

ORDINANCE NO. 016

AN ORDINANCE OF THE CITY OF HIGHLAND HAVEN, TEXAS TO BE HEREINAFTER KNOWN AS THE CITY OF HIGHLAND HAVEN, CABLE TELEVISION FRANCHISE ORDINANCE.

BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF HIGHLAND HAVEN, TEXAS AS FOLLOWS:

SECTION 1. TITLE AND PURPOSES OF THIS ORDINANCE

1.1 TITLE:

This ordinance shall be known as the CITY of Highland Haven, Cable Television Franchise Ordinance.

1.2 PURPOSES:

The purposes of this ordinance is to establish the terms and conditions under which all cable television systems within the CITY are thereby required to operate, to provide for the payment of a franchise fee to the CITY for the use of CITY streets and for other public rights of way, and to compensate the CITY for the costs associated with administrating and regulating the system. Any subsequent changes in FCC rulings or Federal or State Statutes that conflict with this ordinance shall govern but only to the extent that there is a conflict with this ordinance.

SECTION 2. DEFINITIONS

For the purpose of this ordinance, the terms, phrases, words, and their derivations shall have the normal, reasonable and usually understood meanings unless the context clearly indicates a special or specialized meaning is intended. Unless otherwise indicated, terms, phrases, words and their derivations within this ordinances shall have the meaning ascribed to them under the rules and regulations of the Federal Communications Commission and the Cable Television and Consumer Protection Act of 1992, and such future rulings or legislation as may amend or supersede that act. Certain specific definitions to pertain to this ordinance not withstanding the above references are set forth as follows.

2.1 ACCEPTABLE MINIMUM - When referring to service and reception as defined as both the standards adopted under 47CFR Section 76.605 and as a minimum, a clear, crisp, snow-free picture with static free volume of an acceptable level, on each and every channel being provided to that customer as per their particular selected package of service.

2.2 BASIC SERVICE - Means the standard base service as defined by the Cable Act.

2.3 CABLE ACT - Means the Cable Television Consumer Protection Act of 1992 on such future amendments or legislation as supersedes it.

2.4 CABLE TV SYSTEMS - Means any non-broadcast facility consisting of a set of closed transmission paths and associated signal reception, transmission and control equipment, that is designated or designed to distribute to subscribers audio, video and other forms of electronic or electrical signals.

2.5 CITY - Means the CITY of Highland Haven, Texas.

2.6. BOARD OF ALDERMEN - Means the Board of Aldermen of Highland Haven, Texas.

2.7 DROP LINE - Means the line which the Grantee uses to provide

service from the main or trunk line to the customer's service connection.

2.8 FRANCHISE - Means the rights granted pursuant to this ordinance to construct, own and operate a cable television system along the public ways within the CITY or within specified areas of the CITY.

2.9 GRANTEE - Means a person or business entity or its lawful successor or assignee which has been granted a franchise by the CITY pursuant to this ordinance. But this also includes any contractors, subcontractors or contract employees serving the GRANTEE.

2.10 GRANTOR - Means the CITY of Highland Haven, Texas.

2.11 GROSS REVENUE - Means any and all revenues actually received either directly or indirectly from all sources except copyright fees, by the GRANTEE from its cable systems operations within the CITY, including but not limited to, all income without any offsetting of expenses, parts or depreciation which may be derived from subscribers receiving goods, equipment, service; revenues from service installation and repair, advertising, marketing and sales of programming, air time and other services within the CITY or aired within the CITY; home shopping sales made within the CITY; any and all revenue received by GRANTEE for services which, even if unrelated to cable systems, are provided by the GRANTEE within the CITY limits; provided however, such revenues are not intended to include income, credits or revenues attributed to the operation of the cable system within the CITY which arise from real property transactions by the GRANTEE; taxes paid a subscriber to the GRANTEE; interest other than interest charged subscribers of the cable system or advertisers for service provided and delivered by the cable system within the CITY, or dividends on investments received by the GRANTEE unrelated to the delivery of cable services within the CITY; or net uncollectible debts.

2.12 RIGHT OF WAY - Means the surface, air space above the surface, and the area below the surface of any public street, alley, sidewalk, bridge, tunnel, park, parkways, or other public right of ways including public utility easements or

rights of way and any temporary or permanent fixtures or improvements located thereon now or hereafter held by the CITY which shall entitle the CITY and the GRANTEE to the use thereof for the purpose of installing and maintaining the GRANTEE'S cable television system.

2.13 SUBSCRIBER - Means any person who receives monthly cable television service provided by the GRANTEE.

2.14 TRUNK LINE OR MAIN LINE - Means the larger lines from which service lines will branch.

SECTION 3. APPLICATION, CRITERIA FOR GRANT, AND TERM

3.1 FRANCHISE REQUIRED:

It shall be unlawful to operate a cable television system within the CITY unless a valid franchise has first been obtained from the CITY pursuant to the terms of this ordinance. A franchise granted pursuant to this ordinance shall authorize the GRANTEE to provide cable television services within the CITY and to charge subscribers for such services. It shall also authorize and permit the GRANTEE to traverse any portion of the CITY in order to provide service outside the CITY. Unless otherwise specified, the franchise area shall be the legal boundaries of the CITY.

Since franchises may have an adverse impact on the public rights of way, the CITY may issue a franchise only following a public hearing to consider the potential impact which the grant of a franchise may have on the community. In considering whether to grant one or more franchises, the CITY shall consider all matters reasonably related to the positive and negative impact of a franchise on the community and the ability of the applicant to provide cable television service in a reliable and technically cable manner during the entire duration of the franchise.

3.2 APPLICATION PROCEDURES AND CRITERIA:

An application for a new cable television franchise shall be submitted to the CITY in a form acceptable to the Board of Aldermen and in accordance with the procedures established by the CITY. The CITY may request such facts and information as it deems appropriate.

Every applicant shall furnish to the CITY a map of suitable scale showing all roads and public buildings which indicates the areas to be served and the proposed dates of commencement of service for each area within the CITY. The proposed service areas shall be subject to approval by the CITY. If no service area is specifically set forth in an application or the subsequent franchise it shall be considered that the service area is the corporate boundaries of the CITY.

After receiving the franchise application, the CITY may examine the applicants, legal, financial and technical and character qualifications.

Subject to the provision of this ordinance the CITY may grant one or more non exclusive franchises creating the right to construct and operate a cable television system within the public ways of the CITY.

In the event that an application is filed which would service an area which overlaps in whole or in part an existing GRANTEE'S franchise area the applicant should provide a copy of the application by certified mail to the existing GRANTEE. Such notice shall be considered a condition of approval of the application by the subsequent applicant.

3.3 FRANCHISE RENEWAL PROCEDURES:

No later than one year prior to a franchise expiration, the CITY may on its own initiative and shall at the request of the GRANTEE who must file with the CITY a proposal for renewal if that is GRANTEE'S desire commence proceedings which afford the public in the franchise area appropriate notice and participation for the purpose of identifying cable related community needs and reviewing the performance of the GRANTEE during the current franchise term. Any application for renewal shall contain such material as the CITY may require.

Upon submittal by the GRANTEE of the proposal of renewal of a franchise the CITY shall provide prompt public notice of such proposal and immediately begin the review of such renewal proposal. Within ninety days of submission of a proposal for renewal, the CITY shall issue a preliminary assessment that the franchise should or should not be renewed or commence a series of no less than two public hearings to obtain public input to consider whether the GRANTEE has substantially complied with the material terms of the existing franchise; the quality of the GRANTEE'S service; the status of the GRANTEE'S financial and technical ability to provide the services set forth in the GRANTEE'S proposal; and whether the GRANTEE'S proposal is reasonable to meet the future cable related community needs of the CITY.

Upon the completion of the above proceedings and at least six months prior to the termination of the existing franchise the Board of Alderman shall issue a written decision either granting or denying the proposal for renewal and provide a copy of such decision to the existing cable operator.

At any time in these proceedings the CITY may invite application other cable service operators to submit proposals to serve the franchise area. Additional said proposals shall be submitted no less than six months prior to termination of existing franchise and shall not be subject of public consideration by the Board of Alderman or subject to the above referenced public hearings occurring prior to the decision to renew or reject the existing cable operator.

Following the denial of a proposal for renewal the Board of Alderman will publicly review franchise proposals from other than the existing GRANTEE and shall have no less than two public hearings for the purpose of public input relating to such proposals which they will undertake to consider.

It is a specific requirement for renewal of any existing franchise that upon submission of a proposal for renewal of an existing franchise the franchise holder, or existing GRANTEE must provide a complete list of assets of the GRANTEE's cable television system within the CITY or specifically and exclusively required in order to serve the franchise area within the CITY and the value of those assets. If the existing franchise is not renewed the Board of Alderman shall provide as a condition of a franchise to a subsequent franchise operator that said new operator must acquire or purchase the assets of the former GRANTEE at a fair market value. The value of said assets shall be the value indicated by the GRANTEE submitting its asset list unless challenged by the new cable system GRANTEE. In regard to any asset upon which there is not agreement as to the valuation then it is a specific condition of the granting of any franchise under this ordinance that each franchise GRANTEE agrees that such dispute between a prior franchise holder and a subsequent franchise holder as to the valuation will be submitted to a binding arbitration to be made by one arbitrator chosen by the existing GRANTEE and any future GRANTORS party and any third arbitrator to be chosen by the initial two arbitrators. The cost of such arbitration regarding the value of assets in question shall be borne equally between the prior franchise GRANTEE and the subsequent franchise GRANTEE. All GRANTEES of franchises under this ordinance agree that they will abide by the decision as to valuation by a majority of the arbitrators and the new franchise GRANTEE shall pay to the prior franchise GRANTEE good funds for the purchase of such assets within ninety days of a determination by arbitrators of said valuations. The determination of the value of any assets in controversy as well as the payment by subsequent GRANTEE to prior GRANTEE of all other payments of assets shall be completed no less than six months following the grant of a franchise under this ordinance to the subsequent GRANTEE.

If the existing GRANTEE's proposal for renewal is denied by the CITY pursuant to this section the GRANTEE is entitled to appeal such decision in any appropriate state judicial forum or any state administrative forum. It is a specific condition that by acceptance of any franchise under this ordinance that franchise GRANTEE does agree as part consideration that any appeal of the CITY's decisions are limited to state forum and that no such remedies shall be sought in any federal judicial or administrative forum.

3.4 TERM OF FRANCHISE

In order that all subscribers sustain the best possible service, the GRANTEE shall install and maintain its system to reasonably conform with the best current technology. The CITY may choose to issue a franchise for term of up to but no more than twenty years. The exact length would be determined by the Board of Alderman at such time as they determine the requirement to meet future cable related community needs.

3.5 COMPETING OR OVERLAPPING FRANCHISES

Although all cable television franchises granted by the CITY shall be non exclusive, nothing in this ordinance shall be construed to require the CITY to grant more than one franchise. If competing or overlapping franchises are granted the CITY shall not intentionally grant any franchise on terms or conditions which are obviously and clearly more favorable or less favorable than those granted under any other franchise agreement unless it be deemed to be in the best interest of the citizens of the CITY that such favorable or less favorable conditions be included in subsequent franchises.

The CITY may issue a license, an easement or other permit to any person other than a GRANTEE under this ordinance to permit that person or entity to traverse any portion of any GRANTEE's franchise area within the CITY in order for the entity to provide service outside the CITY.

4.0 FRANCHISE FEE

4.1 PAYMENT OF FRANCHISE FEE

The GRANTEE shall pay a franchise fee for the use of the CITY's right of way and to compensate the CITY for all costs associated with administering and regulating the system. The amount of the franchise fee shall be five percent (5%) of the GRANTEE's annual gross revenues as defined herein above and such fees shall be paid on a calendar quarterly basis within forty-five days after the end of each calendar quarter; provided however, that the initial payment under the terms of any franchise granted may be, by approval of the Board of Alderman, delayed until ninety-days following the first day of the first full year after the granting of the franchise under this ordinance.

Regardless of the date that a franchise is granted under this ordinance, the franchise fee for the year that the franchise is granted to the GRANTEE shall be based on the annual gross revenues for the entire and complete calendar year which shall be required to compensate the CITY for its expenses in negotiating, reviewing and researching the proposal for a franchise by the franchise GRANTEE.

4.2 REPORTING AND AUDITING OF FEE PAYMENTS

The GRANTEE shall provide the grantor with financial statements clearly showing the gross revenues received, the monthly state sales tax reports and the amount of franchise fee due to the CITY for each calendar quarter within forty-five days after the end of said quarter.

For every year of the franchise, or any year for which there is a partial franchise, the GRANTEE shall file with the CITY

secretary within ninety-days of the close of the GRANTEE's fiscal year an annual report prepared and audited by a certified public accountant, clearly showing the annual gross revenues attributable to the franchise rights within the CITY. The extension of said annual reporting requirement of up to thirty days may be granted by the mayor of the CITY.

The CITY or its agents shall have the right to inspect the GRANTEE's financial records for the purpose of recomputing any amounts to be payable to the CITY under this ordinance, provided however that such inspection shall take place within twenty-four months following the receipt of such payment. Any additional amount due the CITY as a result of said audit must be paid within thirty days following written notice to the GRANTEE by the CITY of the amount due, which notice shall include a copy of the audit report. If any additional amount is found to be due to the CITY by the audit, the cost of the entire audit shall be borne by the GRANTEE.

4.3 PENALTIES FOR LATE PAYMENT

In the event that any franchise payment is not made on or before the dates required herein, interest shall be charged from such due date at the annual rate of twelve percent per annum and no franchise payment upon which interest has been charged will be considered to have been paid unless it includes all accrued interest to the date of payment. The payment of the franchise fee hereunder shall be in lieu of any other tax or assessment or charge by the CITY other than ad valorem taxes and sales taxes where applicable to the services provided by GRANTEE.

No acceptance of any partial payment by the CITY shall be construed as a release or satisfaction of any claim that the CITY may have for further or additional sums payable as a franchise fee under this ordinance or for the performance of any other obligation of the GRANTEE.

SECTION 5. SUBSCRIBER RATES

5.1 SUBSCRIBER RATES

All charges to subscribers shall be consistent with a schedule of fees for services established by the GRANTEE and previously provided to the CITY. Rates shall be non discriminatory in nature and uniform to persons of like classes under similar circumstances and conditions. GRANTEE may offer discounted rates at its discretion for promotional purposes. GRANTEE shall provide the CITY and all subscribers with thirty days advance notice of all changes in rates, charges and programming. Special paid television events are specifically exempted from this requirement. CITY shall not regulate such rates until and unless CITY gives GRANTEE notice of intent to regulate rates.

The GRANTEE may, at its own discretion, waive reduce or suspend connection fees or monthly service fees on a one time or monthly basis for promotional purposes only.

The GRANTEE shall provide refunds to subscribers where the GRANTEE failed within a reasonable time to commence service requested by subscriber; where subscribers notified GRANTEE that they wish to Terminate part or all services at any time and the prompt return of appropriate GRANTEE's equipment by the subscriber. Refund checks will be issued promptly but no later than either the customer's next billing cycle following the termination of service or thirty days whichever is earlier. All credits for service will be issued no later than a customer's next billing cycle or thirty days whichever is earlier.

If any subscriber's service is out of order during four or more cumulative hours during a twenty-four hour period due to technical failure, damage or circumstances not within the control of subscriber then GRANTEE will credit the account of subscriber a minimum of one day service. The twenty-four hour period shall begin when the GRANTEE has either its own knowledge of the event or has been notified by the subscriber.

SECTION 6. CUSTOMER SERVICE

6.1 GRANTEE'S OFFICE LOCATION AND AVAILABILITY

The GRANTEE shall maintain an office open to the public within the county of Burnet, Texas, which shall be open from at least nine in the morning to three in the afternoon at least five days per week and one evening during the week until nine in the evening except state approved holidays. An adequate number of service representatives shall be on site so that customers shall be attended to promptly. The GRANTEE shall have directory listed telephone numbers for customer service or billing inquiries or business related questions. These listings shall be local and toll free and shall be manned with trained representatives during the referenced business hours. An adequate number of telephone lines and operators shall be provided so that no customer shall have to wait more than five minutes for a response to a telephone inquiry.

6.2 GRANTEE'S CUSTOMER SERVICE HOURS

In order that subscribers may report outages or substandard reception GRANTEE shall have at least three (3) directory listed telephone lines which shall be manned by trained personnel from at least 8:00 a.m. to 8:00 p.m. every day of the week.

6.3 ON-SITE SERVICE RESPONSES

All subscribers requesting repair service shall be physically responded to on site by GRANTEE's representative within two hours of the time that the request is received by the GRANTEE. On site response shall not be required when it can be shown that the repairs or corrections can or must be in the GRANTEE's central office or other cable facilities. In

such a case a customer making the complaint shall be directly contacted within the required two hour time limit, notified of the status of the situation, and the expected time of resolution.

6.4 NEW INSTALLATIONS

New installations will be performed within seven business days after an order for service has been placed by a customer in the franchise area.

6.5 GRANTEE'S DEFENSE FOR VIOLATIONS

Circumstances completely beyond the GRANTEE's control such as acts of God, wars, riots, loss of power from the electric supply company or absence of incoming broadcast signals shall be the only defenses for failure to comply with the requirements of this section.

SECTION 7. CONSUMER PROTECTION

7.1 REFUSAL OF SERVICE

The GRANTEE shall neither fail to make available cable service or terminate service to any customer without good cause approved by the grantor. Good cause for the termination of service or failure to make available service shall include but not necessarily be limited to, customers who have unpaid outstanding accounts with the GRANTEE which remain due and owing for more than sixty days or customers convicted of theft of service from the GRANTEE.

Upon request from customers, the GRANTEE shall supply free of additional charge a channel blocker, i.e. a device to block out undesired channels.

7.2 CUSTOMER NOTIFICATIONS

The GRANTEE shall provide the grantor and all subscribers with notice thirty days in advance of any changes of programming services, channel positions or projected rate changes.

7.3 PROTECTION OF PRIVACY

The GRANTEE will guard against any possible abuse of the right of privacy or any other rights of any customer and in particular the GRANTEE shall comply with the privacy provisions of the Cable Communications Policy Act of 1984, 47 U.S.C. 551.

The GRANTEE shall not permit the transmission of any signal, aural, visual, or digital from any customer's premises without first obtaining the informed consent of the customer which shall not have been obtained from these customers as a condition of any service for which such transmission is not an essential element. The request for such consent shall be contained in a separate document which states and describes the transmission being authorized and includes a permanent statement that the subscriber is authorizing the permission and full knowledge of its provision and that the permission shall be revocable at any time by the customer without penalty of any kind whatsoever. This provision is not intended to prohibit the use or transmission of signals for the sole purpose of the control and measurement of system performance or used billing subscribers or providing or optional services to the customer.

The GRANTEE, its agents or employees shall not, without the specific written authority of the customer involved, sell or otherwise make available to any other party any list which identifies the viewing habits or responses of individual subscribers.

7.4 GRANTEE EMPLOYEE IDENTIFICATION

GRANTEE shall make a background check of all of its employees and maintain records of such background check which shall be available upon request by the CITY attorney for the CITY upon written request stating a reasonable basis for said inquiry. All employees and contractors except office personnel of the GRANTEE shall wear uniforms and badges with identifying photograph showing them as employees of the GRANTEE.

SECTION 8. SYSTEM OPERATING STANDARDS

8.1 GENERAL OPERATING STANDARDS AND SERVICE EXTENSION

GRANTEE shall insure that the design, construction operation, and maintenance of the cable system is such that the signals are delivered to the customers without material degradation and quality and in compliance with technical standards set forth in title 47 Code of Federal Regulations, Part VI, Cable Television Service. GRANTEE's system shall meet or exceed all FCC specifications of engineering standards in effect as of the date of the grant of the franchise and shall comply with all future modifications of those standards. GRANTEE shall operate and maintain its cable television system in compliance with the rules and regulations of the FCC and all other applicable federal, state and local laws.

A copy of all compliance filings required by the FCC or other governmental agencies shall be filed with the CITY.

The GRANTEE shall extend its cable television system and make service available within one year to all dwelling units within the boundary of the franchise. Such service to be provided for all customers within the franchise area within the said one year period beginning at the date of granting of the franchise at GRANTEE's standard connection charge.

The GRANTEE shall have ninety days to remove all equipment and material from all public rights of way and utilities within the franchise area upon the discontinuance of use of such equipment and material unless otherwise directed by

the grantor.

8.2 FREE SERVICE TO PUBLIC BUILDINGS

GRANTEE shall provide, without charge, one service outlet activated for full and total service to the CITY hall of the grantor and basic service to any fire stations, police stations or other CITY buildings and all public school buildings located within the CITY limits of the grantor.

SECTION 9. INSURANCE AND INDEMNIFICATION

9.1 GENERAL INSURANCE

Upon grant of a franchise under this ordinance, GRANTEE shall obtain insurance providing at least the coverage required herein and until proof of such coverage is provided to the grantor the franchise shall not be deemed to be in effect. All policies shall be in company with the best rating of "A" or better with a policy surplus of at least one hundred million dollars. The CITY shall be named as an additional insured and the policy shall contain a waiver of subrogation. All policies shall require a thirty day written notice of cancellation to the CITY. In the event of any cancellation, change of coverage or non-renewal, GRANTEE shall provide replacement insurance and avoid any lapse in coverage.

The CITY is to be provided of certificates of insurance and certified copies of all policies and endorsements. GRANTEE shall carry a comprehensive general liability policy covering premises and operations to GRANTEE of any subcontractors employed by the GRANTEE with a minimum limit liability of one million dollars per person, two million dollars per occurrence for personal injury and one million dollars per person and two million dollars per occurrence for property damage.

GRANTEE shall carry a comprehensive general liability policy covering all owned, hired and no owned vehicles used in the business of the GRANTEE with a limit of liability of one million dollars per person and two million dollars per accident for bodily injury and a minimum limit of liability of one million dollars per accident for property damage.

GRANTEE shall carry workers compensation insurance.

9.2 INDEMNIFICATION

The GRANTEE, including its directors, officers, employees, agents, assigns or contractors by its acceptance of a franchise granted pursuant to this ordinance and in consideration of the granting of such ordinance do indemnify and hold harmless, the CITY, its officers, boards, commissions, agents, and employees against and from any and all claims, suits, causes of action, proceedings, demands, actions, damages, costs or liabilities of every kind, including but not limited to damages for injury or death or damage to person or property and against all liability to others, and against any loss, cost and expense resulting or arising out of the same, including any attorneys fees, accountant fees, expert witness or consultation fees, court costs, per diem expenses, travel and transportation expense or other costs or expenses which may accrue to or be suffered or be claimed by any person or persons arising out of or pertaining to and arising out of the award of a franchise to the GRANTEE and its operation of the cable television system under the franchise without limitation.

These damages shall include but not be limited to, penalties arising out of copyright infringements and damages arising out of any failure by GRANTEE to secure consent from the owners or distributors or licensees of programs to be delivered by the GRANTEE's system, including the costs of liabilities of the CITY with respect to its employees, whether or not any act or omission complained of is authorized, allowed or prohibited by the franchise.

SECTION 10. FRANCHISE VIOLATIONS

10.1 PROCEDURES IN THE EVENT OF ALLEGED VIOLATIONS

If the CITY finds sufficient cause to believe that a violation of the provisions of this ordinance has occurred, the GRANTEE shall be issued a notification of violation by the CITY attorney. GRANTEE shall have ten days following the issuance of such a notification to respond to the alleged violation and provide a resolution acceptable to the CITY. If GRANTEE fails to respond within the allowed time period or if that response is not acceptable the GRANTEE shall be issued a citation for violation of this ordinance to appear in municipal court where a hearing will determine if there has been a violation of this ordinance. If the actions are found by a municipal judge to violate this ordinance then the court shall assess penalty that shall be no less than two hundred dollars per occurrence or per day of continued violation and no more than five hundred dollars per occurrence or per day of continued violation.

The GRANTEE or any other entity who operates or causes to be operated a cable television operation without a valid franchise or who is in violation of this ordinance is subject to a suit for injunction as well as prosecution for any criminal violations.

If GRANTEE has been, in the opinion of grantor, charged with a substantial number of violations, then the grantor may hold a public hearing to determine if the franchise should be revoked. After such hearing the council shall make a ruling and that a substantial and unreasonable number of violations of this ordinance have occurred and therefore the franchise is terminated then the GRANTEE shall conform with all of the requirements of this ordinance including the obligation as trustee for aiding in a smooth transition for a future franchise holder.

Nothing in this section shall be construed to limit or restrict the GRANTEE's right to appeal the CITY's action in any

appropriate state judicial or administrative forum. The grant of the franchise under this ordinance is in part consideration of the GRANTEE's agreement to waive access to federal judicial or administrative forums for appeal of violations under this section. It is agreed by the acceptance of a franchise by the GRANTEE that the CITY shall not be liable for any of GRANTEE's cost associated with defense of any violation, appeal process or any administrative processes regardless of the outcome. If GRANTEE is unsuccessful in fully reversing the decision of the CITY or its court then the GRANTEE agrees by the acceptance of this franchise to pay all costs incurred by the CITY in defending its actions against legal action or appeal by GRANTEE.

10.2 FRANCHISE TERMINATION

In the event that the CITY denies renewal or terminates the franchise the GRANTEE shall be afforded a period of one hundred and eighty days from the effective date including the appeal within which to transfer and convey the assets of the cable system to a subsequently approved franchise holder. The GRANTEE shall, within ninety days after transfer or conveyance of the assets of the franchise of the GRANTEE within the franchise area, remove all equipment and material not transferred or conveyed to its successor from all public property and utility easements within the franchise area.

SECTION 11. GRANTEE'S OBLIGATION AS TRUSTEE

Recognizing that the subscribers are entitled to continuity of service, upon the expiration, non-renewal or termination of GRANTEE's franchise, and until such time as a new franchise holder or the CITY or its nominee takes possession of the system, the GRANTEE shall be responsible for operating pursuant to the terms and conditions of this ordinance, its franchise. The existing franchise holder shall act as trustee for its successor and shall continue to operate the cable television system under the terms and conditions of this ordinance and continue to provide the services which were being provided at the time of the termination and at the same level of service. During the interim period, GRANTEE shall not sell any of the system assets to other than its successor franchise holder nor shall GRANTEE make any physical, material, administrative or operational charges that would tend to degrade the quality of service to the subscriber; decrease its income, or materially increase expenses without the express written permission of the CITY.

Violations of the requirements of this section shall be separate and individual violations of this ordinance for the purposes of penalties set forth in this ordinance and it is agreed by the GRANTEE upon the acceptance of a franchise pursuant to this ordinance that the CITY shall have all legal and equitable relief necessary to enforce the provisions of this section. For its management services during this interim period the GRANTEE shall be entitled to receive as compensation the net profit generated during the period between the expiration, revocation or termination of GRANTEE's franchise and the date of sale or transfer to the new franchise holder sufficient assets of the existing GRANTEE to provide subsequent franchise holder with the ability to serve its subscribers pursuant to the terms of this ordinance. If transfer and sale of GRANTEE's assets necessary to serve its franchise area under the terms of this ordinance, is not completed within one year of termination of GRANTEE's franchise then GRANTEE shall continue to operate the cable television system as provided for in its franchise but shall pay to the city thereafter a franchise fee equal to twenty-five percent (25%) of its gross revenues until the sale or transfer and ownership and control passes to the successor franchise holder.

If it is necessary for a third party determination of the value of assets of the GRANTEE to be transferred or sold under the terms of Section 11 or Section 12 of this ordinance then the arbitration requirements under Section 3.3 herein above shall apply for determining of such asset valuations.

SECTION 12. ASSIGNMENT OF FRANCHISE

The GRANTEE may secure financing or a debt by trust or mortgage, against its assets, in whole or in part without requiring consent of the CITY. Consent shall be required from the CITY to assign any franchise from one business entity to another which is not controlled and managed by the present GRANTEE. If GRANTEE desires to assign its franchise to another entity not controlled and managed by the existing GRANTEE the consent of the CITY shall be required for such an assignment. To aide the CITY in its review of this request the CITY shall be provided with all reasonable information and data required by the CITY to insure that the proposed new entity possesses the technical and financial qualifications to operate the system and an affirmative statement and commitment in a form acceptable to the CITY whereby the proposed new entity agrees to comply with all the terms of this ordinance.

Within thirty days following receipt of request for assignment of the franchise the CITY shall inform the GRANTEE in writing whether or not the CITY intends to hold a hearing. Within fifteen days of the date of the public hearing, if it is called by the CITY, or within forty-five days after the filing of the request for assignment, the CITY shall make a formal determination regarding the request of assignment. The CITY may reject such assignment if the CITY determines that the proposed new entity is not technically or financially qualified to operate the cable system or that the CITY has not received information necessary to make an informed determination of the qualifications of the proposed new entity.

GRANTEE shall be responsible for payment to the CITY of all fees incurred by the CITY in reviewing and determining its position on such assignment of a franchise. The maximum expense reimbursement by the GRANTEE to the CITY shall be ten thousand dollars during the first five years of the GRANTEE's franchise period with a maximum to be increased by one thousand dollars for every subsequent year of the franchise having been completed prior to requests for assignment.

The reasonableness of the CITY's actions regarding a requested assignment shall be subject to judicial review in state forums only by agreement of the CITY and the GRANTEE indicated by the GRANTEE's acceptance of a franchise under this ordinance. The CITY shall not be responsible for any cost or expense incurred by the GRANTEE where the GRANTEE is successful or unsuccessful in such appeal. If GRANTEE is unsuccessful in such appeal the GRANTEE shall pay all costs and attorney's fees incurred by the CITY for protecting its ordinance and its decision under this section.

SECTION 13. GENERAL PROVISIONS

The GRANTEE and the CITY shall at all times comply with all applicable state and federal laws and all applicable rules and regulations of administrative agencies who have rulemaking authority related to cable television service. The GRANTEE shall secure and hold all necessary licenses, permits and authorizations as may be required in order to carry on community television service.

Except as otherwise provided in this ordinance the CITY shall not move to take any action involving the GRANTEE's franchise unless the CITY has notified the GRANTEE by certified mail at least three days prior to such meeting as to its time, place and purpose. The notice provided for in this section should be in addition to and not in lieu of any other notice to the GRANTEE provided for in this ordinance. All notices and other communications required or permitted under this ordinance shall be in writing and shall be deemed to have been duly delivered if mailed by certified mail, return receipt requested to the contact person at the address listed on the records of the CITY or as amended by the GRANTEE in writing prior to such notice. It shall be solely the GRANTEE'S duty and responsibility to notify the CITY in writing if the contact name or address should change.

SECTION 14. STREET OCCUPANCY AND ACCESS TO PUBLIC AND PRIVATE PROPERTY

GRANTEE shall be entitled to use all existing poles, conduits and other facilities wherever feasible within public rights of way so long as written approval of any other appropriate governmental authority is acquired. GRANTEE may instruct or install new, different or additional poles, conduits or other facilities within public rights of way so long as written approval is obtained by the GRANTEE from any appropriate governmental authority exercising jurisdiction over said rights of way other than the CITY.

Street cuts by the GRANTEE shall be made only with approval of the CITY which shall not be unreasonably withheld, however it is within the right of the CITY to require that other physical remedies or solutions be undertaken if they are reasonable and feasible in order to avoid unnecessary street cuts.

All transmission lines, equipment and structures of the GRANTEE shall be so installed and located as to cause minimum interference with the rights, appearance and reasonable convenience of property owners who are joined by any public right of way at any time and shall be maintained in a safe condition good order and repair.

GRANTEE shall have the authority to trim trees on public property at its own expense as it may be necessary to protect its wires and facilities subject to the direction of the CITY or other appropriate governmental authority.

In the case of any disturbances by GRANTEE on a public right of way or easements, pavements, sidewalks, driveways or other surfaces, the GRANTEE shall at its own cost and expense and in a manner approved by the CITY replace and restore all paving of sidewalk, driveway, or surface in as good condition as before the work was commenced.

In the event that the CITY lawfully elects to alter or change any street, alley, easement or other public rights of way requiring the relocation of GRANTEE'S facilities, the GRANTEE upon reasonable notice by the CITY, shall remove, relay and relocate at its own expense.

GRANTEE shall on the request of any person holding a building permit issued by the CITY or a building moving permit issued by the CITY, and with seven days notice, temporarily raise or lower its lines to permit the moving any building or equipment. The expense of such temporary removal shall be made by the person requesting the same and GRANTEE shall have authority to require such payment in advance; provided however in no event shall the CITY be required to pay for such expense.

Upon request by GRANTEE the CITY shall promptly exercise any rights that it may have to permit or enable the GRANTEE to obtain or utilize existing dedicated easements, in accordance with CITY design standards as required to facilitate GRANTEES use thereof for purposes of providing existing service to the tenants, residents or lawful occupants in or about said easements.

When major construction is to be undertaken by the GRANTEE, on its own initiative or at the request of the CITY, such a system upgrades related to renewal of franchise, the construction time table and reporting shall be submitted to the CITY in a form acceptable to the CITY and in accordance with procedures and schedules established by the CITY all installations and construction will conform to CITY ordinances and will be subject to all building permits and inspections required by the CITY. Plans showing the detail of all construction shall be filed with the CITY prior to commencement of construction and "as built" plans will be filed after construction is completed.

SECTION 15. BOND REQUIREMENTS

Upon demand by the CITY, at any time within the term of any franchise granted under this ordinance the GRANTEE shall post a cash deposit, bond or certificate of deposit in any form readily negotiable by the CITY in an amount of five thousand dollars. Shall funds shall remain on deposit with the CITY as a cash bond to guarantee the GRANTEE'S compliance with the terms of the franchise. All interest earned on such fund shall belong to the GRANTEE and shall be paid to the GRANTEE annually or credited against payments due to the CITY at the option of the CITY.

SECTION 16. SEVERABILITY OF ORDINANCE AND EFFECTIVE DATE

If any section of this ordinance, any franchise granted hereunder, or any portions of it are held to be invalid or unconstitutional in any court or competent or administrative agency, such decision shall not effect the validity of the remaining portions or the ordinance or franchise.

This ordinance shall become effective on the date of its adoption by the CITY. Any failure by the CITY to follow proper procedures under state or local law in adopting this ordinance or granting a franchise shall not abrogate the rights or obligations of either GRANTEE or the CITY under this ordinance. If following adoption of this ordinance it is determined that proper legal procedures have not been followed by the CITY it shall be the responsibility of the CITY to rectify any procedural defects and modify the terms of this ordinance.

SECTION 17. EMERGENCY

By majority vote of the Board of Alderman it is determined that the health, safety and welfare of the inhabitants of the CITY of Highland Haven require that this ordinance be enacted immediately as an emergency and therefore this ordinance is hereby enacted as an emergency.

PASSED AND APPROVED ON THIS THE 15 TH DAY OF **JANUARY, 1998**.

MAYOR - CITY OF HIGHLAND HAVEN

ATTEST:

CITY SECRETARY

APPROVED AS TO FORM:

CITY ATTORNEY