

ORDINANCE NO. 75-46

AN ORDINANCE GRANTING A FRANCHISE TO THE FERNANDINA CABLE TELEVISION COMPANY, ITS SUCCESSORS AND ASSIGNS, TO OPERATE AND MAINTAIN A COMMUNITY ANTENNA TELEVISION SYSTEM IN THE COUNTY; SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OF FRANCHISE; PROVIDING FOR COUNTY REGULATION AND USE OF THE COMMUNITY ANTENNA TELEVISION SYSTEM; AND PRESCRIBING PENALTIES FOR VIOLATION OF THE FRANCHISE PROVISIONS; AND PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE PEOPLE OF THE COUNTY OF NASSAU, FLORIDA:

SECTION 1. SHORT TITLE. This Ordinance shall be known and may be cited as the "Fernandina Cable Television Company Franchise Ordinance."

SECTION 2. DEFINITIONS. For the purpose of this Ordinance, the following terms, phrases, words, and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory.

- (1) "County" is the unincorporated areas of Amelia Island, Nassau County, Florida.
- (2) "Commission" is the County Commission of Nassau, Florida.
- (3) "Community Antenna Television System," hereinafter referred to as "CATV System" or "system", means a system of coaxial cables or other electrical conductors and equipment used or to be used primarily to receive television or radio signals directly or indirectly off-the-air and transmit them to subscribers for a fee.
- (4) "Person" is any person, firm, partnership, association, corporation, company or organization of any kind.
- (5) Grantee is Fernandina Cable Television Company, or anyone who succeeds Fernandina Cable Television Company in accordance with the provisions of this Franchise.

SECTION 3. GRANT OF NONEXCLUSIVE AUTHORITY.

(a) Following a full public proceeding evaluating the Grantee's legal, character, financial, technical and other qualifications and the adequacy and feasibility of its construction arrangements and affording due process to the public, there is hereby granted by the County to the grantee the right and privilege to construct, erect, operate, and maintain, in, upon, along, across, above, over and under the streets, alleys, public ways and public places now laid out or dedicated and all extensions thereof, and additions thereto, in the County, poles, wires, cables, underground conduits, manholes and other electrical conductors and fixtures necessary for the maintenance and operation in the County of a cable television system for the interception, sale and distribution of television and radio signals."

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

SECTION 4. COMPLIANCE WITH APPLICABLE LAWS AND ORDINANCES.

The grantee shall, at all times during the life of this Franchise, be subject to all lawful exercise of the police power by the County to such reasonable regulation as the County shall hereafter provide.

SECTION 5. TERRITORIAL AREA INVOLVED. This Franchise related to the present territorial limits of the County and to any area henceforth added thereto during the term of this Franchise.

SECTION 6. LIABILITY AND INDEMNIFICATION.

(a) The grantee shall pay and by its acceptance of this Franchise the Grantee specifically agrees that it will pay all damages and penalties which the County may legally be required to pay as a result of granting this Franchise. These damages or penalties shall include, but shall not be limited to, damages arising out of copyright

infringements and all other damages arising out of the installation, operation, or maintenance of the CATV system authorized herein, whether or not any act or omission complained of is authorized, allowed, or prohibited by this Franchise.

(b) The Grantee shall pay and by its acceptance of this Franchise specifically agrees that it will pay all expenses incurred by the County in defending itself with regard to all damages and penalties mentioned in subsection (a) above. These expenses shall include all out-of-pocket expenses, such as attorney fees, and shall also include the reasonable value of any services rendered by the County Attorney or his assistants or associates or any employees of the County.

(c) The Grantee shall maintain, and by its acceptance of this Franchise specifically agrees that it will maintain throughout the term of this Franchise liability insurance insuring the County and the Grantee with regard to all damages mentioned in sub-paragraph (a) above in the minimum amounts of:

(1) \$200,000.00 for bodily injury or death to any one person, within the limit, however, of \$500,000.00 for bodily injury or death resulting from any one accident.

(2) \$100,000.00 for property damage resulting from any one accident

(3) \$500,000.00 for the infringement of copyrights, and

(4) \$100,000.00 for all other types of liability.

(d) The Grantee shall maintain, and by its acceptance of this Franchise specifically agrees that it will maintain for the first three (3) years of this Franchise a faithful performance bond or a letter of credit from a reputable bank running to the County, and to be approved by the County, in the penal sum of \$25,000.00 and thereafter throughout the term of this franchise a \$10,000.00 bond or letter of credit conditioned that the Grantee shall well and truly

observe, fulfill, and perform each term and condition of this Franchise and that in case of any breach of condition of the bond, the amount thereof shall be recoverable from the principal and sureties thereof by the County for all damages proximately resulting from the failure of the Grantee to well and faithfully observe and perform any provision of this Franchise.

(e) The insurance policy and bond obtained by the Grantee in compliance with this section must be approved by the County Commission and such insurance policy and bond, along with written evidence of payment of required premiums, shall be filed and maintained with the County Clerk during the term of this Franchise.

SECTION 7. CONSTRUCTION. The Grantee shall accomplish significant construction within one (1) year after receiving FCC certification, and shall thereafter equitably and reasonably extend energized trunk cable to a substantial percentage of the franchise area each year, such percentage to be greater than twenty (20%) percent per year."

SECTION 8. COLOR TV. The facilities used by the grantee shall be capable of distributing color TV signals, and when the signals the Grantee distributes are received in color they shall be distributed in color where technically reasible.

SECTION 9. SIGNAL QUALITY REQUIREMENTS. The Grantee shall:

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

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

(3) Limit failures to a minimum by locating and correcting malfunctions as soon as feasibly possible.

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(4) Demonstrate by instruments and otherwise to subscribers that a signal of adequate strength and quality is being delivered.

SECTION 10. OPERATION AND MAINTENANCE OF SYSTEM.

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

(b) The Grantee shall maintain an office in the County, which shall be open during all usual business hours, have a listed telephone, and be so operated that complaints and requests for repairs or adjustments may be received at any time.

SECTION 11. FCC RULES. All FCC Rules and Regulations shall be complied with regarding the carriage of the programming of any existing or future television broadcasting station which covers the County of Nassau, Florida, in its principal broadcasting area. Further, any modifications of FCC Rules and Regulations which affect this ordinance shall be incorporated into this franchise within one (1) year of adoption by the FCC or at a time of franchise renewal whichever occurs first.

SECTION 12. PROGRAM ALTERATION. All programs of broadcasting stations carried by the Grantee shall be carried in their entirety as received, with announcements and advertisements and without additions.

SECTION 13. SERVICE TO PUBLIC FACILITIES. The Grantee shall provide service to public school locations, teaching stations, Police and Fire Stations and Chamber of Commerce within one County for

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educational purposes upon request by the County and at no cost to it or to the public school system, provided the facilities are passed by the cable. The Grantee may at its election provide similar services without cost to private schools, including parochial or other religious schools.

SECTION 14. EMERGENCY USE OF FACILITIES. In the case of any emergency or disaster, the Grantee shall, upon request of the County Commission, make available its facilities to the County for emergency use during the emergency or disaster period.

SECTION 15. OTHER BUSINESS ACTIVITIES.

(a) Neither the Grantee hereunder nor any shareholder of the Grantee shall engage in the business of selling, repairing, or installing television receivers or radio receivers within the County of Nassau, Florida, during the term of this Franchise and the Grantee shall not allow any of its shareholders to so engage in any such business.

(b) This Franchise authorizes only the operation of a CATV system as provided for herein, and does not take the place of any other franchise, license, or permit which might be required by law of the Grantee.

SECTION 16. SAFETY REQUIREMENTS.

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

(b) The Grantee shall install and maintain its wires, cables, fixtures, and other equipment in accordance with the requirements of the County's electrical codes that is now or may hereafter be in existence, and in such manner that they will not interfere with any installations of the County or of a public utility serving the County.

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

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

SECTION 17. NEW DEVELOPMENTS. It shall be the policy of the County liberally to amend this Franchise, upon application of the Grantee, when necessary to enable the Grantee to take advantage of any developments in the field of transmission of television and radio signals which will afford it an opportunity more effectively, efficiently, or economically to serve its customers. Provided, however, that this Section shall not be construed to require the County to make any amendment or to prohibit it from changing its policy stated herein.

SECTION 18. CONDITIONS ON STREET OCCUPANCY.

(a) All transmissions and distribution structures, lines, and equipment erected by the Grantee within the County shall be so located as to cause minimum interference with the proper use of streets, alleys, and other public ways and places, and to cause minimum interference with the rights and reasonable convenience of property owners who join any of the said streets, alleys or other public ways and places.

(b) In case of disturbance of any street, sidewalk, alley, public way, or paved area, the Grantee shall, at its own cost and

expense and in a manner approved by the County Public Works, replace and restore such street, sidewalk, alley, public way, or paved area in as good a condition as before the work involving such disturbance was done.

(c) If at any time during the period of this Franchise the County shall lawfully elect to alter or change the grade of any street, sidewalk, alley, or other public way, the Grantee, upon reasonable notice by the County, shall remove, relay, and relocate its poles, wires, cables, underground conduits, manholes, and other fixtures at its own expense.

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

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

(f) The Grantee shall have the authority to trim trees upon and overhanging streets, alleys, sidewalks, and public ways and places of the County so as to prevent the branches of such trees from coming in contact with the wires and cables of the Grantee, except that at the option of the County, such trimming may be done by it or under its supervision and direction at the expense of the Grantee.

(g) In all sections of the County where the cables, wires, or other like facilities of public utilities are placed underground, the Grantee shall place its cables, wires or other like facilities



underground to the maximum extent that existing technology reasonably permits the Grantee to do so.

(h) The Grantee shall have the authority to negotiate directly with any utility company over the joint use of its existing poles within the franchise area.

SECTION 19. PREFERENTIAL OR DISCRIMINATORY PRACTICES PROHIBITED.

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

SECTION 20. REMOVAL OF FACILITIES UPON REQUEST. Upon termination of service to any subscriber, the Grantee shall promptly remove all its facilities and equipment from the premises of such subscriber upon his request.

SECTION 21. TRANSFER OF FRANCHISE. The Grantee shall not transfer this Franchise to another person without prior approval of the County by ordinance.

SECTION 22. TRANSACTIONS AFFECTING OWNERSHIP OF FACILITIES.

(a) In order that the County may exercise its option to take over the facilities and property of the CATV system authorized herein upon expiration or forfeiture of the rights and privileges of the Grantee under this Franchise, as is provided for herein, the Grantee shall not make, execute, or enter into any deed, deed of trust, mortgage, conditional sales contract, or any loan, lease, pledge, sale, gift or similar agreement concerning any of the facilities and property, real or personal, of the CATV business without prior approval of the County Commission upon its determination that the transaction proposed by the Grantee will not be inimical to the rights of the County under this Franchise. Provided, however,

that this section shall not apply to the disposition of worn out or obsolete facilities or personal property in the normal course of carrying on the CATV business.

(b) Except as provided for in subsection (a) above, the Grantee shall at all times be the full and complete owner of all facilities and property, real and personal, of the CATV business.

SECTION 23. CHANGE OF CONTROL OF GRANTEE. Prior approval of the County Commission shall be required where ownership or control of more than 30% of the right of control of Grantee is acquired by a person or group of persons acting in concert, none of whom already own or control 30% or more of such right of control, singularly or collectively. By its acceptance of this Franchise the Grantee specifically grants and agrees that any such acquisition occurring without prior approval of the County Commission shall constitute a violation of this Franchise by the Grantee.

SECTION 24. FILINGS AND COMMUNICATIONS WITH REGULATORY AGENCIES  
Copies of all petitions, applications and communications submitted by the Grantee to the Federal Communications Commission, Securities and Exchange Commission, or any other federal or state regulatory commission or agency having jurisdiction in respect to any matters affecting CATV operations authorized pursuant to this Franchise, shall also be submitted simultaneously to the County Manager.

SECTION 25. COUNTY RIGHTS IN FRANCHISE.

(a) The right is hereby reserved to the County or the County Commission to adopt, in addition to the provisions contained herein and in existing applicable ordinances, such additional regulations as it shall find necessary in the exercise of the police power; provided that such regulations, by ordinance or otherwise, shall be reasonable and not in conflict with the right herein granted.

(b) The County shall have the right to inspect the books, records, maps, plans, and other like materials of the Grantee at any time during normal business hours.

(c) The County shall have the right, during the life of this Franchise, to install and maintain free of charge upon the poles of the Grantee any wire and pole fixtures necessary for a police alarm system, on the condition that such wire and pole fixtures do not interfere with the CATV operations of the Grantee.

(d) The County shall have the right to supervise all construction or installation work performed subject to the provisions of this Franchise and make such inspections as it shall find necessary to insure compliance with the terms of this Franchise and other pertinent provisions of law.

(e) At the expiration of the term for which this Franchise is granted, or upon its termination and cancellation, as provided for herein, the County shall have the right to require the Grantee to remove at its own expense and within a reasonable time all portions of the CATV system from all public ways within the County.

(f) At the expiration of the term for which this Franchise is granted, or upon its termination and cancellation, as provided for herein, the County, at its election, and upon the payment of the fair market value to the Grantee, shall have the right to purchase and take over the CATV system in its entirety. The above price shall not include, and the Grantee shall not receive, anything for the valuation of any right or privilege appertaining to it under this Franchise. Upon the exercise of this option by the County and its service of an official notice of such action upon the Grantee, the Grantee shall immediately transfer to the County possession and title to all facilities and property, real or personal, of the CATV business, free from

any and all liens and encumbrances not agreed to be assumed by the County in lieu of some portion of the purchase price set forth above; and the Grantee shall execute such Warranty Deeds or other instruments of conveyance to the County as shall be necessary for this purpose. The Grantee shall make it a condition of each contract entered into by it with reference of its operations under this Franchise that the contract shall be subject to the exercise of this option by the County and that the County shall have the right to succeed to all privileges and obligations thereof upon the exercise of such option. Provided, however, that the County shall have the right to increase the purchase price provided for above, should it so elect, by an ordinance amendatory hereto. But such right shall not be construed as giving the Grantee a right to any price in excess of that set forth above.

(g) After the expiration of the term for which this franchise is granted, or after its termination and cancellation, as provided for herein, the County shall have the right following a public proceeding allowing due process of law to all parties to determine whether the Grantee shall continue to operate and maintain the cable television system for a like term pending the decision of the County as to the future maintenance and operation of such system.

SECTION 26. MAPS, PLATS, AND REPORTS.

(a) The Grantee shall file with the County Clerk true and accurate maps or plats of all existing and proposed installations.

(b) The Grantee shall file annually with the County Clerk not later than sixty (60) days after the end of the Grantee's fiscal year, a copy of its report to its stockholders (if it prepares such a report), an income statement applicable to its operations during the preceding 12 months period, a balance sheet, and a statement of its properties

devoted to CATV operations, by categories, giving its investment in such properties on the basis of original cost, less applicable depreciation. These reports shall be prepared or approved by a certified public accountant and there shall be submitted along with them such other reasonable information as the County Commission shall request with respect to the Grantee's properties and expenses related to its CATV operations within the County.

(c) The Grantee shall keep on file with the County Clerk a current list of its shareholders and bondholders.

SECTION 27. PAYMENT TO THE COUNTY. The Grantee shall pay to the County annually an amount equal to three (3) percent of the annual gross subscriber revenues taken in and received by it on all retail sales of television signals within the County during the year, for the use of the streets and other facilities of the County in the operation of the CATV system and for the municipal supervision thereof. This payment shall be in addition to any other tax or payment owed to the County by the Grantee and will be made within sixty (60) days of the close of the Grantee's fiscal year.

SECTION 28. FORFEITURE OF FRANCHISE.

(a) In addition to all other rights and powers pertaining to the County by virtue of this Franchise or otherwise, the County reserves the right to terminate and cancel this Franchise and all rights and privileges of the Grantee hereunder in the event that the Grantee:

1. Violates any provision of this Franchise or any rule, order, or determination of the County or County Commission made pursuant to this Franchise, except where such violation, other than of Section 23 or subsection (2) below, is without fault or through excusable neglect;

2. Becomes insolvent, unable or unwilling to pay its debts, or is adjudged a bankrupt,

3. Attempts to dispose of any of the facilities or property of its CATV business to prevent the County from purchasing same, as provided for herein;

4. Attempts to evade any of the provisions of this Franchise or practices any fraud or deceit upon the County; or

5. Fails to begin construction under this Franchise before fifteen months from the date hereof.

(b) Such termination and cancellation shall be by ordinance duly adopted after thirty (30) days notice to the Grantee and shall in no way affect any of the County's rights under this Franchise or any provision of law. In the event that such termination and cancellation depends upon a finding of fact, such finding of fact as made by the County Commission or its representative shall be conclusive. Provided, however, that before this Franchise may be terminated and cancelled under this Section, the Grantee must be provided with an opportunity to be heard before the County Commission.

SECTION 29. COUNTY'S RIGHT OF INTERVENTION. The Grantee agrees not to oppose intervention by the County in any suit or proceeding to which the Grantee is a party.

SECTION 30. FURTHER AGREEMENT AND WAIVER BY GRANTEE. The Grantee agrees to abide by all provisions of this Franchise, and further agrees that it will not at any future time set up as against the County or the County Commission the claim that the provisions of this Franchise are unreasonable, arbitrary, or void.

SECTION 31. DURATION AND ACCEPTANCE OF FRANCHISE.

(a) This Franchise and the rights, privileges, and authority hereby granted shall take effect and be in force from and after final passage hereof, as provided by law, and shall continue in force and effect for a term of fifteen (15) years, provided that within thirty (30) days after the date of the passage of this ordinance the Grantee shall file with the County Clerk its unconditional acceptance of this Franchise and promise to comply with and abide by all its provisions, terms, and conditions. Such acceptance and promise shall be in writing duly executed and sworn to, by or on behalf of the Grantee before a Notary Public or other officer authorized by law to administer oaths.

(b) Should the Grantee fail to comply with subsection (a) above, it shall acquire no rights, privileges, or authority under this Franchise whatever.

SECTION 32. ERECTION, REMOVAL, AND COMMON USES OF POLES.

(a) No poles or other wire-holding structures shall be erected by the Grantee without prior approval of the County Commission with regard to location, height, type and any other pertinent aspect. However, no location of any pole or wire-holding structure of the Grantee shall be a vested interest and such poles or structures shall be removed or modified by the Grantee at its own expense whenever the County Commission determines that the Public convenience would be enhanced thereby.

(b) Where poles or other wire-holding structures already existing for use in serving the County are available for use by the Grantee, but it does not make arrangements for such use, the County Commission may require the Grantee to use such poles and structures if it determines that the public convenience would be enhanced thereby and the terms of the use available to the Grantee are just and reasonable.

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

SECTION 33. NUMBER OF CHANNELS. The Grantee's cable television distribution system shall be capable of carrying at least twenty (20) television channels or that allowed by FCC rules and regulations.

SECTION 34. RATES.

(a) The rates and charges for television and radio signals distributed hereunder shall be fair and reasonable and no higher than

necessary to meet all costs of service (assuming efficient and economical management), including a fair return on the original cost, less depreciation, of the properties devoted to such service (without regard to any subsequent sale or transfer price or cost of such properties).

(b) The County Commission shall have the power, authority, and right to cause the Grantee's rates and charges to conform to the provisions of subsection (a) hereof, and for this purpose, it may deny increases or order reductions in such rates and charges when it determines that in the absence of such action on its part, the Grantee's rates and charges or proposed increased rates and charges will not conform to the said subsection (a).

(c) By its acceptance of this Franchise the Grantee specifically grants and agrees that its rates and charges to its subscribers for television and radio signals shall be fair and reasonable and no higher than necessary to meet all its necessary costs of service (assuming efficient and economical management), including a fair return on the original cost, less depreciation, of its properties devoted to such service (without regard to any subsequent sale or transfer price or cost of such properties).

(d) By its acceptance of this Franchise the Grantee further specifically grants and agrees that the County Commission shall have the power, authority, and right to cause the Grantee's rates and charges to conform to the provisions of subsection (c) hereof, and for this purpose the Commission may deny increases or order reductions in such rates and charges when it determines that in the absence of such action on its part, the Grantee's rates and charges or proposed increased rates and charges will not conform to the said subsection (e).



(e) However, no action shall be taken by the County Commission with respect to the Grantee's rates under this Section until the Grantee has been given reasonable notice thereof and an opportunity to be heard by the Commission with regard thereto.

(f) The following maximum rates and charges are hereby authorized for service under this franchise and shall not be changed by the Grantee without prior approval by the County Commission at a public proceeding affording due process.

1. Initial aerial tap-in and connection charge, \$25.00
2. Monthly rate for single service connection, \$7.50

(g) The Grantee shall receive no deposit, advance payment, or penalty from any subscriber or potential subscriber without approval of the Commission.

(h) The Grantee shall receive no consideration whatsoever for or in connection with its service to its subscribers other than in accordance with this Section.

(i) If in the future, the State of Florida regulates the rates of the Grantee for the service provided for in this Franchise, this Section shall be of no effect during such state regulation to the extent of any conflict therewith.

SECTION 35. FLOW-THROUGH OF REFUNDS.

(a) If during the term of this Franchise the Grantee received refunds of any payments made for television or radio signals, it shall without delay notify the County Commission, suggest a plan for flow through of the refunds to its subscribers, and retain such refunds pending order of the Commission. After considering the plan submitted by the Grantee, the Commission shall order the flow through of the refunds to the Grantee's subscribers in a fair and equitable manner.

(b) By its acceptance of this Franchise the Grantee specifically grants and agrees that if, during the term hereof, it receives refunds of any payments made for television or radio signals, it shall without delay notify the County Commission, suggest a plan for flow

through of the refunds to its subscribers, retain the refunds pending order of the Commission, and flow through such refunds in accordance with the order of the Commission.

SECTION 36. SUBSCRIBER REFUNDS ON TERMINATION OF SERVICE. If any subscriber of the Grantee of less than three (3) years terminates service because of the Grantee's failure to render service to such subscriber of a type and quality provided for herein, or if service to a subscriber of less than three (3) years is terminated without good cause or because the Grantee ceases to operate the CATV business authorized herein for any reason, except expiration of this Franchise, the Grantee shall refund to such subscriber an amount equal to the initial-tap-in and connection charges paid by him.

SECTION 37. PUBLICATION COSTS. The Grantee shall assume the cost of publication of this Franchise as such publication is required by law and such is payable upon the Grantee's filing of acceptance of this Franchise.

SECTION 38. ARBITRATION. In the event any dispute between the parties hereto arising out of and under Section 25 (f) of this ordinance as to what constitutes the "fair market value", then and in that event it shall be settled by arbitration: one person to be appointed by the County and one person to be appointed by the Grantee and the arbitrators so chosen shall, if they themselves are unable to agree, choose a third arbitrator without any unnecessary delay, and the decision in writing by those assenting thereto of any two of the arbitrators shall be final and binding on the parties hereto, namely, the Grantee and the County.

SECTION 39. INDEMNITY. Grantee agrees to fully indemnify and save and hold harmless the said County from and against all claims, actions and all expenses incidental to the investigation and defense thereof, based upon or arising out of damages or injuries to person or property, caused by the fault or negligence of Grantee, its agents or employees, or arising out of the conduct of Grantee's business,

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or arising out of the use or occupancy of the properties or the Grantee shall not be liable for any injury or damage or loss occasioned by the negligence of grantee, its agents or employees. Grantee hereby agrees to pay all costs, attorneys' fees and expenses that shall be made and incurred by County in enforcing and defending the agreements of this ordinance. Grantee shall give to the County prompt and reasonable notice of any such claims or actions or suits.

SECTION 40. INCREASED FEE RATE. If for any reason the laws or regulations of the State of Florida or the Federal Communication Commission or any other agency thereof shall increase their rate, the fee to be charged by the County may be changed to that allowed by the appropriate authority at the option and approval by the County Commission.

SECTION 41. SEPARABILITY. If any section, subsection, sentence, clause, phrase, or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions hereof.

SECTION 42. ORDINANCES REPEALED. All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

This Ordinance shall take effect and become law upon enactment.

John F. Armstrong, Jr.

ATTEST:

D. O. Oxley  
D. O. Oxley  
Ex-officio Clerk

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