

ORDINANCE NO. 1636

AN ORDINANCE GRANTING A FRANCHISE TO WARNER AMEX CABLE COMMUNICATIONS, INC., ITS SUCCESSORS OR ASSIGNS, TO OWN AND OPERATE AND MAINTAIN A CABLE TELEVISION SYSTEM IN MESQUITE, TEXAS, SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OF FRANCHISE; PROVIDING FOR THE REGULATION AND USE OF SAID SYSTEM; AND PROVIDING FOR CERTAIN PENALTIES.

WHEREAS, the City of Mesquite, Texas, has following reasonable notice conducted a full public hearing, affording all persons reasonable opportunity to be heard, which proceeding was concerned with the analysis and consideration of the technical ability, financial condition, legal qualification and general character of the franchisee; and

WHEREAS, the City of Mesquite after such consideration, analysis and deliberation, has approved and found sufficient the technical ability, financial condition, legal qualification, and character of said franchisee; and

WHEREAS, the said City of Mesquite has at the said public hearing, also considered and analyzed the plans of the franchisee for the construction and operation of the cable television system and found the same to be adequate and feasible in view of the needs and requirements of the entire area to be served by the said system;

NOW, THEREFORE, the City of Mesquite does ordain that there is hereby created, granted, and established a nonexclusive franchise for a period of fifteen (15) years for the installation, operation and maintenance of a cable television system within the City of Mesquite to the Warner Amex Cable Communications, Inc.

Provided, however, that the said franchise shall be subject to the following terms and performance conditions:

ARTICLE I. GRANT OF FRANCHISE AND GENERAL PROVISIONS

SECTION 1. TITLE OF ORDINANCE

This ordinance shall be known and may be cited as the "Mesquite Cable Television Franchise", hereinafter "Franchise", and it shall become a part of the ordinances of the City of Mesquite.

00100

SECTION 2. DEFINITIONS

For the purpose of this ordinance the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is mandatory and "may" is permissive. Words not defined shall be given their common and ordinary meaning.

a. "Basic Service" shall mean all subscriber services provided by the Company, including the delivery of broadcast signals, covered by the regular monthly charge paid by all subscribers, excluding optional services for which a separate charge is made.

b. "Cable television System" or "CATV System", shall mean a system of antennas, cables, wires, lines, towers, waveguides, or other conductors, converters, equipment or facilities, designed and constructed for the purpose of producing, receiving transmitting, amplifying and distributing, audio, video and other form of electronic or electrical signals, located in the city. Said definition shall not include any such facility that serves or will serve only subscribers in one or more multiple unit dwellings under common ownership, control or management, and does not use city rights-of-way.

c. "Class IV Channel" means a signaling path provided by a cable television system to transmit signals of any type from a subscriber terminal to another point the cable television system.

d. "City" is the City of Mesquite, a municipal corporation, in the State of Texas.

e. "Company" is Warner Amex Cable Communications, Inc., the grantee of rights under this ordinance awarding a franchise, or the successor, transferee or assignee.

f. "Converter" means an electronic device, which converts signals to a frequency not susceptible to interference within the television receiver of a subscriber, and by an appropriate channel selector also permits a subscriber to view all signals included in the basic service delivered at designated converter dial locations.

g. "Council" shall mean the governing body of the City of Mesquite.

h. "FCC" shall mean the Federal Communications Commission and any legally appointed, designated or elected agent or successor.

i. "Gross Revenues" shall mean all revenue derived directly or indirectly by the Company, its affiliates, subsidiaries, parent, and any person in which the Company has a financial interest, from providing cable television services within the city, including, but not limited to, basic subscriber service monthly fees, pay cable fees, installation and reconnection fees, leased channel fees, converter rentals, studio rental, production equipment and personnel fees, and advertising revenues; provided, however, that this shall not include any taxes on services furnished by the Company herein imposed directly upon any subscriber or user by the state, local or other governmental unit and collected by the Company on behalf of said governmental unit.

j. "Initial Service Area" means all contiguous areas in Mesquite having at least fifty (50) dwelling units per street mile, and as set forth in the Company's application as incorporated herein.

k. "Installation" shall mean the connection of the system from feeder cable to subscribers' terminals.

l. "Monitoring" means observing a communications signal, or the absence of a signal, where the observer is neither the subscriber nor the programmer, whether the signal is observed by visual or electronic means, for any purpose whatsoever. Provided, monitoring shall not include systemwide, nonindividually addressed sweeps of the system for purposes of verifying system integrity, controlling return paths transmissions, or billing for pay services.

m. "Street" shall mean the surface of and the space above and below any public street, road, highway, freeway, lane, path, public way or place, alley, court, sidewalk, boulevard, parkway, drive or other easement now or hereafter held by the City for the purpose of public travel and shall include such other easements or rights-of-way as shall be now held or hereafter held by the City which shall within their proper use and meaning entitle the City and its Company to the use thereof for the purpose of installing or transmitting cable transmissions over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments and other property as may be ordinarily necessary and pertinent to a cable system.

n. "Subscriber" means a recipient of cable television service.

o. "User" means a party utilizing a cable television system channel for purposes of production or transmission of material to subscribers, as contrasted with receipt thereof in a subscriber capacity.

00102

SECTION 3. RIGHTS AND PRIVILEGES OF COMPANY

The Franchise granted by the City pursuant to this ordinance shall grant to the Company the right and privilege to erect, construct, operate and maintain in, upon, along, across, above, over and under the streets, now in existence and as may be created or established during its terms; any poles, wires, cable, underground conduits, manholes, and other television conductors and fixtures necessary for the maintenance and operation of a CATV system for the interception, sale, transmission and distribution of television programs and other audio-visual electrical signals and the right to transmit the same to the inhabitants of the City on the terms and conditions hereinafter set forth.

SECTION 4. AGREEMENT AND INCORPORATION OF APPLICATION  
BY REFERENCE

Upon adoption of this franchise and execution hereof by Company, Company agrees to be bound by all the terms and conditions contained herein.

The Company also agrees to provide all services specifically set forth in its application to provide cable television service within the confines of the City of Mesquite and by its acceptance of the franchise, the Company specifically grants and agrees that its application is thereby incorporated by reference and made a part of the franchise and this ordinance. In the event of a conflict between such proposals and the provisions of this ordinance, that provision which provides the greatest benefit to the City, in the opinion of the City Council, shall prevail.

SECTION 5. FRANCHISE TERRITORY

The franchise is for the present territorial limits of the City of Mesquite, Texas, and for any area henceforth added thereto during the term of the franchise.

SECTION 6. DURATION AND ACCEPTANCE OF FRANCHISE

The franchise and the rights, privileges and authority hereby granted shall take effect and be in force from and after final passage thereof, as provided by law, and shall continue in force and effect for a term of fifteen (15) years, provided that within fifteen (15) days after the date of final passage of the franchise the Company shall file with the City Manager its unconditional acceptance of the franchise and promise to comply with and abide by all its provision, terms, and conditions. Such acceptance and promise shall be in writing duly executed and sworn to, by, or on behalf of the Company before a notary public or other officer authorized by law to administer oaths.

SECTION 7. FRANCHISE RENEWAL

a. This franchise may be renewed by the City upon application of the Company pursuant to the procedure established in subsection b of this section, and in accordance with the then applicable law.

b.

(1) At least thirteen months prior to the expiration of the franchise, Company shall inform the City in writing of its intent to seek renewal of the franchise.

(2) After giving public notice, the City shall proceed to determine whether the Company has satisfactorily performed its obligations under the franchise. To determine satisfactory performance, the City shall consider technical developments and performance of the system, programming, other services offered, cost of services, and any other particular requirements set in the ordinance; also, the City shall consider the Company's annual reports made to the City and the FCC; industry performance on a national basis shall also be considered. Provision shall be made for public comment.

(3) A four (4) month period shall be provided to determine the Company's eligibility for renewal.

(4) The City shall then prepare within two (2) months any amendments to this ordinance that it believes necessary.

(5) If the City finds the Company's performance satisfactory, a new franchise may be granted pursuant to the ordinance as amended for an additional period of ten (10) years. Subsequent renewal for ten (10) year periods may be applied for by Company in accordance with procedure outlined in Section 7.

(6) In the event the Company is determined by the City to have performed unsatisfactorily, new applicants shall be sought and evaluated and a franchise award shall be made by the City.

SECTION 8. POLICE POWERS

In accepting this franchise, the Company acknowledges that its rights hereunder are subject to the police power of the City to adopt and enforce general ordinances necessary to the safety and welfare of the public; and it agrees to comply with all applicable general laws and ordinances enacted by the City pursuant to such power

00104

Any conflict between the provisions of this franchise and any other present or future lawful exercise of the City's police powers shall be resolved in favor of the latter, except that any such exercise that is not of general application in the jurisdiction or applies exclusively to Company or CATV systems which contains provisions inconsistent with this franchise shall prevail only if upon such exercise, the City finds an emergency exists constituting a danger to health, safety, property or general welfare or such exercise is mandated by law.

#### SECTION 9. CATV FRANCHISE REQUIRED

No CATV system shall be allowed to occupy or use the streets of the City or be allowed to operate without a CATV franchise.

#### SECTION 10. USE OF COMPANY FACILITIES

The City shall have the right, during the life of this franchise, to install and maintain free of charge upon the poles of the Company any wire and pole fixtures that do not unreasonably interfere with the CATV operations of the Company.

#### SECTION 11. COSTS

Costs to be borne by Company shall include, but shall not be limited to, all costs of publications of notices prior to any public meeting provided for pursuant to this franchise, publication of this ordinance and any costs (up to \$20,000) not covered by the application fees, incurred by the City in its study, preparation of proposal documents, evaluation of all applications, and examinations of applicants' qualifications. In addition, any costs incurred by City during the system construction period for any system inspection performed by City's independent consulting engineer, to assure that system construction and performance is in accordance with this ordinance and the Company's proposal, shall also be paid by Company up to a maximum of \$3,000.

#### SECTION 12. NOTICES

All notices from Company to the City pursuant to this franchise shall be to the City Manager. Company shall maintain with the City, throughout the term of this franchise, an address for service of notices by mail. Company shall also maintain within the City of Mesquite, local office and telephone number for the conduct of matters related to this franchise during normal business hours.

SECTION 13. SECURITY FUND

a. Within ten (10) days after the award of this franchise, the Company shall deposit with the City a cash deposit in the amount of \$10,000 to establish a security fund. The security fund shall be used to insure the faithful performance by the Company of all provisions of this franchise; and compliance with all orders, permits and directions of any agency, commission, board, department, division or office of the City having jurisdiction over its acts or defaults under this franchise, and the payment by the Company of any claims, liens and taxes due the City which arise by reason of the construction, operation or maintenance of the system.

b. The security fund shall be maintained at \$10,000 during the entire term of this franchise, even if amounts have to be withdrawn pursuant to subdivision a or c of this section.

c. If the Company fails to pay to the City any compensation within the time fixed herein; or, fails, after ten (10) days' notice to pay to the City any taxes due and unpaid; or fails to repay the City within ten (10) days, any damages, costs or expenses which the City is compelled to pay by reason of any act or default of the Company in connection with this franchise; or, fails, after three (3) days' notice of such failure by the City to comply with any provision of this franchise which the City reasonably determines can be remedied by demand on the security fund, the City may immediately withdraw the amount thereof, with interest and any penalties, from the security fund. Upon such withdrawal, the City shall notify the Company of the amount and date thereof.

d. The rights reserved to the City with respect to the security fund are in addition to all other rights of the City, whether reserved by this franchise or authorized by law, and no action, proceeding or exercise of a right with respect to such security fund shall affect any other right the City may have.

SECTION 14. PERFORMANCE BOND

a. Within thirty (30) days after the award of this franchise, the Company shall file with the City a Performance Bond in the amount of One Hundred Thousand Dollars (\$100,000) in favor of the City. This bond shall be maintained throughout the construction period and until such time as determined by City Council.

b. In the event the Company fails to comply with any law, ordinance or regulation governing the franchise, or fails to well

00106

and truly observe, fulfill and perform each term and condition of the franchise, including the Company's proposal which is incorporated herein by reference, there shall be recoverable, jointly and severally, from the principal and surety of the bond, any damages or loss suffered by the City as a result, including the full amount of any compensation, indemnification or cost of removal or abandonment of any property of the Company plus a reasonable allowance for attorney's fees, including the City's legal staff, and costs, up to the full amount of the bond. This section shall be an additional remedy for any and all violations outlined in Section 13.

c. The City may, upon completion of construction of the service area as approved by the City Council, waive or reduce requirement of the Company to maintain said bond. However, the City may require a performance bond to be posted by the Company for any construction subsequent to the completion of the initial service areas, in a reasonable amount and upon such terms as determined by the City Council.

d. The bond shall contain the following endorsement:

"It is hereby understood and agreed that this bond may not be cancelled by the surety nor the intention not to renew be stated by the surety until thirty (30) days after receipt by the City, by registered mail, a written notice of such intent to cancel or not to renew."

#### SECTION 15. LIABILITY AND INSURANCE

a. The Company shall maintain and by its acceptance of the franchise specifically agrees that it will maintain throughout term of the franchise, insurance insuring the City and the Company in the minimum amount of:

- (1) Workmen's Compensation: as required by all applicable Federal, State Maritime or other laws including Company Liability with a limit of at least \$100,000.
- (2) Company's Liability: each occurrence \$100,000; aggregate \$300,000.
- (3) Comprehensive General Liability: Bodily injury, each person \$300,000 and each occurrence \$1,000,000; Property damage, each accident \$100,000 and aggregate \$300,000.



- (4) Comprehensive Automobile Liability: including nonownership and hired car coverage as well as owned vehicles with minimum limits as follows: Bodily injury for each person \$300,000 and each occurrence \$1,000,000; Property damage for each occurrence \$100,000.

b. The insurance policies obtained by the Company in compliance with this section must be approved by the city attorney and such insurance policies, along with written evidence of payment of required premiums, shall be filed and maintained with the city secretary during the term of the franchise, and may be changed from time-to-time to reflect changing liability limits. The Company shall immediately advise city attorney of any litigation that may develop that would affect this insurance.

c. Neither the provisions of this section nor any damages recovered by the City thereunder, shall be construed to or limit the liability of the Company under any franchise issued hereunder or for damages.

d. All insurance policies maintained pursuant to this franchise shall name the city co-insured and contain the following endorsement:

"It is hereby understood and agreed that this insurance policy may not be cancelled by the surety nor the intention not to renew be stated by the surety until thirty (30) days after receipt by the City, by registered mail, a written notice of such intention to cancel or not to renew."

#### SECTION 16. INDEMNIFICATION

a. Company shall, at its sole cost and expense, fully indemnify, defend and hold harmless the City, its officers, boards, commissions and employees against any and all claims, suits, actions, liability and judgments for damages (including but not limited to expenses for reasonable legal fees and disbursements and liabilities assumed by the City in connection therewith):

(1) To persons or property, in any way arising out of or through the acts or omissions of Company, its servants, agents or employees, or to which Company's negligence shall in any way contribute;

00108

(2) Arising out of any claim for invasion of the right of privacy, for defamation of any person, firm or corporation, or the violation or infringement of any copyright, trademark, trade name, service mark or patent, or of any other right of any person, firm or corporation (excluding claims arising out of or relating to City programming); and

(3) Arising out of Company's failure to comply with the provisions of any federal, state, or local statute, ordinance or regulation applicable to Company in its business hereunder.

b. The foregoing indemnity is conditioned upon the following: The City shall give Company prompt notice of the making of any claim or the commencement of any action, suit or other proceeding covered by the provisions of this section. Nothing herein shall be deemed to prevent the City from cooperating with Company and participating in the defense of any litigation by its own counsel at its sole cost and expense. No recovery by the City of any sum by reason of the Security Fund required in Article I, Section 13, hereof shall be any limitation upon the liability of the Company to the City under the terms of this section, except that any sum so received by the City shall be deducted from any recovery which the City might have against the Company under the terms of this section.

SECTION 17. RIGHTS OF INDIVIDUALS

a. Company shall not deny service, deny access, or otherwise discriminate against subscribers, channel users, or general citizens on the basis of race, color, religion, national origin, or sex. Company shall comply at all times with all other applicable federal, state and local laws and regulations, and all executive administrative orders relating to nondiscrimination which are hereby incorporated and made part of this ordinance by reference.

b. Company shall strictly adhere to the equal employment opportunity requirements of the FCC, state and local regulations, and as amended from time to time.

c. No signals of a Class IV cable communications channel shall be transmitted from a subscriber terminal for purposes of monitoring individual viewing patterns or practices without the express written permission of the subscriber. The request for such permission shall be contained in a separate document with a prominent statement that the subscriber is authorizing the permission in full knowledge of its provision. Such written

permission shall be for a limited period of time not to exceed one (1) year, which shall be renewable at the option of the subscriber. No penalty shall be invoked for a subscriber's failure to provide or renew such an authorization. The authorization shall be revokable at any time by the subscriber without penalty of any kind whatsoever. Such authorization is required for each type or classification of Class IV cable television activity planned; provided however, that the Company shall be entitled to conduct systemwide or individually addressed "sweeps" for the purpose of verifying system integrity, controlling return-path transmission, or billing for pay services.

d. The Company, or any of its agents or employees, shall not, without the specific written authorization of the subscriber involved, sell, or otherwise make available to any party:

- (1) lists of the names and addresses of such subscribers, or
- (2) any list which identifies the viewing habits of subscribers.

#### SECTION 18. PUBLIC NOTICE

Minimum public notice of any public meeting relating to this franchise shall be by publication at least once in a local newspaper of general circulation at least ten (10) days prior to the meeting, posting at City Hall, by announcement on at least two (2) channels of the Company's CATV system between the hours of 7:00 p.m. and 9:00 p.m., for five (5) consecutive days prior to the meeting.

#### SECTION 19. SEVERABILITY

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

### ARTICLE II. CATV SYSTEM EXTENSION, OPERATION, STANDARDS AND PROCEDURES

#### SECTION 1. SERVICE AVAILABILITY AND RECORD REQUEST

The Company shall provide cable television service throughout the entire franchise area pursuant to the provisions of this franchise and shall keep a record for at least three (3) years of all requests for service received by the Company. This record shall be available for public inspection at the local office of the Company during regular office hours.

SECTION 2. CATV SYSTEM CONSTRUCTION

## a. Construction Map and Schedule

(1) Map and Plan (Exhibit A)

Company has submitted a construction plan which is incorporated herein by reference and made a part hereof as Exhibit A. The plan consists of a map of the entire franchise area and clearly delineates the following:

(a) The areas within the franchise area where the CATV system will be initially available to subscribers.

(b) Areas within the franchise area where extension of the CATV system cannot reasonably be done due to lack of present or planned development, or other similar reasons, then the areas and the reasons for not serving them are clearly identified on the map.

(c) The plan shall also describe, by use of reference to census tract numbers, the construction timetable showing which census tracts will be built and the year in which construction and system activation will occur.

(d) Any changes in the plan shall require approval of the City Manager.

## b. CONSTRUCTION TIMETABLE

(1) Within two (2) years from the date of the award of the franchise, the Company must make cable television service available to every dwelling unit within the initial service area.

(a) The Company must make cable television service available to at least 30 percent of the dwelling units within the initial service area within one (1) year from the date of the award of the franchise.

(b) The Company must make cable television service available to at least 70 percent of the dwelling units within the initial service area within eighteen (18) months from the date of the award of the franchise.

(c) The Company must make cable television service available to at least 100 percent of the dwelling units within the initial service area within two (2) years from the date of the award of the franchise.

(2) The Company, in its application, may propose a timetable of construction which will make cable television service available

in the initial service area sooner than the above minimum requirements, in which case the Company's application will be incorporated by reference pursuant to Article I, Section 4 of this ordinance and will be binding upon the Company.

(3) Any delay beyond the terms of this timetable, unless specifically approved by the City Council, will be considered a violation of this ordinance for which the provisions of either Section 5 or Section 6 of Article III shall apply, as determined by the City.

(4) Early Construction

Nothing in this section shall prevent the Company from constructing the system earlier than planned. However, any delay in the system construction beyond the times specified in the plan report timetable shall require application to and consent by the Council. The City may not withhold consent when Company has shown good cause for the delay but City may attach reasonable conditions to ensure performance.

(5) Commencement of Construction

Construction in accordance with the plan submitted by Company shall commence as soon after the grant and acceptance of the franchise as is reasonably possible. The City acknowledges that commencement of construction depends in large part upon Company's retention of cable television construction crews. Company shall seek to retain and contract with such construction crews with all due diligence. Failure to proceed expeditiously, shall be grounds for revocation of this franchise. Failure to proceed expeditiously shall be presumed in the event construction is not substantially in compliance with the construction schedule or has not commenced within twelve (12) months of the grant and acceptance of this franchise.

c. LINE EXTENSIONS

(1) In areas of the franchise territory not included in the initial services area, the Company shall be required to extend its system pursuant to the following requirements:

(a) Company must extend and make cable television service available to every dwelling unit within one (1) year of any unserved area reaching the minimum density of at least fifty (50) dwelling units per street mile, as measured from the existing system.

(b) Company must extend and make cable television service available to every dwelling unit in all unserved, developing areas having at least fifty (50) dwelling units planned per street

mile, as measured from the existing system, and shall extend its system simultaneously with the installation of utility line.

(c) Company must extend and make cable television service available to any isolated resident outside the initial service area requesting connection at the standard connection charge, if the connection to the isolated resident would require no more than a standard one hundred and fifty (150) foot aerial drop line.

(2) Early Extension

In areas not meeting the requirements for mandatory extension of service, Company shall provide, upon the request of a potential subscriber desiring service, an estimate of the costs required to extend service to said subscriber. Company shall then extend service upon request of said potential subscriber. Company may require advance payment or assurance of payment satisfactory to Company. The amount paid by subscribers for early extension shall be nonrefundable, and in the event the area subsequently reaches the density required for mandatory extension such payments shall be treated as consideration for early extension.

(3) New Development Undergrounding

In cases of new construction or property development where utilities are to be placed underground, the developer or property owner shall give Company reasonable notice of such construction development, and of the particular date on which open trenching will be available for Company's installation of conduit, pedestals and vaults, and laterals to be provided at Company's expense. Company shall also provide specifications as needed for trenching.

Costs of trenching and easements required to bring service to the development shall be borne by the developer or property owner except that if Company fails to install its conduit, pedestals and/or vaults, and laterals within five (5) working days of the date the trenches are available, as designated in the notice given by the developer or property owner, then should the trenches be closed after the five day period, the cost of new trenching is to be borne by Company. Except for the notice of the particular date on which trenching will be available to Company, any notice provided to Company by City of a preliminary plat request shall satisfy the requirement of reasonable notice if sent to the local general manager or system engineer of Company prior to approval of the preliminary plat request.

c. Special Agreements

Nothing herein shall be construed to prevent Company from serving areas not covered under this section upon agreement with developers, property owners, or residents.

d. The Company, in its application, may propose a line extension policy which will result in serving more residents of the City than as required above, in which case the Company's application will be incorporated by reference pursuant to Article I, Section 4 of this ordinance, and will be binding on the Company.

e. Any violation of this section shall be considered a breach of the terms of this ordinance for which the provisions of either Section 5 or Section 6 of Article III shall apply, as determined by the City Council.

SECTION 3. CONSTRUCTION AND TECHNICAL STANDARDS

a. Compliance with Construction and Technical Standards

Company shall construct, install, operate and maintain its system in a manner consistent with all laws, ordinances, construction standards, governmental requirements, FCC technical standards, and detailed standards submitted by Company as part of its application, which standards are incorporated by reference herein. In addition, Company shall provide the City, upon request, with a written report of the results of Company's annual proof of performance tests conducted pursuant to FCC standards and requirements.

b. Additional Specifications

Construction, installation and maintenance of the cable television system shall be performed in an orderly and workmanlike manner. All cables and wires shall be installed, where possible, parallel with electric and telephone lines. Multiple cable configurations shall be arranged in parallel and bundled with due respect for engineering considerations.

Company shall at all times comply with:

- National Electrical Safety Code (National Bureau of Standards);
- National Electrical Code (National Bureau of Fire Underwriters);
- Bell System Code of Pole Line Construction; and
- Applicable FCC or other federal, state and local regulations.

In any event, the system shall not endanger or interfere with the safety of persons or property in the franchise area or other areas where the Company may have equipment located.

Any antenna structure used in the cable television system shall comply with construction, marking, and lighting of antenna structure, required by the United States Department of Transportation.

00114

All working facilities and conditions used during construction, installation and maintenance of the CATV system shall comply with the standards of the Occupational Safety and Health Administration.

Rf leakage shall be checked at reception locations for emergency radio services to prove no interference signal combinations are possible. Stray radiation shall be measured adjacent to any proposed aeronautical navigation radio sites to prove no interference to airborne navigational reception in the normal flight patterns. FCC Rules and Regulations shall govern.

The Company shall maintain equipment capable of providing standby power for headend, transportation and trunk amplifiers for a minimum of two hours.

The Company shall incorporate into its cable television system the capacity which will permit the City, in times of emergency, to override, by remote control, the audio of all channels simultaneously. The Company shall designate a channel which will be used for emergency broadcast of both audio and video. The Company shall cooperate with the City in the use and operation of the emergency alert override system.

In all areas of the City where the cables, wires, and other like facilities of public utilities are placed underground, the Company shall place its cables, wires, or other like facilities underground to the maximum extent that existing technology reasonably permits.

#### SECTION 4. USE OF STREETS

##### a. Interference with Persons and Improvements

The Company's system, poles, wires, and appurtenances shall be located, erected and maintained so that none of its facilities shall endanger or interfere with the lives of persons, or interfere with any improvements the City may deem proper to make, or unnecessarily hinder or obstruct the free use of the streets, alleys, bridges, easements or public property.

##### b. Minimum Interference with Public Ways

All transmission and distribution structures, lines and equipment erected by the Company within the City shall be so located as to cause minimum interference with the proper use of streets, alleys, and other public ways and places, and to cause minimum interference with the rights or reasonable convenience of property owners who adjoin any of the said streets, alleys or other public ways and places.



c. Restoration to Prior Condition

In case of any disturbance of pavement, sidewalk, driveway or other surfacing, the Company shall, at its own cost and expense and in a manner approved by the City, replace and restore all paving, sidewalk, driveway, or surface of any street or alley disturbed, in as good condition as before said work was commenced and in accordance with standards for such work set by the City Manager.

d. Erection, Removal, and Common Uses of Poles

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

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

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

e. Relocation of the Facilities

In the event that at any time during the period of this franchise the City shall lawfully elect to alter, or change the grade of any street, alley or other public ways, the Company, upon reasonable notice by the City, shall remove or relocate as necessary its poles, wires, cables, underground conduits, manholes and other fixtures at its own expense.

f. Cooperation with Building Movers

The Company shall, on the request of any person holding a building moving permit issued by the City, temporarily raise or lower its wires to permit the moving of buildings. The expense of

00116

such temporary removal, raising or lowering of wires shall be paid by the person requesting the same, and the Company shall have the authority to require such payment in advance. The Company shall be given not less than forty-eight (48) hours advance notice to arrange for such temporary wire changes.

g. Tree Trimming

The Company shall not remove any tree or trim any portion, either above, at or below ground level, of any tree within any public place without the prior consent of the City. The City shall have the right to do the trimming requested by the Company at the cost of the Company. Regardless of who performs the work requested by the Company, the Company shall be responsible, shall defend and hold City harmless for any and all damages to any tree as a result of trimming, or to the land surrounding any tree, whether such tree is trimmed or removed.

SECTION 5. OPERATIONAL STANDARDS

a. The Company shall put, keep, and maintain all parts of the system in good condition throughout the entire franchise period.

b. Upon the reasonable request for service by any person located within the franchise territory, the Company shall, within thirty (30) days, furnish the requested service to such person within terms of the line extension policy. A request for service shall be unreasonable for the purpose of this subsection if no trunk line installation capable of servicing that person's block has as yet been installed.

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

d. Company shall not allow its cable or other operations to interfere with television reception of persons not served by Company, nor shall the system interfere with, obstruct or hinder in any manner, the operation of the various utilities serving the residents within the confines of the City of Mesquite.

e. The Company shall continue, through the term of the franchise, to maintain the technical standards and quality of service set forth in this ordinance. Should the City find, by resolution, that the Company has failed to maintain these technical standards and quality of service, and should it, by resolution, specifically enumerate improvements to be made, the Company shall make such improvements. Failure to make such improvements within three (3) months of such resolution will constitute a breach of a condition for which the remedy of Article III, Section 5(d) is applicable.

SECTION 6. CONTINUITY OF SERVICE MANDATORY

a. It shall be the right of all subscribers to continue receiving service insofar as their financial and other obligations to the Company are honored. In the event that the Company elects to overbuild, rebuild, modify, or sell the system, or the City gives notice of intent to terminate or fails to renew this franchise, the Company shall act so as to ensure that all subscribers receive continuous, uninterrupted service regardless of the circumstances.

In the event of a change of franchisee, or in the event a new operator acquires the system, the Company shall cooperate with the City, new franchisee or operator in maintaining continuity of service to all subscribers. During such period, Company shall be entitled to the revenues for any period during which it operates the system, and shall be entitled to reasonable costs for its services when it no longer operates the system.

b. In the event Company fails to operate the system for seven (7) consecutive days without prior approval of the City or without just cause, the City may, at its option, operate the system or designate an operator until such time as Company restores service under conditions acceptable to the City or a permanent operator is selected. If the City is required to fulfill this obligation for the Company, the Company shall reimburse the City for all reasonable costs or damages in excess of revenues from the system received by the City that are the result of the Company's failure to perform.

SECTION 7. COMPLAINT PROCEDURE

a. The Office of the City Manager is designated as having primary responsibility for the continuing administration of the franchise and implementation of complaint procedures.

b. During the term of this franchise, and any renewal thereof, the Company shall maintain a local business office for the purpose of receiving and resolving all complaints regarding the quality of service, equipment malfunctions, and similar matters. The office must be reachable by a local, tollfree telephone call to receive complaints regarding quality of service, equipment malfunctions and similar matters. The local office shall be open to receive inquiries or complaints from subscribers during normal business hours, and in no event less than 9:00 a.m. to 5:00 p.m., Monday through Friday, excluding legal holidays. Company shall provide the means to accept complaint calls twenty-four (24) hours a day, seven days a week. Any service complaints from subscribers shall be investigated and acted upon as soon as possible. Any service complaint shall be resolved within three (3) calendar days. The Company shall credit a subscriber's

00118

account on a prorata basis for loss of service commencing forty-eight (48) hours after notification. The Company shall keep a maintenance service log which will indicate the nature of each service complaint, the date and time it was received, the disposition of said complaint and the time and date thereof. This log shall be made available for periodic inspection by the City.

c. As subscribers are connected or reconnected to the system, the company shall, by appropriate means, such as a card or brochure, furnish information concerning the procedures for making inquiries or complaints, including the name, address and local telephone number of the employee or employees or agent to whom such inquiries or complaints are to be addressed, and furnish information concerning the City office responsible for administration of the franchise with the address and telephone number of the office.

d. When there have been similar complaints made, or where there exists other evidence, which, in the judgment of the City, casts doubt on the reliability or quality of cable service, the City shall have the right and authority to require Company to test, analyze, and report on the performance of the system. Company shall fully cooperate with City in performing such testing and shall prepare results and a report, if requested, within thirty (30) days after notice. Such report shall include the following information:

- (1) The nature of the complaint or problem which precipitated the special tests.
- (2) What system component was tested.
- (3) The equipment used and procedures employed in testing.
- (4) The method, if any, in which such complaint or problem was resolved.
- (5) Any other information pertinent to said tests and analysis which may be required.

The City may require that tests be supervised, at Company's expense, by a professional engineer, not on the permanent staff of the Company. The engineer should sign all records of special tests and forward to the City such records with a report interpreting the results of the tests and recommending actions to be taken.

The City's right under this section, shall be limited to requiring tests, analyses, and reports covering specific subjects and characteristics based on said complaints or other evidence when and under such circumstances as the City has reasonable grounds to believe that the complaints or other evidence require that tests be performed to protect the public against substandard cable service.

#### SECTION 8. COMPANY RULES AND REGULATIONS

The Company shall have the authority to promulgate such rules, regulations, terms and conditions governing the conduct of its business as shall be reasonably necessary to enable the Company to exercise its rights and perform its obligations under this franchise, and to assure an uninterrupted service to each and all of its customers. Provided, however, that such rules, regulations, terms and conditions shall not be in conflict with the provisions hereof or applicable State and Federal laws, rules and regulations.

#### SECTION 9. FRANCHISE FEE

a. For the reason that the streets of the City to be used by the Company in the operation of its system within the boundaries of the City of Mesquite are valuable public properties acquired and maintained by the City at great expense to its taxpayers, and that the grant to the Company to the said streets is a valuable property right without which the Company would be required to invest substantial capital in right-of-way costs and acquisitions, the Company shall pay to the City an amount equal to four percent (4%) of Company's gross revenue from all sources attributable to the operations of the Company within the confines of the City of Mesquite. In the event that any cable television company providing substantially similar services, shall pay to any other municipality or county located within the area comprised of Dallas and Tarrant Counties a franchise fee in excess of four (4) percent, the City of Mesquite, at its option, may require of the Company the greater percentage of gross revenues. In the event that it is determined that the FCC lacks jurisdiction to impose a limitation on franchise fees, or that the limit is raised, then the franchise fee will be subject to renegotiation.

b. This payment shall be in addition to any other tax or payment owed to the City by Company.

c. The franchise fee and any other cost or penalties assessed shall be payable quarterly, for the preceding quarter, as of March 31, June 30, September 30, and December 31. Payments are to be made to the City Manager's office and the Company shall file a complete and accurate verified statement of all gross receipts within the City during the period for which said quarterly payment is made, and said payment shall be made to the City not later than sixty (60) days after the dates listed above. Each payment shall

00120

be accompanied by a brief report showing the basis for the computation and such other relevant facts as may be required by the City.

d. The City shall have the right to inspect the Company's income records and the right to audit and to recompute any amounts determined to be payable under this ordinance. Any additional amount due to the City as a result of the audit shall be paid within thirty (30) days following written notice to the Company by the City which notice shall include a copy of the audit report. No acceptance of any payments shall be construed as a release or as an accord and satisfaction of any claim the City may have for further or additional sums payable under this ordinance or for the performance of any other obligation hereunder.

e. In the event that any franchise payment or recomputed amount, cost or penalty, is not made on or before the applicable dates heretofore specified, interest shall be charged daily from such date at the annual rate of ten percent (10%).

#### SECTION 10. TRANSFER OF OWNERSHIP OR CONTROL

a. Should the Company choose to sell the franchise, it would be permitted to do so only with the permission of the City Council, and then only after offering the City of Mesquite the right of first refusal.

b. This franchise shall not be assigned or transferred, either in whole or in part, or leased, sublet, or mortgaged in any manner, nor shall title thereto, either legal or equitable or any right, interest or property therein, pass to or vest in any person without the prior written consent of the City acting through its City Council. The proposed assignee must show financial responsibility as determined by the City and must agree to comply with all provisions of the franchise. City shall be deemed to have consented to a proposed transfer or assignment in the event its refusal to consent is not communicated in writing to Company within sixty (60) days following receipt of written notice of the proposed transfer or assignment.

c. The Company shall promptly notify the City of any actual or proposed change in, or transfer of, or acquisition by any other party of, control of the Company. The word "control" as used here is not limited to major stockholders but includes actual working control in whatever manner exercised. A rebuttable presumption that a transfer of control has occurred shall arise upon the acquisition or accumulation by any person or group of persons of ten percent (10%) of the voting shares of the Company. Every change,

transfer, or acquisition of control of the Company shall make the franchise subject to cancellation unless and until the City shall have consented thereto, which consent will not be unreasonably withheld. For the purpose of determining whether it shall consent to such change, transfer, or acquisition of control, the City may inquire into the qualification of the prospective controlling party, and the Company shall assist the City in any such inquiry.

d. The consent or approval of the City to any transfer of the Company shall not constitute a waiver or release of the rights of the City in and to the streets, and any transfer shall by its terms, be expressly subordinate to the terms and conditions of this franchise.

e. In the absence of extraordinary circumstances, the City will not approve any transfer or assignment of the franchise prior to substantial completion of construction of proposed system.

f. In no event shall a transfer of ownership or control be approved without successor in interest becoming a signatory to this franchise agreement.

#### SECTION 11. AVAILABILITY OF BOOKS AND RECORDS

Company shall fully cooperate in making available at reasonable times, and a representative of the City Manager's office shall have the right to inspect the books, records, maps, plans and other like materials of the Company applicable to the CATV system, at any time during normal business hours; provided where volume and convenience necessitate, Company may require inspection to take place on Company premises.

#### SECTION 12. OTHER PETITIONS AND APPLICATIONS

Copies of all petitions, applications, communications and reports submitted by the Company to the Federal Communications Commission, Securities and Exchange Commission, or any other federal or state regulatory commission or agency having jurisdiction in respect to any matters affecting cable television operations authorized pursuant to the franchise, shall be provided simultaneously to the City.

#### SECTION 13. FISCAL REPORTS

The Company shall file annually with the City Manager, no later than one hundred twenty (120) days after the end of the Company's fiscal year, a copy of a financial report applicable to the CATV system including an income statement applicable to its operations during the preceding twelve (12) months period,



00122

a balance sheet, and a statement of its properties devoted to CATV system operations, by categories, giving its investment in such properties on the basis of original cost, less applicable depreciation. These reports shall be certified as correct by an authorized officer of Company and there shall be submitted along with them such other reasonable information as the City shall request with respect to the Company's properties and expenses related to its CATV system operations within the City.

#### SECTION 14. REMOVAL OF CATV SYSTEM

At the expiration of the term for which this franchise is granted, or upon its termination as provided herein, Company shall forthwith, upon notice by City, remove at its own expense all designated portions of the CATV system from all streets and public property within the City. If Company fails to do so, City may perform the work at Company's expense. A bond shall be furnished by Company in an amount sufficient to cover this expense.

#### SECTION 15. REQUIRED SERVICES AND FACILITIES

##### a. Verbal Agreements

A transcript of the statements, comments and commitments of Warner Amex representative at the August 18, 1980, Council meeting is attached hereto and made a part of this ordinance. (Exhibit "A")

b. Certain correspondence called documents of clarification is hereby attached hereto and made a part of this ordinance. (Exhibit "B")

c. Warner Amex is to provide to City prior to the effective date hereof a proposed proof of notice of availability of a lock-box device to lock out "R" rated movies at no cost to subscriber. Upon approval of same by City, which must be prior to beginning of transmission, such document shall be attached hereto and shall become a part of this ordinance. Each subscriber shall be provided notice of such service and applicant shall furnish proof of such notice as provided in the approved document as a condition precedent to providing service to a subscriber. (Exhibit "C")

#### SECTION 16. AREAWIDE INTERCONNECTION OF CATV SYSTEMS

##### a. Interconnection Required

The Company shall interconnect access channels of the cable system with any or all other CATV systems in adjacent areas, upon the directive of the City. Interconnection of systems may be done by direct cable connection, microwave link, or other appropriate method.

##### b. Interconnection Procedure



Upon receiving the directive of the City to interconnect, the franchisee shall immediately initiate negotiations with the other affected system or systems in order that all costs may be shared equally among cable companies for both construction and operation of the interconnection link.

c. Relief

The franchisee may be granted reasonable extensions of time to interconnect or the City may rescind its order to interconnect upon petition by the franchisee to the City. The City shall grant said request if it finds that the franchisee has negotiated in good faith and has failed to obtain an approval from the system or systems of the proposed interconnection, or that the cost of the interconnection would cause an unreasonable or unacceptable increase in subscriber rates.

d. Cooperation Required

The franchisee shall cooperate with any interconnection corporation, regional interconnection authority or city, county, state and federal regulatory agency which may be hereafter established for the purpose of regulating, financing, or otherwise providing for the interconnection of cable systems beyond the boundaries of the City.

e. Initial Technical Requirements to Assure Future Interconnection Capability

(1) All cable systems receiving franchises to operate within the City shall use the standard frequency allocations for television signals.

(2) All cable systems are required to use signal processors at the headend for each television signal.

(3) The City also urges franchisees to provide local origination equipment that is compatible throughout the area so that videocassettes or videotapes can be shared by various systems.

ARTICLE III. ADMINISTRATION AND REGULATION

SECTION 1. RULES AND REGULATIONS

a. In addition to the inherent powers of the City to regulate and control this franchise, and those powers expressly reserved by the City, or agreed to and provided for herein, the right and power is hereby reserved by the City to promulgate such additional regulations as it shall find necessary in the exercise of its lawful powers and in furtherance of the terms and conditions of this franchise.

00124

b. The City may also adopt such regulations at the request of Company upon application.

SECTION 2. PERFORMANCE EVALUATION SESSIONS

a. The City and the Company shall hold scheduled performance evaluation sessions within thirty (30) days of the third, sixth, ninth and twelfth anniversary dates of the Company's award of the franchise and as may be required by federal and state law. All such evaluation sessions shall be open to the public.

b. Special evaluation sessions may be held at any time during the term of the franchise at the request of the City or the Company.

c. All evaluation sessions shall be open to the public and announced in a newspaper of general circulation in accordance with legal notice. Company shall notify its subscribers of all evaluation sessions by announcement on at least two (2) channels of its system between the hours of 7:00 p.m. and 9:00 p.m., for five (5) consecutive days preceding each session.

d. Topics which may be discussed at any scheduled or special evaluation session may include, but not be limited to, service rate structures; franchise fee; penalties; free or discounted services; application of new technologies; system performance; services provided; programming offered; customer complaints; privacy; amendments to this ordinance; judicial and FCC rulings; line extension policies; and Company or City rules.

e. Members of the general public may add topics either by working through the negotiating parties or by presenting a petition. If such a petition bears the valid signatures of fifty (50) or more residents of Mesquite, the proposed topic or topics shall be added to the list of topics to be discussed at the evaluation session.

SECTION 3. INITIAL RATES; REQUEST TIMING; DETERMINATION OF AUTHORITY

a. Initial Rates

(1) The Company shall establish initial rates that must be applied fairly and uniformly to all subscribers in the City for its services in accordance with the rates contained in Company's application for this franchise.

(2) Initial basic subscriber rates shall be effective for a minimum of two (2) years from the date cable service commences, or until Company has completed all construction proposed in its application (Form H) for the first and second years, whichever is longer.

b. Minimum Timing Requests. The Company may request a rate change at any time after two (2) years of commencing operation, provided that not more than one (1) request may be made by the Company in any twelve (12) month period.

c. Between September 1 and November 30 of the years 1983, 1986, 1989 and 1992, and each three years thereafter, the City shall determine whether it will assume rate modification authority.

(1) If the City declines rate modification authority, then rates may be changed by the Company by filing with the City a schedule of rates proposed and by notifying its subscribers in writing at least 60 days prior to implementation of the rate change.

(2) If the City assumes rate modification authority, then for the next three (3) years rates shall be subject to change only by the City in accordance with the procedures in Section 4.

#### SECTION 4. RATE CHANGE PROCEDURES

Providing that the City assumes rate modification authority in Section 3.

a. Rates Subject to Review. The City shall have the authority to review the following rates, fees and charges:

- (1) Rates for the provision of basic service to subscribers, whether residential or commercial.
- (2) Rates for the connection, installation and reinstatement (including converters) of basic service, whether residential or commercial.
- (3) Rates for installation, connection and reinstatement of basic service where unusual circumstances exist such as remote or inaccessible subscriber locations or subscriber requested underground service drops.

b. The Company may petition the City for a change in rates by filing, in triplicate, a proposed rate schedule with the City Council, which petition shall include the justification(s) for the proposed schedule. Said petition shall be filed at least ninety (90) days prior to the requested implementation date of the rate change. One (1) copy of the petition shall remain on file with the City Secretary and be open for public inspection.

c. Within ninety (90) days of the filing of the petition for rate change, the City shall hold an appropriate public hearing to consider the proposed rate change, at which hearing all persons desiring to be heard, including the Company, shall be heard on any matter, including but not limited to, the performance of this franchise, the Company's services, and the proposed new rates.

d. Upon notice of any public hearing as provided in subsection (c), the Company shall notify its subscribers of the time, place and subject matter of the public hearing by announcement on at least two (2) channels of its system between the hours of 7:00 p.m. and 9:00 p.m., for at least five (5) consecutive days prior to the hearing. In addition, notice of any public hearing shall be published in a newspaper of general circulation at least once, but may be published two (2) or more times, provided that one (1) publication occurs not less than seven (7) nor more than twenty-one (21) days before the public hearing.

e. Within ninety (90) days after said hearing, the City shall render a written decision on the Company's petition, either accepting, rejecting, modifying or deferring the same and reciting the basis of its decision. The City shall consider, inter alia, the following factors in approving or disapproving the petition:

- (1) the ability of the Company to render System services and to derive a reasonable profit therefrom under the existing rate schedule and under the proposed rate schedule;
- (2) the revenues and profits derived from System services;
- (3) the efficiency of the Company;
- (4) the quality of the service offered by the Company;
- (5) the original cost of the System less depreciation;
- (6) a fair rate of return with respect to the cost of borrowing and the rates of return on investments having similar risks to that of community antenna television;
- (7) the extent to which the Company has adhered to the terms of this agreement; and
- (8) fairness to City residents; subscribers and users.

The City shall not consider any valuation based upon this franchise or the Company's goodwill and these items of value shall neither be amortized as an expense nor shall a return be paid on them.

f. If the City fails to render a written decision either accepting, rejecting, modifying, or deferring Company's petition within one hundred eighty (180) days of the Company's petition pursuant to subsection (b) above, the Company shall thereafter be entitled to put its proposed new rates into effect.

g. The Company's petition for a rate increase shall include, but not be limited to, the following financial reports which shall reflect the operations of the Mesquite system only.

- (1) Balance Sheet
- (2) Income Statement
- (3) Statement of Sources and Applications of Funds
- (4) Detailed Supporting Schedules of Expenses, Income, Assets and other items as may be required.
- (5) Statement of Current and Projected Subscribers and Penetration.

The Company's accounting records applicable to the Mesquite system shall be available for inspection by the City at all reasonable times. The City shall have access to records of financial transactions for the purpose of verifying burden rates or other indirect costs prorated to the Mesquite operation. The documents listed above shall include sufficient detail and/or footnotes as may be necessary to provide the City with the information needed to make accurate determinations as to the financial condition of the system. All financial statements shall be certified as accurate by an officer of Company.

#### SECTION 5. CIVIL PENALTIES

For the violation of any of the following provisions of this franchise, penalties shall be chargeable to the security fund as follows:

- a. For failure to complete system construction and provide service in accordance with Article II, Section 2, unless the City Council specifically approves the delay by motion or resolution, due to the occurrence of conditions beyond Company's control, Company shall pay Two Hundred Dollars (\$200.00) per day for each day, or part thereof, the deficiency continues.
- b. For failure to provide data, documents, reports, information as required by Article II, Sections 9, 11, 12, 13 and Article III, Section 4, Company shall pay Fifty Dollars (\$50.00) per day each violation occurs or continues.
- c. For failure to test, analyze and report on the performance of the system following a request pursuant to Article II, Section 7, Company shall pay Fifty Dollars (\$50.00) per day for each day, or part thereof, that such noncompliance continues.
- d. For failure to comply with the operational standards following the City's resolution directing Company to make improvements pursuant to Article II, Section 5, Company shall forfeit Two Hundred Dollars (\$200.00) per day or part thereof that the violation continues.

#### SECTION 6. FORFEITURE AND TERMINATION

- a. In addition to all other rights and powers retained by the City under this franchise or otherwise, the City reserves the right to forfeit and terminate the franchise and all rights and

00128

privileges of the Company hereunder in the event of a substantial breach of its terms and conditions. A substantial breach by Company shall include, but shall not be limited to the following:

- (1) Violation of any material provision of the franchise or any material rule, order, regulation or determination of the City made pursuant to the franchise;
- (2) Attempt to evade any material provision of the franchise or practice any fraud or deceit upon the City or its subscribers or customers;
- (3) Failure to begin or complete system construction or system extension as provided under Article II, Section 2;
- (4) Failure to provide the services promised in Company's application as incorporated herein by Article I, Section 4;
- (5) Failure to restore service after ninety-six (96) consecutive hours of interrupted service, except when approval of such interruption is obtained from the City; or
- (6) Material misrepresentation of fact in the application for or negotiation of the franchise.

b. The foregoing shall not constitute a major breach if the violation occurs but it is without fault of the Company or occurs as a result of circumstances beyond its control. Company shall not be excused by mere economic hardship nor by misfeasance or malfeasance of its directors, officers or employees.

c. The City Manager may make a written demand that the Company comply with any such provision, rule, order, or determination under or pursuant to this franchise. If the violation by the Company continues for a period of thirty (30) days following such written demand without written proof that the corrective action has been taken or is being actively and expeditiously pursued, the City Manager may place the issue of termination of the franchise before the City Council. The City shall cause to be served upon Company, at least twenty (20) days prior to the date of such City Council meeting, a written notice of intent to request such termination and the time and place of the meeting. Public notice shall be given of the meeting and issue which the City Council is to consider.

d. The City Council shall hear and consider the issue and shall hear any person interested therein, and shall determine in its discretion whether or not any violation by the Company has occurred.

e. If the City Council shall determine the violation by the Company was the fault of Company and within its control, the City Council may, by resolution, declare that the franchise of the Company shall be forfeited and terminated unless there is compliance within such period as the City Council may fix, such period not to be less than sixty (60) days, provided no opportunity for compliance need be granted for fraud or misrepresentation.

f. The issue of forfeiture and termination shall automatically be placed upon the City Council agenda at the expiration of the time set by it for compliance. The City Council then may terminate the franchise forthwith upon finding that Company has failed to achieve compliance or may further extend the period, in its discretion.

#### SECTION 7. FORECLOSURE

Upon the foreclosure or other judicial sale of all or a substantial part of the CATV system, or upon the termination of any lease covering all or a substantial part of the CATV system, the Company shall notify the City of such fact, and such notification shall be treated as a notification that a change in control of the Company has taken place, and the provisions of this franchise governing the consent of the City Council to such change in control of the Company shall apply.

#### SECTION 8. RECEIVERSHIP

The City Council shall have the right to cancel this franchise one hundred twenty (120) days after the appointment of a receiver, or trustee, to take over and conduct the business of the Company, whether in receivership, reorganization, bankruptcy or other action or proceeding, unless such receivership or trusteeship shall have been vacated prior to the expiration of said one hundred twenty (120) days, or unless:

a. Within one hundred twenty (120) days after his election or appointment, such receiver or trustee shall have fully complied with all the provisions of this ordinance and remedied all defaults thereunder; and

b. Such receiver or trustee, within said one hundred twenty (120) days, shall have executed an agreement, duly approved by the court having jurisdiction in the premises, whereby such receiver or trustee assumes and agrees to be bound by each and every provision of this ordinance and the franchise granted to the Company.

#### SECTION 9. COMPLIANCE WITH STATE AND FEDERAL LAWS

Notwithstanding any other provisions of this franchise to the contrary, the Company shall at all times comply with all laws and regulations of the state and federal government or any administrative agencies thereof. Provided, however, if any such state

00130

or federal law or regulation shall require the Company to perform any service, or shall permit the Company to perform any service, or shall prohibit the Company from performing any service, in conflict with the terms of this franchise or of any law or regulation of the City, then as soon as possible following knowledge thereof, the Company shall notify the City Council of the point of conflict believed to exist between such regulation or law and the laws or regulations of the City or this franchise.

If the City Council determines that a material provision of this ordinance is affected by any subsequent action of the state or federal government, the City Council shall have the right to modify any of the provisions herein to such reasonable extent as may be necessary to carry out the full intent and purpose of this agreement.

SECTION 10. LANDLORD/TENANT

a. Public Policy - Non-owned Residences

It is hereby declared to be the public policy of the City of Mesquite to make the services of cable television available to as broad a section of the public as possible. To this end it is hereby declared that any rental contract executed, renewed or extended after the effective date of this ordinance containing any provision prohibiting the installation or reception of cable television or making the receipt of such service more difficult or onerous, other than a requirement of reimbursement for actual damage or loss due to installation shall be void to such extent; provided, however, nothing contained herein shall be construed to invalidate existing contracts in contravention of the United States Constitution or the taking or damaging of property without just compensation; said compensation being actual damage or loss due to such installation or reception.

This provision shall be applicable to single family, multi-family, duplex and townhouse-type rental units in which possession is let on an indefinite or monthly or more basis but not to hotel-motel or other type rental units designed for short-term occupancy or properties in which occupancy is upon less than exclusive possession such as nursing homes and hospitals.

No charge or consideration shall be charged or collected by a rental property owner for the privilege of allowing installation of cable television in a rental unit other than for actual damage or loss sustained by reason of such installation unless such charge shall have been contracted prior to the effective date of this ordinance.

b. Reselling Service Prohibited

No person shall resell, without the expressed, written consent of both the Company and the City, any cable service, program or signal transmitted by a cable television company operating under a franchise issued by the City.



## c. Protection of Property Permitted

Nothing in this article shall prohibit a person from requiring that cable television system facilities conform to laws and regulations and reasonable conditions necessary to protect safety, functioning, appearance and value of premises or the convenience and safety of persons or property.

## d. Risks Assumed by Company

Nothing in this article shall prohibit a person from requiring a cable television company from agreeing to indemnify the owner, or his agents or representatives for damages or from liability for damages caused by the installation, operation, maintenance or removal of cable television facilities.

SECTION 11. THEFT OF SERVICES AND TAMPERING

a. No person, whether or not a subscriber to the cable system may intentionally or knowingly damage or cause to be damaged any wire, cable conduit, equipment or apparatus of Company, or commit any act with intent to cause such damage, or to tap, tamper with or otherwise connect any wire or device to a wire, cable, conduit, equipment and apparatus, or appurtenances of Company with the intent to obtain a signal or impulse from the cable system without authorization from or compensation to the Company, or to obtain cable television or other communications service with intent to cheat or defraud Company of any lawful charge to which it is entitled.

b. Any person convicted of violating any provision of this section is subject to a fine of not less than Fifty Dollars (\$50.00) nor more than Two Hundred Dollars (\$200.00) for each offense. Each day's violation of this section shall be considered a separate offense.

SECTION 12. MESQUITE CABLE TELEVISION ADVISORY BOARD

a. There shall be established by City Council a Cable Television Advisory Board consisting of nine (9) members who shall serve without remuneration.

b. Members shall serve for three (3) years, except the terms of four of the first members shall initially serve two years. Vacancies shall be filled by appointment of the City Council upon recommendation from the group being represented.

## c. Members shall be consisted as follows:

- 3--members of the Mesquite City Council;
- 1--member of the Mesquite Independent School District;
- 1--cable company's local manager;
- 1--member representing alliance of ministers;
- 1--citizen-at-large, appointed by City Council;
- 1--Eastfield College; and
- 1--City Manager's staff.

00132

d. The Advisory Board shall have the following duties and responsibilities:

(1) Develop rules and regulations relating to the operation and use of the public access, religious access, and educational access channels with a view toward maximizing the diversity of programs and services to subscribers, providing equitable time-sharing and time allocation, and equitable scheduling in accordance with the needs of the various users of these access channels.

(2) Encourage and facilitate the use of these designated access channels among the widest range of institutions, groups and individuals within the City of Mesquite.

(3) Develop rules to govern the utilization of unused access channels and unused time periods.

(4) Submit for City Council approval proposed rules and regulations for the conduct of Advisory Board business, and upon approval, said Board shall regulate and coordinate the access channels in accordance with those rules and this ordinance.

#### ARTICLE IV. PURCHASE OF CATV SYSTEM BY CITY

##### SECTION 1. RIGHTS TO PURCHASE

In the event the Company forfeits and City terminates this franchise pursuant to provisions of this ordinance, or at the normal expiration of the franchise term, City shall have the right, directly or as an intermediary, to purchase the franchised CATV system.

##### SECTION 2. FRANCHISE VALUATION

The value of the franchise shall be the aggregate of the replacement value of tangible assets and the going value of the franchised CATV system.

##### SECTION 3. REPLACEMENT VALUE AND GOODWILL

a. "Replacement value" shall be determined by the unit-in-place method.

b. The "going concern value" shall mean the benefits that attach to the business as a result of its location in the City, Company's reputation among franchise subscribers or potential subscribers for dependability and quality of service, and any other circumstances resulting in probable retention of old subscribers or acquisition of new subscribers; except no value shall be assigned to either the franchise itself or any right, privilege or expectancy arising to Company out of the right to transact business under the franchise, and particularly no value shall be allowed for any increase in value arising out of any expectation of CATV system revenues beyond the forfeiture and termination date or expiration date, whichever is sooner.

SECTION 4. RELOCATION

In the acceptance of this franchise Company expressly waives its rights, if any, to relocation costs that might otherwise be provided by law.

SECTION 5. DATE OF VALUATION

The date of valuation shall be no earlier than the day following the date of expiration or termination and no later than the date City makes a fair and reasonable offer for the system or the date of transfer of ownership, whichever occurs first.

SECTION 6. TRANSFER TO CITY

Upon exercise of this option and the payment of the above sum by the City and its service of official notice of such action upon Company, the Company shall immediately transfer to the City possession and title to all facilities and property, real and personal, of the CATV system, free from any and all liens and encumbrances not agreed to be assumed by the City in lieu of some portion of the purchase price set forth above; and the Company shall execute such warranty deeds or other instruments of conveyance to City as shall be necessary for this purpose.

SECTION 7. ARBITRATION OF VALUE AND COSTS

a. In the event City and Company cannot agree upon the value of CATV system, either may give notice of a demand to the other for arbitration.

b. Arbitration shall commence and proceed according to law except as follows:

(1) The parties shall, within fifteen (15) days, appoint one arbitrator each who is experienced and knowledgeable in the valuation of business property. Arbitrators shall each agree upon the selection of a third arbitrator, similarly qualified, within fifteen (15) days.

(2) Within thirty (30) days after appointment of all arbitrators and upon ten (10) day's written notice to parties, the board of arbitrators shall commence a hearing on the issue of valuation.

(3) The hearing shall be recorded and transcribed at the request of either party. All hearing proceedings, debate and deliberations shall be open to the public and at such times and places as contained in the notice or as thereafter publicly stated in order to adjourn, except as otherwise authorized by the City Attorney.

(4) At the close of the hearings and within thirty (30) days, the board shall prepare findings and decision agreed upon by a majority of the board which shall be filed with the City and served by mail upon the Company. Unless the parties extend by mutual agreement the time which the board has to make a decision, the

00134

proceedings shall become null and void and shall be started anew.

(5) The decision of the board shall be final and binding upon the parties.

(6) Either party may seek judicial relief in the following circumstances:

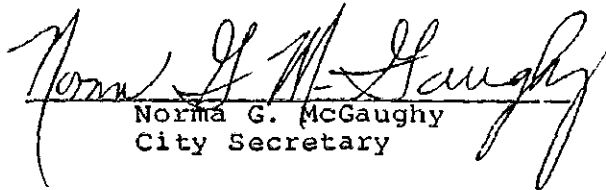
- (a) a party fails to select an arbitrator;
- (b) the arbitrators fail to select a third arbitrator;
- (c) one or more arbitrator is unqualified;
- (d) designated time limits have been exceeded;
- (e) the board has not proceeded expeditiously; and
- (f) based upon the record the board abused its discretion.

(7) In the event a court of competent jurisdiction determines the board has abused its discretion, it may order the arbitration procedure repeated and issue findings, orders and directions, with costs of suit to be awarded to the prevailing party.

(8) Cost of arbitration shall be borne equally unless the board finds the offer of the City or the demand of Company was unreasonable, in which case, cost may be apportioned so that less or none of the costs may be borne by one party.

Passed by the City Council of the City of Mesquite, Texas, on first reading August 18, 1980, second reading September 15, 1980, and third and final reading October 6, 1980.

ATTEST:

  
 \_\_\_\_\_  
 Norma G. McGaughy  
 City Secretary

  
 \_\_\_\_\_  
 B.J. Smith  
 Mayor

ACCEPTANCE

Company accepts and hereby agrees to be bound by all the terms and conditions of this franchise.

Dated: \_\_\_\_\_