

AN ORDINANCE OF THE CITY OF SAN DIEGO GRANTING TO MISSION CABLE TV, INC. THE NONEXCLUSIVE RIGHT, PRIVILEGE AND FRANCHISE TO LAY AND USE LINES, WIRES, COAXIAL CABLE AND APPURTENANCES FOR TRANSMITTING, DISTRIBUTING AND SUPPLYING RADIO AND CABLE TELEVISION SERVICE ALONG, ACROSS AND UPON THE PUBLIC STREETS, WAYS, ALLEYS AND PLACES WITHIN CERTAIN AREAS OF SAN DIEGO.

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BE IT ORDAINED, by the Council of The City of San Diego,
as follows:

Section 1. CITATION OF ORDINANCE

This ordinance may be cited as the City of San Diego Mission Cable TV, Inc. Franchise Ordinance.

Section 2. RULES OF CONSTRUCTION

This ordinance shall be construed liberally in order to effectuate its purposes. Unless otherwise specifically prescribed in this ordinance, the following provisions shall govern its interpretation and construction:

(a) 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.

(b) Time is of the essence of this ordinance. Grantee shall not be relieved of its obligation to comply promptly with any provision of this ordinance by any failure of City to enforce prompt compliance with any of its provisions.

(c) Any right or power conferred, or duty imposed upon any officer, employee, department or board of City is subject to transfer by operation of law to any other officer, employee, department or board of City.

(d) Grantee shall have no recourse whatsoever against City for any loss, cost, expense or damage arising out of any provision or requirement of this ordinance or the enforcement thereof.

(e) This ordinance does not relieve Grantee of any requirement of the City Charter or of any ordinance, rule, regulation or specification of City now or hereafter in effect, including, but not limited to, any requirement relating to street work, street excavation permits, undergrounding of utility facilities, including cable television system facilities, or the use, removal or relocation of property in streets.

(f) Provisions of this ordinance shall be construed in accordance with Sections 103, 103.1, 104 and 105 of the Charter of The City of San Diego.

(g) None of the provisions of this ordinance shall deprive Grantee of any rights, privileges or protections afforded under the express provisions of the Charter and ordinances of the City of San Diego and Constitution and laws of the State of California or the United States of America. Nor shall the City exercise any of its rights and powers in an arbitrary or capricious manner, or without affording Grantee due process of law.

Section 3. PURPOSE AND INTENT

It is the purpose and intent of this ordinance to grant a franchise to engage in the business of operating a Cable Television System in that portion of the City of San Diego particularly described in Section 6 of this ordinance.

Section 4. DEFINITIONS

Whenever in this ordinance the following words or phrases are used, they shall be construed as follows:

(a) "City" shall mean The City of San Diego, a municipal corporation in the State of California and successors in interest of the City.

(b) "Council" shall mean the City Council of City and successors in interest of the Council.

(c) "Dwelling Unit" shall mean a room or suite of rooms in a building or portion thereof, used for living purposes by one family. A Dwelling Unit shall not mean a building used solely for commercial uses or a building providing rooms or suites of rooms exclusively for transient occupancy use as such use is described in Section 35.0102 of the San Diego Municipal Code.

(d) "Franchise" shall mean the right and authority granted by this ordinance to Grantee to construct, maintain and operate a Cable Television System through use of public streets, other public rights of way or public places in City.

(e) "Franchise Property" shall mean all property owned, installed or used in the public streets, other public rights of way or public places in City under authority of this ordinance by Grantee.

(f) "Grantee" shall mean Mission Cable TV, Inc., and any lawful successor or assignee of the original Grantee.

(g) "Public School" shall mean any school at any educational level operated within the corporate limits of the City of San Diego by any public school system, including, but not necessarily limited to, elementary, junior high school, high school, community college, state colleges and universities.

(h) "Street" shall mean the surface, the air space above the surface and the area below the surface of any public street, other public right of way or public place.

(i) "Cable Television System" shall mean a system of antennas, cables, wires, lines, towers, wave guides, or any other conductors, converters, equipment or facilities, designed and constructed for the purpose of producing, receiving, amplifying and distributing, audio, video and other forms of electronic or electrical signals, located in the City as delineated in Section 6 of this ordinance.

(j) "Subscriber" shall mean a member of the general public that receives programming distributed by a cable system and does not further distribute it. This term shall include the occupants of one or more multiple-occupancy buildings who receive signals distributed by an internal distribution system that is interconnected to a Cable Television System for this purpose.

(k) "Total Gross Receipts" shall mean any and all compensation and other consideration collected or received or in any manner gained or derived by Grantee from the operation of its Cable Television System. Total gross receipts shall not include (a) uncollectible amounts; (b) refunds or rebates made

by Grantee; (c) revenues received as a direct reimbursement of Grantee's expense in the operation of any access channels; (d) sales, ad valorem, or other types of "add on" taxes, levies or fees calculated by gross receipts or gross revenues which Grantee might have to pay or collect for Federal, State or local government (exclusive of franchise fees provided for herein); (e) revenues received for advertising on Grantee's local origination channel, to the extent of Grantee's direct costs of operation of Grantee's local origination channel; and (f) non-operating revenues such as interest income or gain from sale of an asset.

(l) "Undeveloped Region" shall mean any area in which there exist few or no buildings, streets or other improvements.

(m) "Head End Facilities" shall mean that portion of the cable television system consisting of the television receiving antennae and structures necessary to support such antennae in a position to receive television broadcast signals and any microwave facilities that are a part of such antenna system.

(n) "Resale Customer" shall mean any customer who provides, operates and maintains its own cable television distribution system within a multi-dwelling-unit complex and is eligible to receive

for its service payment at the rate for resale customers as established by the City Council.

Section 5. NATURE AND EXTENT OF GRANT

The franchise granted by this ordinance to Grantee, constitutes authority to use the public streets, other public rights of way or public places in City, to engage in the business of operating a Cable Television System within the service area described in Section 6 of this ordinance subject to all of the terms and conditions contained in this ordinance. Pursuant to such authority, until lawfully revoked, Grantee may construct, maintain and operate wires, cables, poles, conduits, manholes and other television conductors and equipment necessary for the maintenance and operation of a Cable Television System.

With the exception of channel converters, Grantee shall not engage in the business of selling, leasing or renting television sets which make use of signals transmitted by its system, nor shall Grantee engage in the repair of or sale of parts for such sets.

Section 6. DESIGNATION OF SERVICE AREA

The service area referred to in Section 3 of this ordinance is as follows:

- (a) All areas within the corporate limits of the City of San Diego lying southerly of the center line of the San Diego River Channel, as said line was established by the City Council in Document No. 750693 on file in the

office of the City Clerk which is by this reference incorporated into this ordinance as if set out fully herein;

(b) Those additional areas within the corporate limits of the City of San Diego lying northerly of the line referred to in (a) above, as said additional areas are more particularly delineated in Document No. 734821 on file in the office of the City Clerk which is by this reference hereby incorporated into this ordinance as if set out fully herein, said document to contain a map and legal description of said additional areas;

(c) Provided, however, that in no event shall the foregoing service area descriptions exclude from this franchise ordinance any area now served by Grantee and inadvertently omitted due to inaccuracies or oversight in said service area description.

Section 7. DURATION OF GRANT

(a) The Franchise shall become effective on the thirtieth (30th) day after the passage of this ordinance provided that prior to the date of the passage of this ordinance Grantee has filed with the City Clerk:

(1) A written instrument, addressed to the Council, accepting the Franchise and agreeing to comply with all the provisions of this ordinance;

(2) A construction plan setting forth projected installation accomplishment in accordance with paragraph (b), Section 11 of this ordinance.

(3) Performance surety bonds, cash deposits or deposits in any Federal or State of California chartered bank or savings and loan association in accordance with the provisions of Section 11 of this ordinance.

(b) The term of this Franchise shall be thirty (30) years, commencing on the effective date of the Franchise as provided in paragraph (a) of this section; provided, however, that the term of this Franchise may be extended in accordance with the procedures set forth below:

(1) The provisions of this ordinance shall be subject to renegotiation every five (5) years during the term of the Franchise, including any extensions thereof. These renegotiation opportunities shall be referred to as "renegotiation intervals." Renegotiation shall be initiated upon written notice given by the City or Grantee to the other not less than one (1) year prior to the particular renegotiation interval. If both parties agree to renegotiation, renegotiation shall be directed towards effecting alterations in the terms and conditions of this Franchise to reflect any significant changes which occurred during the interim period.

(2) If any renegotiation prior to the end of the term, including extensions of this Franchise,

results in agreement between the City and Grantee, or if, alternatively, both parties agree, at any renegotiation interval as defined above, that no renegotiation is needed or required, then the term of this Franchise shall be extended for an additional five (5) years by an appropriate action of the City Council.

(3) This franchise shall terminate without further action by the City at the end of the term, including extensions, of this Franchise; provided, however, the total term of this Franchise, with extensions, shall not exceed fifty (50) years from the effective date of this ordinance; provided, further, that the City Council, at or before the end of the term, or the term as extended, retains the exclusive power to grant a further extension, or a renewal of this Franchise, or a new Franchise to Grantee.

(c) The Franchise may be terminated at any time by Council in the event Council finds, after notice and hearing, that:

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(1) The Grantee fails to comply with any material provision of this ordinance; however, termination proceedings shall only be commenced in a public meeting affording due process, if, after sixty (60) days from written notification from the City stating with particularity the grounds upon which the City relies, Grantee fails to correct stated violation. In the event stated violation is not reasonably curable within sixty (60) days, the Franchise shall not be terminated or revoked if the Grantee provides, within the said sixty (60) days, a plan, satisfactory to the City Manager to remedy the violation and continues to demonstrate good faith in seeking to correct said violation.

(a) It shall not be a failure to comply with a material provision of this ordinance for Grantee to comply with any rules and regulations of the Federal Communications Commission, or any Federal or State regulatory commission or agency having jurisdiction over Grantee's operations.

(b) The Council's finding of materiality is subject to a de novo review by a court of competent jurisdiction.

(2) City wishes to purchase the property of Grantee, as provided in Section 104 of the Charter

of City; provided, however, that Grantee shall be given thirty (30) days' notice of any termination proceedings.

Section 8. LIMITATIONS UPON GRANT

(a) No privilege or exemption is granted or conferred by this ordinance except those specifically prescribed in it and necessarily included in it.

(b) The Franchise granted by this ordinance is subordinate to any public use or any other type of franchise or lawful occupancy existing in 1963 at the time of the grant of Mission Cable TV, Inc.'s original franchise, of any public highway, street, or road or other public property for the purpose of erecting, operating and maintaining poles, lines, conduits, cables, gas pipe lines and other necessary fixtures used in connection with the purpose of other existing types of franchises or any extension of them.

(c) The Franchise granted by this ordinance is a privilege personal to the original Grantee. It cannot in any event be sold, transferred, leased, assigned, or disposed of as a whole, or in part, either by forced sales, merger, consolidation, by operation of law, or otherwise, without prior consent of City expressed by ordinance, and then only under such conditions as may be prescribed in the consenting ordinance; provided, however, that no such consent shall be required for any transfer in trust, mortgage, or other hypothecation, as a whole, to secure an indebtedness.

(d) In the event the Grantee is a corporation, prior approval of the City Council, expressed by resolution, shall be required when ownership or control of thirty percent (30%) or more of the voting stock of Grantee is acquired by a person or a group of persons acting in concert, none of whom already own or control thirty percent (30%) or more of the voting stock, singularly or collectively. Any such acquisition occurring without prior approval of the City Council shall constitute a failure to comply with a provision of this ordinance within the meaning of subparagraph (1) of paragraph (c) of Section 7 of this ordinance.

Section 9. RIGHTS RESERVED TO CITY

(a) City provides and reserves to itself every right and power which is required to be reserved or provided in this ordinance by any provision of the Charter of City or of any ordinance of City, and Grantee by its acceptance of this Franchise agrees to be bound thereby and to comply with any action or requirement of City in its reasonable exercise of any such right or power.

(b) Neither the granting of this Franchise nor any provision of this ordinance shall constitute a waiver or bar to the reasonable exercise of any governmental right or power of City.

(c) The Franchise granted by this ordinance shall be nonexclusive and neither the granting of this Franchise nor any of the provisions contained in this ordinance shall prevent City from granting any identical or similar

franchise to any person or corporation other than the Grantee, either within or without the area designated in Section 6.

Section 10. SERVICES TO CITY

(a) Grantee shall at its own expense and without any cost to City whatsoever, provide and maintain the following facilities and services to City and Public Schools as hereinafter provided:

(1) One cable television connection to each City unit designated by the City Manager such as police stations, fire stations, public libraries and other City facilities within Grantee's authorized service area that require an aerial drop of 150 feet or less from the existing cable television distribution system. Grantee shall not be required to provide or maintain the cable television distribution system within said facilities; and

(2) One cable television connection to each public elementary school site, secondary school site, college or university school site and educational administrative site within Grantee's authorized service area that requires an aerial drop of 150 feet or less from the existing cable television distribution system. Grantee shall not be required to provide or maintain the cable distribution system within said facilities.

(b) In the event that City or any Public School desires to have additional connections of the cable television system or the cable television distribution system within such buildings installed by Grantee, Grantee shall make such connections or installations charging to the City or Public School the actual variable cost to Grantee of such connections or installations. Grantee shall reserve the right to subcontract such installations or connections when deemed necessary. Installation of all additional connections to public buildings shall be completed within sixty (60) days of receipt of request for such connections.

(c) Grantee shall not charge City or any Public School for delivering any regularly carried basic service signals to any of the buildings described in subsections (a) or (b) of this section.

(d) Grantee shall provide without cost one channel for use by Local Governments for the distribution of programming in the public interest. Grantee shall provide interconnection of such channel with all other Cable Television Systems operating pursuant to a franchise granted by City, provided, however, that the receiving Cable Television System shall bear the full cost of receiving Grantee's transmission of such channel. If Grantee operates a remote or permanent vehicle and equipment for telecasting and video taping, Grantee shall provide origination service to City at such reasonable times and costs as are mutually agreed upon.

(e) Grantee shall provide without cost, one channel for use by Public Schools. As required by Grantee, the Public Schools shall save and hold harmless Grantee from any uses made by the Public Schools in the distribution of programming.

(f) City shall save and hold harmless Grantee from any uses made by the City in the distribution of programming in the public interest as provided for in Subsection (d) of this section.

(g) Grantee shall provide without cost, one channel for public or community access in accordance with reasonable rules, regulations and conditions mutually established by Grantor and Grantee after appropriate public hearing, provided, however, that to the extent that the Federal Communications Commission (FCC) exercises jurisdiction as determined by Federal statute or decisional law to be valid and appropriate, said access rules shall govern.

Section 11. ESTABLISHMENT AND EXTENSION OF SERVICE

(a) Grantee shall extend and offer service to one hundred percent (100%) of the Dwelling Units existing within the franchise area on the effective date of the ordinance by the end of the second (2nd) year after the effective date of this ordinance with the exception of those Dwelling Units falling under the exclusions set forth in Section 12.

(b) To insure conformance with the provisions of this section, Grantee shall within the period specified in paragraph (a) of Section 7 file with the City Clerk and the City Manager:

(1) A construction plan showing the schedule of extension of service conforming to the requirements of paragraph (a). Said plan shall be in a format prescribed by the City Manager and shall at a minimum include cable installation plans and maps presenting the total amount of cable to be installed during the two-year period provided for in paragraph (a) of this section, the amounts of cable to be installed during each year, and any areas to be excluded from the plan as provided in Section 12.

(2) An acceptable corporate performance bond in the amount of \$50,000 which shall guarantee conformance with the construction plan filed in accordance with paragraph (b)(1) of this section. In lieu of said bond Grantee may deposit cash with The City of San Diego or in a Federal or State of California bank or savings and loan association in the name of The City of San Diego, but with interest reserved to the Grantee, on terms and conditions approved by the City Attorney.

(c) In areas where Grantee must install its system underground, Grantee may charge an installation charge up to the actual cost of connecting to the distribution system.

(d) Extensions of service to Dwelling Units developed after the effective date of this ordinance shall be made prior to the acceptance of the subdivision by the City unless such locations are excepted under the provisions of Section 12.

(e) Subsequently developed locations which are exempted from the mandatory extension requirements of paragraph (d) of this section under the provisions of Section 12 shall be provided service upon request under the provisions of Section 13.

(f) Annually, during January of each year, following the adoption of this Franchise, as cable extension and service required in paragraph (a) of this section is actually accomplished, the City Manager, at the request of the Grantee, may authorize a reduction in the amount of the corporate performance bond or deposit specified in paragraph (b)(2) of this section in proportion to the amount of the plan actually accomplished to that date. Upon completion of all cable extension work required by Section 11(a), the City Manager shall authorize release of the remaining bond or deposit to Grantee.

Section 12. EXCEPTIONS TO EXTENSION OF SERVICE REQUIREMENTS

Grantee shall not be required to extend or offer service:

(a) In any area where the investment required per prospective subscriber is greater than the maximum capital investment per subscriber as established by application of the following construction formula:

$$I \quad \left(\begin{array}{l} \text{the maximum capital investment} \\ \text{per subscriber} \end{array} \right) = \frac{R - E}{Cr_f + t}$$

$$\text{where } t = \frac{e}{1 - e} \quad (a - bc) \quad \left[1 - \frac{Gf}{15} \right]$$

The variables in these formulas are defined as follows:

- I = The maximum capital investment per subscriber.
- R = Annual incremental revenue from one additional subscriber.
- E = Incremental annual maintenance and operating cost of maintaining one additional subscriber.

These shall only include actual cash costs and shall exclude such non-cash expenses as depreciation and amortization costs.

- t = Annual income taxes as a proportion of initial investment.
- Cr_f = Capital recovery factor assuming a fifteen (15) year life and an interest rate equal to Grantee's last authorized rate of return.
- e = Combined federal and state tax rate.
- a = Grantee's last authorized rate of return.
- b = Interest rate paid on borrowed funds.
- c = Fraction of net plant financed by borrowing.
- Gf = Uniform gradient factor to convert a gradient series to an equivalent annual series assuming a fifteen (15) year life and an interest rate equal to Grantee's last authorized rate of return.

Provided, however, that the assumption of a fifteen (15) year capital recovery factor and uniform gradient factor

(as defined herein) for the purpose of determining the construction formula set forth above shall not be construed as establishing any precedent for any other purpose, including but not limited to ratemaking.

The number of prospective subscribers shall be equal to 50% of the single family homes plus 30% of the multi-family Dwelling Units to be passed.

(b) An annual review of the construction formula shall be held in March of each year. Grantee shall submit updated computations for the maximum capital investment per subscriber using the construction formula set forth in paragraph (a). These computations shall be reviewed by the City Manager, and when approved, the maximum capital investment so computed shall be used by Grantee in determining service extension requirements until the completion of the next annual review.

(c) All exceptions claimed by Grantee under provisions of paragraph (a) shall be subject to review and approval by the City Manager.

Section 13. SYSTEM EXTENSIONS TO EXCEPTED AREAS

(a) Grantee shall extend service to areas excluded from mandatory extension by the provisions of paragraph (a), Section 12, if at least thirty (30) percent of the single-family Dwelling Units to be passed by the extension agree in writing to pay for the installation of cable television service facilities on their property. Grantee shall begin construction of the cable service extension within one year of receiving these written agreements.

(b) In areas where Grantee extends service under the provisions of (a), Grantee shall be authorized to collect a service extension surcharge in addition to any other normal monthly service charges. The purpose of the surcharge is to allow Grantee to fully recover its excess investment in the extension project. The surcharge shall be computed as follows:

(1) Divide the total cost of making the extension by the number of prospective subscribers as determined in accordance with the provisions of paragraph (a), Section 12.

(2) From the figure obtained in (b)(1) subtract Grantee's maximum capital investment per subscriber computed in paragraph (a), Section 12, to get the amount of Grantee's excess per subscriber investment.

(3) Multiply Grantee's excess per subscriber investment as computed in (b)(2) by the capital recovery factor obtained by assuming a twenty year period and an interest rate equal to Grantee's last authorized rate of return to get the annual per subscriber surcharge. Divide this figure by twelve (12) to get the monthly service extension surcharge which may be collected from subscribers in the extension area.

(c) The surcharge authorized and computed in (b) may be collected by Grantee for a period of twenty years subsequent to the activation of the extension or until Grantee's excess investment is fully amortized, whichever occurs first.

(d) With approval of the City Manager, variations in the extension provisions set forth in (a) and (b) above may be allowed if the application of these provisions would result in an undue burden being placed on Grantee or main body of system subscribers.

Section 14. ABANDONMENT OF SERVICE

(a) After Grantee has established service pursuant to this ordinance in the Franchise area, such service shall not be suspended or abandoned in the whole of or any part of the Franchise area unless the suspension or abandonment is authorized by the City Council.

(b) Whenever Grantee shall file with the City Council a written application alleging that the public interest, convenience and necessity no longer require that Grantee furnish service pursuant to this ordinance in the whole of or in any part of the Franchise area, the City Council, at a public hearing, shall take evidence upon that question and shall make a finding with respect to it. Notice of the hearing shall be given by Grantee in writing to each Subscriber in the part of the Franchise area in question at least fifteen (15) days prior to the date scheduled for the hearing. If the City Council shall find that the public interest, convenience and necessity no longer require that Grantee furnish service, the City Council, after hearing as provided herein, shall authorize suspension or abandonment of service upon such reasonable terms and conditions as may be prescribed by the City Council.

Section 15. REGULATION OF RATES AND SERVICE

(a) The City Council shall have the power and right at all times for the duration of the Franchise granted by this ordinance to require Grantee to conform to reasonable rules and regulations now or hereafter adopted by the City Council, including the power to regulate and establish reasonable rates and charges by Grantee for services rendered under this ordinance. The establishment of such rules and regulations shall be discretionary with the City Council. With the exception of rate increases provided for in subsection 15(b) below, the establishment of rates and charges shall only be made subsequent to appropriate public proceedings affording due process. However, Grantee may establish its own rates and charges for services for which the City Council has not affirmatively established rates and charges.

(b) Beginning on January 1, 1979, Grantee may, upon filing a notice of intention thirty (30) days in advance with the City Manager, receive an increase in the amount of its maximum allowable cable service rates subject to the following conditions and limitations:

(1) The amount of the increase in percent shall be limited to six-tenths (6/10) multiplied by the percentage increase, since Grantee's last rate increase, in the San Diego Area Consumer Price Index for all Urban Consumers, as compiled by the United States Department of Labor, Bureau of Labor Statistics.

In no event shall the amount of the increase exceed ten (10) percent of the service rates.

(2) In the event that the consumer price index referred to in paragraph (b) (1) shall no longer be published, then another similar, generally recognized index may be substituted upon approval of the City.

(3) Grantee shall provide to the City Manager, along with the notice of intention, such information as may be required to document the basis of the request.

(4) Increases shall be subject to the review and approval of the City Manager. The City Manager shall notify Grantee in writing of approval of the increase within ten (10) calendar days of receipt of accurate and complete information, satisfactorily supporting any increase requested in accordance with (b) (1) above. In the absence of any written communication from the City Manager within said ten (10) days to the contrary, the increase is deemed approved.

(5) Grantee shall give notice to subscribers at least fifteen (15) days in advance of the implementation of such an increase, and no part of the increase shall be applicable to any bills for service which have already been sent to subscribers.

(6) No more than one such increase may be implemented in any one calendar year although Grantee shall have at any time the right to submit a request to the City Council for any additional rate relief as provided in the rules and regulations established by Council.

(c) Grantee shall:

(1) Operate the Cable Television System authorized by this Franchise in accordance with the minimum technical standards set forth in Chapter VII, Article 3, Division 1 of the San Diego Municipal Code (Section 73.0101 et seq.), and any subsequent amendments thereto, to the effect that the Subscriber shall receive the best possible signal to his television set consistent with the state of the art at rates reasonable to Grantee and Subscriber.

(2) Limit failure to a minimum by locating and correcting malfunctions promptly, but in no event longer than twenty-four (24) hours after notice.

(3) Upon complaint by a Subscriber make a demonstration satisfactory to the City Manager or his designated representative that a signal is being delivered which is of sufficient strength and quality to meet the said technical standards referenced to in (1) above.

(4) Render efficient service, making repairs promptly and interrupting service only for good cause and for the shortest time possible; such interruptions insofar as possible shall be preceded by notice given to Subscribers twenty-four (24) hours in advance and shall occur during periods of minimum use of system.

(5) Maintain an office within the City of San Diego, which office shall be open during reasonable

business hours, have a local telephone number listed in the directory of The Pacific Telephone and Telegraph Company, and be so operated that complaints and requests for repair or adjustments may be received at any time.

(d) Grantee shall operate the Cable Television System authorized by this ordinance twenty-four (24) hours per day, seven (7) days per week.

Section 16. UNDERGROUND SYSTEM

(a) The Cable Television System to be installed under authority of this ordinance shall be placed underground in all subdivisions which are subject to the provisions of paragraph 2, Section 102.0404 of the San Diego Municipal Code, except as otherwise provided in this Franchise.

(b) Where facilities are required to be installed underground, Grantee may place aboveground the Head End Facilities necessary to operate the system; provided, however, that irrespective of whether the system is aboveground or underground, no Head End Facilities shall be placed in any street.

(c) With approval of the City Manager, expressed in writing, Grantee may place coaxial cables aboveground in undeveloped regions of the service area. The City Manager, in writing, at his sole discretion, may withdraw such permission at any time, after giving Grantee 30 days' notice of his intention to do so. When approval for aboveground cable is withdrawn, conversion to underground service shall be accomplished with minimal interruption of service to Subscribers.

(d) Under no circumstances may the City Manager grant permission to place aboveground in any street any portion of the Cable Television System authorized by this Franchise and required by Section 102.0404 of the San Diego Municipal Code to be constructed underground.

Section 17. LOCATION OF FRANCHISE PROPERTY

Franchise Property shall be constructed or installed only at such locations and in such manner as shall be approved by the City Manager, acting in the exercise of reasonable discretion.

Section 18. REMOVAL OR ABANDONMENT OF FRANCHISE PROPERTY

(a) In the event that any Franchise Property has been installed without complying with the requirements of this ordinance, Grantee shall, at the request of the City Manager and at its sole cost and expense, either install the Franchise Property in compliance with this ordinance or remove promptly from the street all Franchise Property other than any which the City Manager may permit to be abandoned in place. In the event of any such removal, Grantee shall promptly restore to a condition satisfactory to the City Manager the public street or other dedicated public right of way or other public places in the City from which the Franchise Property has been removed.

(b) Franchise Property to be abandoned in place shall be abandoned in the manner prescribed by the City Manager. Upon permanent abandonment of any Franchise Property in place, Grantee shall submit to the City Manager an instrument satisfactory in form to the City Attorney, transferring to City the ownership of the Franchise Property abandoned.

Section 19. CHANGES REQUIRED BY PUBLIC IMPROVEMENTS

Grantee shall, at its sole expense, protect, support, temporarily disconnect, relocate in the same street, alley, or public place, or remove from any street, alley or public place, any Franchise Property when required by the City Manager by reason of traffic conditions; public safety; street vacation; freeway and 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 including, but not limited to, placing such structures and improvements underground, by governmental agencies when acting in a governmental or proprietary capacity; provided, however, that Grantee shall in all such cases have the privilege and be subject to the obligation to abandon Franchise Property in place as provided in Section 18; and provided further that Grantee shall have the benefit of any local, state or federal law or regulation providing for reimbursement of or contribution toward Grantee's expense necessitated by such improvements. It is further provided, however, that where such improvements, requiring actions to protect, support, disconnect, relocate or remove any Franchise Property by Grantee, are not for a municipal or governmental purpose Grantee may be required to engage in the above action only upon condition that the Grantee is reimbursed for any and all costs of such actions incurred by Grantee and occasioned by such improvements.

Section 20. FAILURE TO PERFORM STREET WORK

Upon failure of Grantee to commence, pursue or complete any work required by law or by the provisions of this ordinance to be done in any street, within the time prescribed and to the satisfaction of the City Manager, the City Manager may, at his option, cause such work to be done and the Grantee shall pay to the City the cost thereof and the itemized amounts reported by the City Manager to Grantee, within thirty (30) days after receipt of such itemized report.

Section 21. ANNUAL PAYMENTS TO THE CITY

(a) By its acceptance of this Franchise, Grantee agrees to pay to City annually in lawful money of the United States three percent (3%) of the Total Gross Receipts collected or received, or in any manner gained or derived by Grantee in each calendar year, or portion thereof, during the term of this Franchise, from the properties, operations and business referred to in Section 5 of this Franchise.

(b) Within sixty (60) days after the calendar quarters ending on March 31, June 30, September 30 and December 31 in each year during the term of this Franchise and forty-five (45) days after the expiration of the term of this Franchise, Grantee shall:

(1) File a statement in duplicate, verified by Grantee or by a general officer or other duly authorized representative of Grantee, showing in such form and detail as the City Manager may require from time to time the facts material to a determination of the amount due for the previous calendar quarter.

(2) Pay to the City Treasurer the money required to be paid by Grantee to City upon the basis of the data set forth in the quarterly statement required in paragraph (b) (1).

(c) Payments made to City by Grantee pursuant to this section for any calendar year shall be as a rental for use of the public right of way in lieu of any fee or tax prescribed by City for the same period, but only to the extent of such payment.

(d) In the event Grantee fails to make the payments for this Franchise on or before the dates due as hereinabove provided, Grantee shall pay as additional consideration a sum of money equal to one percent (1%) of the amount due for each month or fraction thereof during which the payment is due and unpaid, as interest and for loss of use of the money due.

(e) The sanctions of paragraph (d) of this section are not exclusive, and do not preclude action by Council under the terms of subparagraph (1) of paragraph (c) of Section 7 of this ordinance in the event that payments become overdue by more than sixty (60) days.

Section 22. INDEMNIFICATION TO CITY

Grantee shall indemnify City, its officers and its employees, against all claims, demands, actions, suits and proceedings by others and against all liability to others, and against any loss, cost and expense resulting therefrom, including reasonable attorneys' fees, arising out of the exercise or enjoyment of the Franchise granted by this ordinance, irrespective of the amount of the bond designated in Section 11.

Section 23. INSPECTION OF PROPERTY AND RECORDS

(a) At all reasonable times Grantee shall permit examination by any duly authorized representative of the City Manager, City Engineer or the City Auditor of all Franchise Property located within the City. Grantee shall also permit any duly authorized representative of the City Manager, City Engineer or the City Auditor to examine and transcribe any and all maps and other records kept or maintained by Grantee or under its control concerning the operations, affairs, transactions or property of Grantee. If any of such maps or records are not kept in the City or upon reasonable request made available in the City, and if the City Manager, City Engineer or the City Auditor shall determine that an examination of such maps or records is necessary or appropriate to the performance of any of their duties, then all reasonable travel and maintenance expense necessarily incurred in making such examination shall be paid by Grantee.

(b) Grantee shall prepare and furnish to the City Manager, City Engineer or the City Auditor, and in the form prescribed by the City Manager, City Engineer or the City Auditor, such reports with respect to its operations, affairs, transactions or property as may be reasonably necessary or appropriate to the performance of any of the duties of the City Manager, City Engineer or the City Auditor in connection with this Franchise. Such reports may include, but are not limited to, a complete set of records and plans of all facilities as finally installed within the Franchise service area.

held pursuant to Section 25 of this Franchise. The standard for determining the price to be paid for the property so acquired shall be that provided by law affecting the purchase of public utility properties applicable on the effective date of this Franchise. Beginning with two years prior to expiration, and whether or not the City has then elected to purchase the system, either the City or the Grantee may demand an arbitration pursuant to Section 25 of this Franchise, for the purpose of determining the price on date of expiration, to be paid by the City if it elects to purchase the system. If the City does not purchase the system, the Grantee shall deal with the part of the system located in the streets in accordance with the provisions of subsections (d) and (e) of this section.

(d) In the event that (1) the use of any Franchise Property is discontinued for any reason for a continuous period of twelve (12) months; or (2) the Franchise has been terminated or has expired, and City has not exercised its rights pursuant to subsection (a) of this section, Grantee, at the direction of the City Manager, shall remove promptly from the street, at its expense, all or such portion of the Franchise Property which the City Manager may reasonably require. Alternatively, Grantee has the option of removing all or any portion of the Franchise Property from the street or other public places and rights of way at its expense. In the event of any such removals, Grantee shall promptly restore to a condition satisfactory to the

City Manager the street or other dedicated public rights of way or other public places in City from which the Franchise Property has been removed.

(e) Franchise Property not removed may be abandoned in place and, if abandoned, shall be abandoned in the manner prescribed by the City Manager. Alternatively, Franchise Property not so removed may be sold or leased to third parties possessing the legal right to use the street or other dedicated public rights of way or other public places in City. Upon permanent abandonment of any Franchise Property in place, Grantee shall submit to the City Manager an instrument, satisfactory in form to the City Attorney, transferring to the City the ownership of the Franchise Property abandoned.

Section 25. ARBITRATION

Matters which are expressly made subject to a call for arbitration by either party under the provisions of this Franchise shall be determined by a panel of three arbitrators. Arbitration shall be mandatory as to both parties. Each of the parties, City and Grantee, shall appoint one arbitrator apiece. The third arbitrator shall be appointed by the Presiding Judge of the Superior Court of the County wherein such arbitration proceedings are to be conducted, San Diego County, California, except if the Presiding Judge declines to appoint, or the parties agree, the two arbitrators appointed by the parties shall appoint a third arbitrator. Arbitrations hereunder shall be

governed by the provisions of the California Arbitration Act, Sections 1280 through 1294.2 of the Code of Civil Procedure. The expenses of the arbitration, including the fees of the arbitrators shall be borne by the parties in such manner as the arbitrators provide in their award. The determination of a majority of the arbitrators shall be binding on the parties.

Section 26. FILINGS AND COMMUNICATION WITH
REGULATORY AGENCIES

Copies of all petitions, applications and communications of all types submitted by Grantee or City to the Federal Communications Commission, Securities and Exchange Commission, California Public Utilities Commission, or any other Federal or State regulatory commission or agency having jurisdiction over any matter affecting operation of Grantee's Cable Television System shall be submitted simultaneously to the City or Grantee. A copy of each document filed by Grantee with the City Clerk in accordance with this section shall be delivered to the City Manager and City Attorney.

Section 27. SEVERABILITY

Each section, part, term and/or provision of this agreement shall be considered severable, and if, for any reason, any section, part, term and/or provision herein is determined to be invalid and contrary to, or in conflict with, any existing or future law or regulation, such shall not impair the operation or affect the remaining portions, sections, parts, and/or provisions of this agreement, and

the latter will continue to be given full force and effect and bind the parties hereto; and said invalid sections, parts, terms and/or provisions shall be deemed not to be a part of this agreement.

Section 28. FRANCHISE GRANTED UNDER AUTHORITY OF CHARTER

Notwithstanding any other provisions contained herein, this Franchise is granted solely and exclusively under Sections 103, 103.1, 104 and 105 of the Charter of The City of San Diego and under no other authority.

Section 29. EFFECTIVE DATE OF ORDINANCE

This ordinance shall take effect and be in force on the thirtieth day from and after its passage.

APPROVED: JOHN W. WITT, City Attorney

By 
John W. Witt

CMF:vl:490

9/15/78

Or. Dept.: City Manager

12543

JAN 2 1979

Passed and adopted by the Council of The City of San Diego on _____
by the following vote:

Councilmen	Yeas	Nays	Excused	Absent
Bill Mitchell	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Maureen F. O'Connor	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Bill Lowery	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Leon L. Williams	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Fred Schnaubelt	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Tom Gade	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Larry Stirling	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
James D. Hays Lucy Killea	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mayor Pete Wilson	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

AUTHENTICATED BY:

PETE WILSON

Mayor of The City of San Diego, California.

CHARLES G. ABDELNOUR

City Clerk of The City of San Diego, California.

(Seal)

By E. J. Cook, Deputy.

I HEREBY CERTIFY that the foregoing ordinance was not finally passed until twelve calendar days had elapsed between the day of its introduction and the day of its final passage, to wit, on

DEC 12 1978

JAN 2 1979

, and on _____

~~I FURTHER CERTIFY that said ordinance was read in full prior to its final passage.~~

I FURTHER CERTIFY that the reading of said ordinance in full was dispensed with by a vote of not less than a majority of the members elected to the Council, and that there was available for the consideration of each member of the Council and the public prior to the day of its passage a written or printed copy of said ordinance.

CHARLES G. ABDELNOUR

City Clerk of The City of San Diego, California.

(Seal)

By E. J. Cook, Deputy.

Office of the City Clerk, San Diego, California

Ordinance Number 12543 Adopted JAN 2 1979

City of San Diego
12th Floor, City Admin. Bldg.
202 C St.
San Diego, Ca. 92101

CERTIFICATE OF PUBLICATION

No. 12543

IN WITNESS WHEREOF

MISSION CABLE T.V.

ORDINANCE NO. 12543

(New Series)

AN ORDINANCE OF THE CITY OF SAN DIEGO GRANTING TO MISSION CABLE TV, INC. THE NONEXCLUSIVE RIGHT, PRIVILEGE AND FRANCHISE TO LAY AND USE LINES, WIRES, COAXIAL CABLE AND APPURTENANCES FOR TRANSMITTING, DISTRIBUTING AND SUPPLYING RADIO AND CABLE TELEVISION SERVICE ALONG, ACROSS AND UPON THE PUBLIC STREETS, WAYS, ALLEYS AND PLACES WITHIN CERTAIN AREAS OF SAN DIEGO.

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- SEC. 2 RULES OF CONSTRUCTION
- SEC. 3 PURPOSE AND INTENT
- SEC. 4 DEFINITIONS
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 - (b) Franchise Unit
 - (c) Franchise
 - (d) Franchise Property
 - (e) Grantee
 - (f) Public School
 - (g) Street
 - (h) Cable Television System
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- SEC. 18 REMOVAL OR ABANDONMENT OF FRANCHISE PROPERTY
- SEC. 19 CHANGES REQUIRED BY PUBLIC IMPROVEMENTS
- SEC. 20 FAILURE TO PERFORM STREET WORK
- SEC. 21 ANNUAL PAYMENTS TO THE CITY
- SEC. 22 INDEMNIFICATION TO CITY
- SEC. 23 INSPECTION OF PROPERTY AND RECORDS
 - (a) Examination of Records
 - (b) Submission of Reports

PATRICIA M. SPAULDING

I, Patricia M. Spaulding, am a citizen of the State of California and of the County of San Diego; I am over the age of eighteen years, and not a party to or interested in the above-entitled matter. I am the principal clerk of the San Diego Daily Transcript, a newspaper of general circulation, printed and published daily, except Saturdays and Sundays, in the City of San Diego, County of San Diego, and which newspaper has been adjudged a newspaper of general circulation by the Superior Court of the County of San Diego, State of California, under the date of January 23, 1969, Decree No. 14894; and the

ORDINANCE NO. 12543

is a true and correct copy of which the attached is a printed copy and was published in said newspaper on the following date(s), to-wit:

January 17, 1979

I certify under penalty of perjury that the foregoing is true and correct.

Dated at San Diego, California this 25 day of Jan. 19 79

Patricia M. Spaulding
Signature

1041-5775,42

BY THE CITY OF SAN DIEGO

SECTION 1. PURPOSE AND COMMUNICATION WITH REGULATORY AGENCIES

SECTION 2. LIABILITY

SECTION 3. EFFECTIVE DATE OF ORDINANCE

SECTION 4. CITATION OF ORDINANCE

SECTION 5. RULES OF CONSTRUCTION

SECTION 6. PURPOSE AND EXTENT

SECTION 7. DEFINITIONS

SECTION 8. DOWELLING UNIT

SECTION 9. PUBLIC SCHOOL

SECTION 10. CABLE TELEVISION SYSTEM

SECTION 11. TOTAL GROSS RECEIPTS

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and... receive television broadcast signals and any microwave facilities that are a part of such antenna system.

(b) "Single Customer" shall mean any customer who provides, operates and maintains its own cable television distribution system within a multi-dwelling-unit complex and is eligible to receive by that service payment at the rate for single customers as established by the City Council.

Section 6. NATURE AND EXTENT OF GRANT

The franchise granted by this ordinance to Grantee, constitutes authority to use the public streets, other public rights of way or public places within the City limits for the purpose of installing, maintaining, operating and using television receivers and equipment necessary for the maintenance and operation of a Cable Television System.

With the exception of annual operations, Grantee shall not engage in the business of selling, leasing or renting television sets which make use of signals transmitted by the system, nor shall Grantee engage in the rental of or sale of such sets.

Section 7. LIMITATION OF SERVICE AREA

The service area referred to in Section 2 of this ordinance is as follows:

(a) All areas within the corporate limits of the City of San Diego lying northwesterly of the center line of the San Diego River, as well as the area established by the City Council, Ordinance No. 10380 as to the portion of the City of San Diego which is this ordinance incorporated into this ordinance on or after the date hereof.

(b) Those residential areas within the corporate limits of the City of San Diego lying northerly of the center line of the San Diego River and within the boundaries of the City of San Diego as shown on the map attached hereto and identified as "Map A" and "Map B".

Section 8. PROVISIONS OF THIS FRANCHISE

The provisions of this franchise shall be that the franchisee shall not be required to provide service to any area not covered by a license and franchise agreement entered into by the franchisee with the City Council.

Section 9. TERMINATION OF GRANT

(a) The franchise shall terminate when the franchisee fails to comply with the provisions of this ordinance, or when the franchisee fails to comply with the provisions of this ordinance.

(b) A certificate shall be issued to the franchisee upon the expiration of the term of this franchise.

(c) A certificate shall be issued to the franchisee upon the expiration of the term of this franchise.

(d) Further provisions shall be made by ordinance of the City Council, or by any Federal or State of California enactment, or by any other law, in connection with the provisions of this ordinance.

(e) The term of this franchise shall be thirty (30) years, commencing on the effective date of this ordinance as provided in paragraph (a) of this section; provided, however, that the term of this franchise may be extended by ordinance of the City Council.

(f) The provisions of this ordinance shall be subject to the provisions of this ordinance, including any amendments thereto, that may be adopted by the City Council.

(g) The provisions of this ordinance shall be subject to the provisions of this ordinance, including any amendments thereto, that may be adopted by the City Council.

(h) The provisions of this ordinance shall be subject to the provisions of this ordinance, including any amendments thereto, that may be adopted by the City Council.

(i) The provisions of this ordinance shall be subject to the provisions of this ordinance, including any amendments thereto, that may be adopted by the City Council.

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(r) The provisions of this ordinance shall be subject to the provisions of this ordinance, including any amendments thereto, that may be adopted by the City Council.

(s) The provisions of this ordinance shall be subject to the provisions of this ordinance, including any amendments thereto, that may be adopted by the City Council.

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... of a Federal or State of California bond or savings and loan association in the name of The City of San Diego, but with interest reserved to the Grantee, on terms and conditions approved by the City Attorney.

(b) In areas where Grantee must install its own service lines, Grantee may charge an installation charge up to the actual cost of connecting to the distribution system.

(c) Extension of service to Dwelling Units developed after the effective date of this ordinance shall be made prior to the acceptance of the subdivision by the City unless such locations are exempted under the provisions of Section 12.

(d) Subsequently developed locations which are exempted from the mandatory extension requirements of paragraph (c) of this section under the provisions of Section 12 shall be provided service upon request under the provisions of Section 12.

(e) Annually, during January of each year, following the expiration of this franchise, an audit of the revenue and expenses of the Grantee of this section is actually accomplished, the City Manager, at the request of the Grantee, may authorize a reduction in the amount of the corporate performance bond or deposit specified in paragraph (b) of this section in proportion to the amount of the plan actually accomplished to that date. Upon completion of all cable extension work required by Section 11(a), the City Manager shall authorize release of the remaining bond or deposit to Grantee.

SECTION 12 - EXCEPTIONS TO EXTENSION OF SERVICE REQUIREMENTS

Grantee shall not be required to extend or alter service:

(a) in any area where the investment required per prospective subscriber is greater than the maximum capital investment per subscriber as established by application of the following construction formula:

(the maximum capital investment - E - E₁) / Cf

where E = expense to be ...

... shall be defined as follows:

E = maximum capital investment per subscriber

E₁ = Annual incremental revenue from one additional subscriber

E₂ = Incremental annual maintenance and operating cost of maintaining one additional subscriber

These shall only include actual cash costs and shall exclude such non-cash expenses as depreciation and amortization costs.

Cf = Annual income taxes as a proportion of initial investment.

Cf = Capital recovery factor assuming a fifteen (15) year life and an interest rate equal to Grantee's last authorized rate of return.

a = Combined federal and state tax rate.

a = Grantee's last authorized rate of return.

b = Interest rate paid on borrowed funds.

c = Fraction of net plant financed by borrowing.

Cf = Uniform gradient factor to convert a gradient series to an equivalent annual series assuming a fifteen (15) year life and an interest rate equal to Grantee's last authorized rate of return.

Provided, however, that the assumption of a fifteen (15) year capital recovery factor and uniform gradient factor (as defined herein) for the purpose of determining the construction formula set forth above shall not be construed as establishing any precedent for any other purpose, including but not limited to rate-making.

The number of prospective subscribers shall be equal to 20% of the single family houses plus 20% of the multi-family Dwelling Units to be served.

(b) An annual review of the construction formula shall be held March of each year. Grantee shall submit updated computations for the maximum capital investment per subscriber using the construction formula set forth in paragraph (a). These computations shall be reviewed by the City Manager, and when approved, the maximum capital investment as computed shall be used by Grantee in determining service extension requirements until the expiration of the next annual review.

(c) All extensions claimed by Grantee under provisions of Section 12 shall be subject to review and approval by the City Manager.

SECTION 12 - SYSTEM EXTENSIONS TO EXCEPTED AREAS

(a) Grantee shall extend service to areas excluded from mandatory extension by the provisions of paragraph (c), Section 12, if at least thirty (30) percent of the single-family Dwelling Units to be served by the extension agree in writing to pay for the installation of cable television service facilities on their property. Grantee shall begin construction of the cable service extension within one year of reaching the written agreement.

(b) In areas where Grantee cannot extend service under the provisions of (a), Grantee shall be deemed to extend a service extension to the extent of the area where service is not extended.

