

ORDINANCE NUMBER O- 19243 (New Series)

ADOPTED ON DEC 08 2003

AN ORDINANCE OF THE CITY OF SAN DIEGO AMENDING
THAT FRANCHISE GRANTED IN ORDINANCE O-15213 TO
AMERICAN TELEVISION AND COMMUNICATIONS CORPORATION
AND SUBSEQUENTLY TRANSFERRED TO TIME WARNER CABLE

WHEREAS, the City of San Diego [City] has by Ordinance No. O-15213 [Cable Franchise] granted to American Television and Communications Corporation the non-exclusive 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 public streets, ways, alleys and places within certain areas of the City; and

WHEREAS, City has by Ordinance No. O-18809 consented to the transferred and assignment of the Cable Franchise to Time Warner Entertainment – Advance/Newhouse Partnership (hereinafter “Time Warner Cable” or “Grantee”); and

WHEREAS, City and Time Warner Cable desire to amend the terms of Ordinance No. O-15213 to extend the term thereof and to otherwise amend the Cable Franchise as hereinafter set forth; NOW, THEREFORE,

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

Section 1. That subsections (o) and (p) of Section 4 of Ordinance No. O-15213 (New Series) shall be added to read as follows:

SECTION 4. DEFINITIONS

- (o) "Cable Service" shall mean the one-way transmission to subscribers of video programming, or other programming service; and subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service. For the purposes of this definition, "video programming" is programming provided by, or generally considered comparable to programming provided by, a television broadcast station; and, "other programming service" is information that a cable operator makes available to all subscribers generally. The term "Cable Service" shall at all times be defined in accordance with applicable state and federal law.
- (p) "Channel" shall mean a portion of the electromagnetic frequency spectrum which is used in a cable system and which is capable of delivering a television channel as a channel appears on a customer's television monitor.

Section 2. That subsection (b) of Section 7 of Ordinance No. O-15213 (New Series) shall be amended to read as follows:

SECTION 7. DURATION OF GRANT

- (b) The term of the franchise shall commence on the effective date of the Franchise as provided in Paragraph (a) of this Section

and expiring on April 9, 2020; provided, however, that the term of this Franchise may be extended in accordance with the procedures set forth below.

Section 3. That subsection (a) of Section 10 of Ordinance No. O-15213 shall be amended to read as follows:

SECTION 10. SERVICES TO CITY

(a)(1) One cable television connection to each City unit designated by City Manager such as police stations, fire stations, public libraries and other City facilities within Grantee's authorized service area that require a drop of 150 feet or less from the existing cable television distribution system; provided that City shall have obtained or will furnish to Grantee all necessary access and authorizations to provide such service at no cost to Grantee. In addition, Grantee shall provide one cable television connection to each City unit designated by the City Manager in locations, within the Grantee's authorized service area, where the City leases office space, subject to the following condition: City shall be responsible for obtaining written authorization from the building owner to allow Grantee to enter the leased building and at no cost to Grantee to provide service. Grantee's installation obligation to each facility shall be for the first one hundred fifty (150) feet from the existing cable television distribution system. Installation costs for

service to facilities beyond one hundred fifty (150) feet may be incurred at the City's option at a rate not to exceed the actual construction costs for the completion of each installation.

Grantee shall not be responsible to provide or maintain the service distribution system within the facilities.

(a)(2) Video Service to Public Schools. Grantee shall provide, without any installation charge, one cable television connection to each Public School within Grantee's authorized Service Area. Grantee's installation obligation to each School Facility shall be for the first one hundred fifty (150) feet from Cable System. Installation costs for Video Service Drops to School Facilities beyond one hundred fifty (150) feet may be incurred at each School's option by the City or school district at a rate not to exceed the actual construction costs for the completion of each installation. Grantee shall not be responsible to provide or maintain the service distribution system within School Facilities. Grantee shall provide to each School Facility, at no charge, any terminal reception or converter equipment necessary to receive and distribute the Basic Service Tier and the Cable Programming Service Tier exclusive of premium Channels, digital tier, and pay-per-view Channels.

Section 4. That subsection (d) of Section 10 of Ordinance No. O-15213 shall be amended to read as follows:

SECTION 10. SERVICES TO CITY

(d)(1) Grantee shall provide without cost one Channel for use by Local Governments for the distribution of programming in the public interest. The Channel shall be part of Grantee's Basic Service. Grantee shall provide inter-connection of such Channel with all other Cable Television Systems operating pursuant to a franchise granted by the City; provided, however, that the receiving Cable Television System shall bear not more than the actual direct cost of receiving Grantee's transmission of such Channel. Such receiving costs shall be subject to review and approval by the City. If Grantee operates a remote or permanent vehicle and equipment meant for telecasting and videotaping, Grantee shall provide origination service to the City at such reasonable times and costs as are mutually agreed upon.

(2) At such time when Grantee provides at least seventy-five percent (75%) of the local broadcast Channels in a digital/high definition television (DTV/HDTV) or successor format, Grantee shall, upon the written request of the City, provide and/or convert existing PEG Channels for carriage in the DTV/HDTV or successor format. Grantee shall coordinate

with the City to ensure that the DTV/HDTV format selected by the City is compatible with the format employed by Grantee. The City and each PEG Programmer shall be responsible for all costs of conversion equipment necessary to transmit DTV/HDTV signals to Subscribers. Grantee shall modify any portion of the Cable System necessary for Grantee to receive the PEG Programmer's DTV/HDTV signal for distribution over the Cable System.

- (3) Upon the City's written request, the Grantee shall provide without cost to the City one (1) Channel in the digital spectrum for use by the City for the distribution of non-commercial programming in the public interest and to provide internal training for City employees. Grantee shall also provide one (1) digital converter to each police and fire station where Grantee provides a cable television connection pursuant to Section 10(a)(1) of this Ordinance. The converter shall be provided at no cost to the City. The City shall pay Grantee standard rates for any services received via the converters, other than the services provided by Grantee at no cost to the City pursuant to Section 10(c) of this Ordinance. Grantee shall be responsible for providing all the network transmission and/or reception equipment necessary for Grantee to cablecast a digital signal, including, and without limitation, digital-to-digital and/or

analog-to-digital conversion and modulation equipment and the City shall be responsible for providing production or playback equipment, to allow the City to deliver programming for the Channel. City's use of said Channel shall not interfere with any other programming or Channel on Grantee's system.

Should advanced technology emerge during the term of this Franchise which would provide similar service in an equal or lesser cost to Grantee, the parties agree to meet in good faith to consider implementing the new technology.

Section 5. That subsection (g) of Section 10 of Ordinance No. O-15213 shall be amended to read as follows:

SECTION 10. SERVICES TO CITY

(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. The Channel shall be part of Grantee's Basic Service. The Grantee shall have no obligation whatsoever to make any facilities available to any

person not a resident of the City. Additionally, Grantee shall not be obligated to provide Live Cablecast. To the extent that this Ordinance conflicts with Resolution No. R-257330 [Adopted on October 12, 1982] Sections III, V and XII, this Ordinance will supercede that Resolution.

Section 6. That a new subsection (h) be added to Section 10 of Ordinance No. O-15213 to read as follows:

SECTION 10. SERVICES TO CITY

(h) Upon the Effective Date of this Ordinance No. O-19243,

the Grantee shall provide without cost one (1) Channel for the distribution of non-commercial programming in the public interest. Grantee shall give priority to non-commercial, public interest programming of other local governments and educational agencies. This Channel shall be part of Basic Service.

Section 7. That a new subsection (i) be added to Section 10 of Ordinance No. O-15213 to read as follows:

SECTION 10. SERVICES TO CITY

(i) Upon the first anniversary of the Effective Date of this Ordinance No.

O-19243 and continuing annually thereafter until April 9, 2020, the Grantee shall be entitled to an annual \$75,000 credit against the costs incurred to operate a public access facility (hereinafter "Annual Access Credit") as provided for in Ordinance O-15213 and Resolution R-257330. Grantee shall

be entitled to deduct the Annual Access Credit from its annual Franchise fee payment to the City. The Annual Access Credit shall be computed and revised each calendar year during the Franchise term by multiplying the Annual Access Credit by the Consumer Price Index for the Franchise area, as published by the United States Department of Labor, Office of Information, for the month immediately preceding the month in which credit is due and receivable.

Section 8. That a new subsection (f) be added to Section 15 of Ordinance No. O-15213 to read as follows:

SECTION 15. REGULATION OF RATES AND SERVICES

(f) The Grantee shall at all times comply with the applicable customer service requirements under state and federal law including, but not limited to, the customer service standards of the Federal Communications Commission.

Section 9. That subsection (a) of Section 21 of Ordinance No. O-15213 shall be amended to read as follows:

SECTION 21. ANNUAL PAYMENTS TO THE CITY

(a) By its acceptance of this Franchise, Grantee agrees to pay to the City annually in lawful money of the United States five percent (5%) 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 provided however, that the requirements of this Section 21 shall, at all times, be construed consistent with applicable federal law. Nothing contained herein shall be read to expand the rights or duties of either party beyond applicable federal law. The requirements under this paragraph (a) shall become effective on the Effective Date of this Ordinance No. O-19243

Section 10. That Section 26 of Ordinance No. O-15213 shall be amended to read as follows:

SECTION 26. FILING AND COMMUNICATIONS WITH REGULATORY AGENCIES.

The Grantee shall, upon request, file with the City a copy of any petition, application, or communication submitted by the Grantee 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 effecting the operation of Grantee's Cable Television System. The copy of each document requested of the Grantee shall be filed with the City Clerk and shall also be delivered simultaneously to City Manager and City Attorney.

Section 11. That Section 12 of Ordinance No. O-15213 shall be amended to reads as follows:

SECTION 12. SERVICE EXTENSION

Service/Line Extension in Grantee's service area. No line extension charge or comparable charge shall be imposed on any current or potential Subscriber for extensions of the Cable System within Grantee's authorized service area, whenever the Grantee receives requests for service by a potential Subscriber and there are at least fifty (50) dwelling units or other potential Subscribers within five thousand two hundred eighty (5,280) cable bearing strand feet (one mile) of Grantee's trunk or distribution cable, and Grantee shall extend its Cable System to such potential Subscriber(s) at no cost to said potential Subscriber(s). The five thousand two hundred eighty (5,280) feet distance or any multiple or fraction thereof shall be measured in extension length of Grantee's trunk and feeder cable required for Cable Service which is located within the Public Right-of-Way or an existing available easement.

Section 12. That Section 13 of Ordinance No. O-15213 shall be amended to reads as follows:

SECTION 13. INSURANCE

- (a) During the term of the Franchise, Grantee shall maintain, or cause to be maintained, in full force and effect and at its sole cost and expense, the following types and limits of insurance:
- (b) For all of Grantee's operations, including contractual, broad form property damage, completed operations, and independent consultant's liability, Grantee shall keep in full force and effect, during any and all work and operations, all applicable insurance to cover personal injury, bodily injury and property damage, providing coverage to a combined single limit of one million dollars (\$1,000,000) per occurrence, subject to an annual aggregate of ten million dollars (\$10,000,000) for general liability, completed operations and personal injury other than bodily injury. Contractual liability shall include coverage of tort liability or another party to pay for bodily injury or property damage to a third Person or organization. Contractual liability limitation endorsement is not acceptable. The per occurrence limits require may be achieved by combining layers of excess or umbrella insurance with underlying Commercial General Liability Coverage, provided that the sum of the limits of all policies meet or exceed the required limits.
- (c) For all of Grantee's automobiles including owned, hired and non-owned automobiles, Grantee shall keep in full force and effect, automobile insurance for bodily injury and property

damage providing coverage to a combined single limit of one million dollars (\$1,000,000) per occurrence. Insurance certificate shall reflect coverage for any automobile. The City shall be named as an additional insured, but only for liability arising out of this Franchise.

- (d) For all of Grantee's employees who are subject to this Franchise and to the extent required by the State of California, Grantee shall keep in full force and effect, a worker's compensation policy. That policy shall provide a minimum of five hundred thousand dollars (\$500,000) of employer's liability coverage, and shall provide an endorsement that the insurer waives the right of subrogation against the City and its respective elected officials, officers, employees, agents, and representatives.
- (e) The City and its respective elected officials, officers, employees, agents, and representatives shall be named as additional insureds to liability policies, where allowed by law. The City's additional insured status must be reflected on certificate of insurance, which shall be submitted to the City.
- (f) All insurance required by express Provision of this Franchise cannot be canceled, non-renewed, or changed except after thirty (30) calendar days prior written notice by Grantee to the City by certified mail, as reflected in an endorsement which shall be

submitted to the City except for non-payment of premium, in which case ten (10) days notice will be provided.

(g) Prior to performing any work under this Franchise, Grantee shall provide the City with all Certificates of Insurance accompanied with all endorsements. Grantee shall provide all current Certificates of Insurance with the City throughout the term of this Franchise.

(h) All insurance required by an express Provision of this Franchise shall be carried only by responsible insurance companies that have been given at least an "A-" rating by AM BEST and that are licensed to do business in the State of California.

Section 13 That, except as amended hereby, Ordinance No. 15213 shall remain in full force and effect and is hereby ratified and confirmed in all respects subject to applicable state and federal law.

Section 14. That a full reading of this Ordinance is dispensed with prior to its final passage, a written or printed copy having been available to the City Council and the public a day prior to its final passage.

Section 15. This Ordinance shall take effect and be in force (the "Effective Date") on the thirtieth day from and after its passage.

APPROVED: CASEY GWIN, City Attorney

By 

Paul G. Edmonson

Deputy City Attorney

PGE:smf

11/20/03

Or.DEPT: IT&C

Aud.Cert: N/A

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