

ORDINANCE NO. 2947

AN ORDINANCE OF THE CITY OF MESQUITE, TEXAS GRANTING A CABLE TELEVISION FRANCHISE TO TELECOM SATELLITE SYSTEMS CORPORATION; ADOPTING THE TERMS AND CONDITIONS ACCOMPANYING THE GRANT OF THE FRANCHISE; AND PROVIDING FOR THE REGULATION AND USE OF THE SYSTEM; AND PROVIDING A SEVERABILITY CLAUSE.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS:

SECTION 1. That there is hereby created, granted and established a nonexclusive franchise for a period of ten (10) years for the installation, operation and maintenance of a cable television system within the City of Mesquite, Texas to TeleCom Satellite Systems Corporation.

SECTION 2. That the franchise granted to TeleCom Satellite Systems Corporation is limited to the right and privilege of TeleCom Satellite Systems Corporation to construct, operate and maintain, in, upon, along, across, above, over and under the eleven hundred block of the street now in existence and known as Americana Lane, in order to link a satellite system between the Apartment complexes known as Towne Center Village and One Towne Crest, any poles, wires, cable, underground conduits, manholes and other television conductors and fixtures necessary for the maintenance and operation of cable television for the interception, sale, transmission and distribution of television programs and other audio visual electrical signals and the right to transmit the same to inhabitants of the City residing at certain apartment complexes located within the City presently known as One Towne Crest Apartments and Town Center Village Apartments.

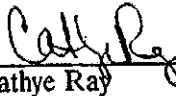
SECTION 3. That the franchise granted to TeleCom Satellite Systems Corporation is, and shall be at all times subject to the terms and conditions and regulations of use set forth in the instrument entitled Franchise Agreement which is attached hereto and incorporated into this ordinance for all purposes as if set out in full herein.

SECTION 4. That should any word, sentence, clause, paragraph or provision of this ordinance be held to be invalid or unconstitutional the remaining provisions of this ordinance shall remain in full force and effect.

DULY PASSED AND APPROVED by the City Council of the City of Mesquite, Texas, on first reading on the 20th day of December, 1993.

DULY PASSED AND APPROVED by the City Council of the City of Mesquite, Texas, on second reading on the 3rd day of January, 1994.


DULY PASSED AND APPROVED by the City Council of the City of Mesquite, Texas, on third and final reading on the 17th day of January, 1994.




Cathye Ray
Mayor

ATTEST:

APPROVED:



Lynn Prugel
City Secretary



B.I. Smith
City Attorney

STATE OF TEXAS §
COUNTY OF DALLAS §

FRANCHISE AGREEMENT

WHEREAS, TeleCom Satellite Systems Corporation has applied to the City of Mesquite for a limited franchise to operate a cable television system within the City of Mesquite; and

WHEREAS, on January 17, 1994, the City Council of the City of Mesquite adopted on third and final reading Ordinance No. 2947, under the terms of which it granted a limited cable television franchise to TeleCom Satellite Systems Corporation, allowing it the right to use certain public streets, highways and easements of the City for the installation of equipment, appliances or appurtenances, above or below the surface of the same, to make the intended use thereof practicable; and

WHEREAS, it is mutually desired by the parties that a contract be entered into which terms will be incorporated into the provisions of Ordinance No. 2947;

NOW, THEREFORE, THIS AGREEMENT IS ENTERED INTO BY THE PARTIES AS FOLLOWS:

SECTION 1. NATURE AND TERM OF FRANCHISE.

A. The purpose of this contract is to effectuate the terms of Ordinance No. 2947, to grant to TeleCom Satellite Systems Corporation, ("TeleCom"), a franchise to construct, operate and maintain a cable television System ("System"), with all necessary facilities, in and under the surface of the streets and public places in the City designated in Ordinance No. 2947, and as shown in red on the map attached hereto and incorporated by reference as Exhibit "A".

B. The term of this contract franchise agreement (hereinafter "Contract"), and all rights and obligations pertaining thereto, shall be ten (10) years from the execution hereof unless terminated sooner as provided herein. This contract shall be subject to a review by City at the end of five (5) years, for compliance with franchise terms related to customer service and compliance with technical standards.

SECTION 2. DEFINITIONS.

For the purpose of this contract and franchise 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 forms 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 on the cable television system.

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

e. "Company" is TeleCom Satellite Systems Corporation, the grantee of rights under this Contract and Ordinance No. 2947 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. "Installation" shall mean the connection of the system from feeder cable to subscribers' terminals.

k. "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 system wide, non-individually addressed sweeps of the system for purposes of verifying system integrity, controlling return paths transmissions, or billing for pay services.

l. "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 the 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.

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

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

SECTION 3. FRANCHISE RENEWAL.

This franchise may be renewed by the City upon application of the Company made at least six (6) months prior to the expiration of the current franchise. Franchise renewal will be subject to all applicable federal, state and local laws and regulations.

SECTION 4. 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.

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 5. 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 6. 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 7. APPLICATION FEE.

A non-refundable application fee of Five Hundred (\$500.00) Dollars shall be paid to the City to defray expenses due to public notice advertising, staff review of application and future monitoring of the franchise operation and collection of the franchise fee.

SECTION 8. 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 and a telephone number for the conduct of matters related to this franchise during normal business hours.

SECTION 9. LIABILITY AND INSURANCE.

a. The Company shall maintain and by its acceptance of the franchise, insurance insuring the City and the Company in the minimum amount of:

- 1) Worker's Compensation: as required by all applicable Federal, State Maritime or other laws including Company's 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 \$500,000 and each occurrence \$1,000,000; Property damage, each accident \$250,000 and aggregate \$500,000.
- 4) Comprehensive Automobile Liability: including non-ownership 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 liability insurance policies maintained pursuant to this franchise shall name the City as additional 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 10. 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;

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.

SECTION 11. SEVERABILITY.

If any section, subsection, sentence, clause, phrase or portion of this contract or the adopting 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.

SECTION 12. 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.

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.

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 13. 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 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 14. OPERATIONAL STANDARDS.

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

b. 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.

c. 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.

d. 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 by the Company of the conditions of this franchise.

SECTION 15. 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 16. 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 17. 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 six (6%) percent of company's gross revenue from all sources attributable to the operations of the Company within the confines of the City of Mesquite with one (1%) percent dedicated to Mesquite Public Access. 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 six (6%) 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, during the term of the franchise, 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 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 (10%) percent.

SECTION 18. TRANSFER OF OWNERSHIP OR CONTROL.

a. Should the Company choose to sell the franchise, it will 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 herein 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 (10%) percent of the voting shares of the Company. Every change, transfer, or acquisition of control of the Company shall make the franchise subject to termination 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 19. 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 20. 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 21. 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, 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 22. 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.

SECTION 23. 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.

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

SECTION 24. 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 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 restore service after ninety-six (96) consecutive hours of interrupted service, except when approval of such interruption is obtained from the City, or
- 4) 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 the 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 herein, 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 the 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 25. 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 26. 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 27. 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 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 28. NOTICES

All notices herein required shall be in writing and shall be served upon the parties at the address listed below. For purposes of this paragraph, the address of the parties shall be:

- | | |
|------------------------|---|
| (a) If to the City: | Attention:
City Manager
City of Mesquite
P.O. Box 850137
Mesquite, Texas 75185-0137 |
| (b) If to the Company: | Attention:
Mark Bates
Cable Television Systems
2510 Southwell Road
Suite 111
Dallas, Texas 75229 |

SECTION 29. LEGAL ACTION

Venue for litigation between the City and the Company arising under or regarding this Contract shall be in Dallas County, Texas.

In any action brought by the City for the enforcement of the obligations of company herein, the City shall be entitled to recover interest, costs and reasonable attorney's fees.

SIGNED by City and Company this the 17th day of January, 1993rd

CITY OF MESQUITE

By: Cathy Ray
Cathy Ray, Mayor

Attest: Lynn Prugel
Lynn Prugel, City Secretary

seal

TELECOM SATELLITE SYSTEMS CORPORATION

By: Dennis Shea
Dennis Shea, Vice President
Typed name and title

seal

CORPORATE ACKNOWLEDGMENT

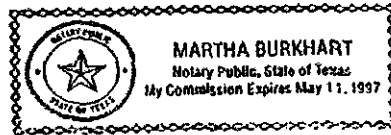
The State of Texas §
County of Dallas §

BEFORE ME the undersigned authority on this day personally appeared Dennis Shea, known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that he signed the same as an act of Telecom Satellite Systems Corporation, a corporation, and that he executed the same as the act of such corporation and for the purposes and consideration therein expressed and in the capacity therein stated.

SUBSCRIBED and sworn before me this the 17th day of January, 1998.

Martha Burkhart
Notary Public in and for the
State of Texas

My Commission expires: 5-11-97



APPROVED AS TO FORM:

[Signature]
City Attorney