

ORDINANCE NO. 1679

An Ordinance renewing a nonexclusive franchise to Comcast Cablevision Corporation of Mobile, Inc., its successors and assigns, to operate and maintain a community antenna television system in the City; setting forth conditions accompanying the Grant of Franchise; providing for authorized City Regulation and use of the Community Antenna Television System; and prescribing penalties for violation of the Franchise provisions.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PRICHARD AS FOLLOWS:

SECTION 1. DEFINITIONS

For the purposes of this Ordinance, the following terms, phrases, words, abbreviations and the derivations shall have the meaning given herein; provided, however, that when not inconsistent with the context, the terms, phrases, words, abbreviations and the derivations not defined herein shall be given their common and ordinary meanings, and the words used in the present tense shall include the future tense, words in the plural shall include the singular and words in the singular number shall include the plural number.

A. "Basic Subscriber Service": All local broadcast signals, if any, required by the Federal Communications Commission to be retransmitted on the cable television system; all programming transmitted on the Public, Educational and Government Access Channels, if any, and such other programming as designated by the Franchisee from time to time as part of the Basic Subscriber Service.

B. "CATV" or "Cable television system": A system of antennas, cables, amplifiers, wires, lines, towers, microwave links, waveguides, laser beams, optical fibers, satellites, converters, conductors, transmission lines, equipment or facilities designed and constructed for the purpose of producing, receiving, storing, processing, transmitting, amplifying, scrambling and distributing audio, video, digital and other forms of electronic or electrical signals to subscribing members of the public for a fixed or period fee.

C. "Channel": A designated frequency band in the electromagnetic spectrum which is capable of carrying video, audio, digital or other electronic signals, or some combination thereof.

D. "City": The City of Prichard, a municipal corporation of the State of Alabama.

E. "Converter": An electronic device which converts signals to a frequency not susceptible to interference within the television receiver of a subscriber and which, by an appropriate channel selector, also permits a subscriber to view all signals delivered at designated dial locations.

F. "Council": The present governing body of the City or any future board constituting the legislative body of the City.

G. "FCC" or "Federal Communications Commission": That agency as is presently constituted by the United States

Congress or any successor agency with jurisdiction over CATV matters.

H. "Franchise": The nonexclusive right or authority to construct, operate and maintain a cable television system by use of the City-owned rights of way, easements or other publicly-owned properties.

I. "Franchisee" or "Operator": The person, firm or corporation to whom or to which a franchise, as hereinabove defined, is granted by the Council and the lawful successor, transferee or assignee of said person, firm or corporation.

J. "Gross Receipts Derived from Cable Services": All receipts received by or for the benefit of the Franchisee derived from the cable services it provides in the City, to the maximum extent authorized by Federal law and regulation.

K. "Leased Access Channel": Any channel or portion of a channel designated by the operator as available for lease.

L. "Person": Any person, firm, partnership, association, corporation, company or organization of any kind.

M. "Premium Service": Programming services over and above those provided by Franchisee as part of its basic service for which there is an additional charge.

N. "Property of Franchisee": All property owned, installed or used by a Franchisee in the conduct

of a CATV business in the City under the authority of a franchise granted pursuant to this ordinance.

O. "Street": The surface of and the space above and below any public street, road, highway, freeway, lane, path, alley, court, sidewalk, parkway, easement, right of way or drive, now or hereafter existing with the City.

P. "Subscriber": Any person legally receiving any service delivered by the Franchisee.

SECTION 2.

GRANT OF AUTHORITY

2.1

GRANT OF FRANCHISE

There is hereby granted to Comcast Cablevision Corporation of Mobile, Inc., a nonexclusive franchise to erect, install, construct, repair, replace, reconstruct, maintain and operate a cable television system and retain, in, over, under, across, and along any public street, public way and public place, now laid out or dedicated, and all extensions thereof and additions thereto in Franchisee's franchise area such poles, wires, cable conductors, ducts, conduit vaults, manholes, amplifiers, attachments, and other property as may be necessary and appurtenant to the CATV system; and in addition so to use, operate and provide similar facilities or properties rented or leased from other persons, firms or corporation, including but not limited to any public utility or other franchisee franchised or permitted to do business in the City.

2.2

TERM AND EFFECTIVE DATE OF AGREEMENT

The term of the franchise granted herein shall be for twenty (20) years from the date that this Ordinance and franchise granted hereunder are executed by both parties hereto.

2.3

TERRITORIAL EXTENT OF FRANCHISE

The territorial extent of the franchise granted herein shall be the legal boundaries of the City as of the date this Ordinance is adopted or the boundaries as extended by annexation, provided that Franchisee shall only be required to extend its cable system into such annexed areas as per the requirements set forth in Section 9.3 of this Ordinance.

SECTION 3.

FRANCHISE FEE

3.1 In consideration for the issuance of this Franchise, Franchisee shall pay to the City an annual franchise fee, hereby levied in a sum equal to five percent (5%) of Franchisee's gross receipts derived from cable services for each period of twelve months (or fraction thereof) during which this Franchise is in effect, where not inconsistent with applicable Federal legislation and regulation.

3.2 The franchise fee shall be payable in semi-annual installments based upon Franchisee's applicable gross receipts for the half-year then ended, and shall be due

at intervals of from six (6) to twelve (12) months of the date of the grant of this Franchise.

3.3 At the time it pays the semi-annual franchise fee installment, Franchisee shall deliver to City a verified statement of gross receipts derived from cable services in the City for the preceding half-year.

3.4 The City shall have the right and authority to examine the applicable books and records of Franchisee at any time during normal business hours and with reasonable advance notice for the purpose of determining the correct franchise fees owing to City for the then-current and five next-preceding fiscal years of Franchisee.

3.5 The City reserves the right to increase or otherwise adjust the franchise fee levied herein as of January 1 of any year during which the franchise is in effect, provided, that any such increase or adjustment shall not be unreasonable nor shall it violate applicable federal or state law or regulations.

SECTION 4. COMPLIANCE WITH APPLICABLE LAWS AND ORDINANCES

4.1 Franchisee shall conform to all applicable laws, rules and regulations of the United States, the State of Alabama and the City in the construction and operation of its cable television system, and all applicable rules and regulations of the Federal Communications Commission.

4.2 The City reserves the right to promulgate such additional regulations as it may find necessary in the exercise of its lawful powers, provided they are not

inconsistent with federal laws and regulations and do not unreasonably violate the intent of this agreement.

SECTION 5.

INSURANCE AND BONDS

5.1

AMOUNTS

Franchisee shall concurrently with the filing of an acceptance of award of the franchise granted herein, furnish to the City, and all times during the existence of the franchise granted herein, maintain in full force and effect, at its own cost and expense, the following:

a) A certificate of insurance evidencing general comprehensive liability coverage listing the City as additional insured with a maximum liability amount of one million dollars (\$1,000,000.)

b) A certificate of insurance evidencing property damage insurance coverage listing the City as additional insured with a maximum liability amount of five hundred thousand dollars (\$500,000.)

5.2

ALTERATIONS

Franchisee shall not materially change or alter the terms or conditions of the insurance policies or performance bond mentioned in this entire section except upon thirty (30) days written notice to the City.

5.3

CONTRACTORS AND SUBCONTRACTORS

Franchisee shall provide coverage for any contractor

or subcontractor involved in the construction, installation, maintenance or operation of its cable television system by either obtaining the necessary endorsements to its insurance policies or requiring such contractor or subcontractor to obtain appropriate insurance coverage consistent with its involvement in the construction, installation, maintenance or operation of Grantee's cable television system. All insurance policies obtained under this subsection shall name the City as an additional insured.

SECTION 6. SERVICES AND FEES

6.1 EXTRA-LONG DROPS

If the installation of a service outlet requires an aerial drop in excess of one hundred fifty feet (150') or an underground drop, Franchisee may charge the subscriber an amount that is equal to the costs of time and materials in accordance with industry standards for that portion of the drop in excess of one hundred fifty feet (150') aerial. Franchisee shall provide the subscriber a written estimate of the costs of installing an extra-long drop and obtain such subscriber's written consent prior to any installation of such drop, provided, however, that Franchisee may require an advance payment of such costs from such subscriber as a condition of performing the requested installation.

6.2

NON-STANDARD INSTALLATIONS

If a subscriber requests a nonstandard installation for aesthetic purposes including, but not limited to, optional underground construction, concealed wiring or routing from the tap to the dwelling unit that differs from the easiest route that could otherwise be taken (usually following the telephone drop) which results in greater costs, Franchisee may charge the subscriber for such nonstandard installation in an amount equal to the costs of time and materials in accordance with industry standards. Franchisee shall provide such installation and obtain the subscriber's written consent prior to any such installation; provided, however, that Franchisee may require an advance payment of such costs from such subscriber as a condition of performing the requested installation.

6.3

COMPETING TECHNOLOGIES

Notwithstanding any other provisions of this Agreement and except as provided herein, Franchisee shall not be required to provide services to subscribers by rewiring buildings already wired for a competing technology so as to allow the residents of said building to receive non-broadcast video services. Upon the request of any landlord or any condominium or tenant association of any building already wired for a competing technology, Franchisee, in a timely manner consistent with its construction schedule, shall undertake a good faith effort

including such pre-marketing studies as shall be appropriate to ascertain the economic viability of providing cable television service to said building. Upon completion of its ascertainment, Franchisee shall inform the person who made such request of the results of said ascertainment. Where the results of said ascertainment demonstrate the economic viability of said building, Franchisee shall provide service in accordance with the construction schedule prepared by Franchisee. Where the results of said ascertainment fail to demonstrate the economic viability of said building, Franchisee shall provide a written explanation of the results of said ascertainment to the person who initially requested said ascertainment.

SECTION 7. MAINTENANCE OF SYSTEM

During the term of this Ordinance, Franchisee shall maintain its cable television system in good repair and condition.

SECTION 8. CONSTRUCTION REQUIREMENTS AND STANDARDS

8.1 GENERAL

Franchisee shall construct, install, maintain and operate its cable television system in a safe, orderly and workmanlike manner utilizing only materials of good, durable quality with due respect for engineering considerations and in accordance with applicable federal, state and local laws and regulations.

8.2

RESTORATION

Franchisee shall promptly restore or replace the public way or private property in as good a condition as before the work causing such disturbance was done; provided, however, that where conditions prohibit prompt restoration or replacement of the public way, Franchisee's time for restoration shall be extended automatically for an appropriate period of time to complete such restoration. Franchisee shall conduct all restoration or replacement in a competent and efficient manner minimizing disruption and inconvenience to others.

8.3

TREE TRIMMING

Franchisee shall have the authority to trim trees upon and overhanging public streets and public ways and places of the franchise area so as to prevent the branches of such trees from coming in contact with the wires and cables of the Franchisee and shall be responsible for debris removal from such activities. Prior to trimming, the City shall be notified and the City may require additional trimming to ensure aesthetics, provided that any such additional trimming shall be done at the expense of the City.

SECTION 9.

EXTENSION OF SERVICE

9.1

NEW DEVELOPMENTS

Franchisee shall, upon its sole determination that such extension of service is economically and technically feasible, provide service to all new developments

located within a portion of the franchise where construction of Franchisee's cable television system has been completed or is in the process of being completed.

9.2

DEVELOPER RESPONSIBILITIES

Subject to state law, a developer shall be required to, at his own expense, make available trenches and install conduit for the technical specifications required by Franchisee and presented to developer in writing.

9.3

ANNEXATION

Upon annexation by the City of any new territory contiguous to its franchise, Franchisee shall, upon its sole determination that such extension of service is economically and technically feasible, provide service to said area upon terms and conditions mutually agreed to by the City and Franchisee.

SECTION 10.

LEASED ACCESS

Franchisee shall provide leased access channel capacity on its subscriber network system for local commercial use as soon as feasible in accordance with Section 612 of the Cable Communications Policy Act of 1984.

SECTION 11.

PARENTAL CONTROL DEVICE

Franchisee shall make available suitable devices for limiting access to certain cable channels.

SECTION 12.

EQUAL EMPLOYMENT OPPORTUNITY

Franchisee shall comply with all provisions of Section 634 of the Cable Communications Policy Act of 1984.

SECTION 13.

CONSUMER SERVICES

Franchise shall establish and maintain offices and provide personnel, telephone service and other equipment, as needed, to ensure timely, efficient and effective service to customers. All business offices of Franchisee shall have a locally listed telephone number and at a minimum be open for hours during a normal business day.

SECTION 14.

PRIVACY

Franchisee shall be bound by all of the provisions of Section 631 of the Cable Communications Act of 1984.

SECTION 15.

RENEWAL OF FRANCHISE

A. During the six (6) month period which begins with the thirty-sixth (36th) month before the franchise expiration, the City may on its own initiative and shall at the request of the Franchisee commence proceedings which afford the public in the City appropriate notice and participation for the purposes of identifying the future cable related needs and interests of the City and reviewing the performance of the Franchisee under its Franchise. Upon completion of the proceeding, the Franchisee may submit an application for renewal.

B. The City shall provide public notice of the Franchisee's application for renewal and, during the four (4) month period which begins upon the completion of the proceedings under Subsection A above, renew the Franchise or issue a preliminary assessment that the Franchise should

not be renewed and, at the request of the Franchisee or on its own initiative hold a public hearing, giving notice to the Franchisee and the public to consider:

1. Whether the Franchisee has substantially complied with the material terms of the existing Franchise and applicable law;
2. Whether the quality of the Franchisee's service, including signal quality, response to consumer complaints, and billing practices, but without regard to other services provided over the system, has been reasonable in light of the City's needs;
3. Whether the Franchisee has the financial, legal and technical ability to provide the services, facilities, and equipment as set forth in the Franchisee's application; and
4. Whether the Franchisee's application is reasonable to meet the future cable-related needs and interests of the City, taking into account the costs of meeting such needs and interests.

The City shall make a transcript of such hearing and the Franchisee shall be afforded opportunity for full participation, including the right to introduce evidence, to require the production of evidence, and to question witnesses.

C. At the completion of the hearing, the City shall issue a written decision granting or denying the franchisee's application for renewal based upon the record of the hearing and transmit a copy of the decision to the franchisee. The written decision shall state the reasons for the City's decision.

D. Any denial of an application for renewal shall be based on one or more adverse findings made with respect to the factors described in subparagraph B above, pursuant to the transcript of the hearing.

E. In the event the City deems it necessary, the City may hire an independent consulting agency or consultant to advise the City with regard to all the matters set forth hereinabove. The reasonable cost of said advice in connection with the renewal proceedings on behalf of the franchisee shall be borne by the franchisee and paid to the City if the Franchisee is awarded a new franchise.

SECTION 16.

TERMINATION OF FRANCHISE

16.1

REVOCATION FOR CAUSE

Pursuant to sections 626 and 627 of the Cable Communications Policy Act of 1984, the franchise granted hereunder may be terminated by the City prior to its date of expiration for the following reasons:

- (1) Franchisee has repeatedly failed to comply with any material provisions of this Ordinance.
- (2) Franchisee has repeatedly failed to comply with any order of the Federal Communications Commission, or other provisions of the Cable Communications Policy Act of 1984.

16.2

PROCEDURES

The procedure to be followed resulting in termination for any of the above reasons, save Franchisee's request, will be: (a) City Council will direct in writing Franchisee to correct such deficiencies or comply with such regulations within thirty (30) days or a reasonable period of time. (b) Failure to do so will cause the matter of termination to be brought before the City Council for hearing; (c) At such hearing the Franchisee and other interested parties may offer evidence explaining or mitigating such noncompliance. The City Council will make the determination as to whether such noncompliance was with just cause. In any event the City Council may fix an additional time period to cure such deficiency(ies). If this has not been effected at the expiration of this additional extended period, the City Council may pass a resolution declaring the franchise to be terminated and forfeited. (d) If the Operator appeals the revocation and termination of the franchise through legal remedies,

the revocation of such franchise shall be held in abeyance pending such judicial review by a court of competent jurisdiction, provided appropriate bond is posted by Franchisee; (e) Provided, nothing contained in the above sections of this section shall prevent the issuance of a new franchise by the City Council to any Operator who has had a franchise revoked, on satisfactory assurance made to the City Council that the terms and conditions required by City can be met by the former Operator.

16.3 EFFECT OF TERMINATION FOR NONCOMPLIANCE

If the franchise granted herein is terminated by the City by reason of Franchisee's noncompliance, that part of the system located in the streets and public property shall, at the election of the City, become the property of the City at a cost consistent with the provisions of Section 627(b)(1) of the Cable Communications Policy Act of 1984, with a reduction for any damages and cost incurred by the City in connection with such termination.

SECTION 17. THEFT OF SERVICE AND TAMPERING

17.1 DEFINITIONS

(1) A person is guilty of theft of cable television services if, with intent to avoid payment by himself or another person of the lawful charge for any service of a cable antenna television system he: (a) tampers or makes connection with the equipment of the supplier, whether

by mechanical, electrical, acoustical, or other means; or (b) offers for sale or otherwise makes available, to anyone other than the cable antenna television system for such system's own use in the provision of its services, any telecommunications decoder or descrambler, a principal function of which defeats a mechanism of electronic signal encryption, jamming, or individually addressed switching imposed by the cable antenna television service provider of any such telecommunications service to restrict the delivery of such service; or (c) uses any other artifice, trick, deception, code or other device to obtain cable service without payment of the established charges.

(2) For the purpose of this section the telecommunications decoder or descrambler in subsection (1)(b) or the equipment described in subsections (3) and (4) of this section does not include any nondecoding and nondescrambling channel frequency converter or any television receiver type accepted by the Federal Communications Commission.

(3) In any prosecution under this section of the franchise, proof that telecommunications equipment, including without limitation, any cable television converter, descrambler, or related equipment, has been tampered with or otherwise intentionally prevented from performing its functions of control of service delivery without the consent of the supplier of the service, or that telecommunications

equipment, including without limitation, any cable television converter, descrambler, receiver, or related equipment, has been connected to the equipment of the supplier of the service without the consent of the supplier of the service, creates a presumption that the resident of whom the service that is at the time being furnished by or through some equipment has, with intent to avoid payment by himself or another person for a prospective or already rendered service, created or caused to be created with reference to such equipment, the condition so existing. A person who tampers with such a device or equipment without the consent of the supplier of the service is presumed to do so with intent to avoid, or to enable another to avoid, payment for the service involved.

(4) In any prosecution as provided herein, proof that any telecommunications decoder or descrambler, a principal function of which defeats a mechanism of electronic signal encryption, jamming, or individually addressed switching imposed by the provider of any such telecommunications service to restrict the delivery of such service, has been offered for sale or otherwise made available by anyone other than the supplier of such service creates a presumption that the person offering such equipment for sale or otherwise making it available has, with intent to avoid payment by himself or another person of the lawful charge for such service, obtained or attempted to obtain

such service for himself or another person or avoided or attempted to avoid payment therefore by himself or another person.

17.2

FINES AND PENALTIES

(1) Theft of cable television service is an offense against the City.

(2) Any person aggrieved by any violation of this section of the franchise agreement may bring a civil action in the appropriate court in the State of Alabama.

(3) The court may: (a) grant temporary and final injunctions on such terms as it may deem reasonable to prevent or restrain violations of subsection 18.1 of this Ordinance; (b) direct the recovery of full costs, including awarding reasonable attorney's fees, to an aggrieved party who prevails; (c) award damages to be computed in accordance with either of the following: (i) the party aggrieved may recover the actual damages suffered by him as a result of th violation and any profits of the violator that are attributable to the violation that are not taken into account in computing the actual damages. In determining the violator's profits, the party aggrieved shall be required to prove only the violator's gross revenue, and the violator shall be required to prove his deductible expenses and the elements of profit attributable to factors other than the violation; or (ii) in addition to actual damages the party aggrieved may recover any award of

statutory damages for all violation involved in this action, in a sum of not less than two hundred fifty dollars or more than ten thousand dollars, as the court considers just; (d) upon conviction of theft of cable television services, order the seizure of any decoder, descrambler or other device, the use of which is prohibited herein as contraband and dispose of it at the court's discretion.

(4) Any person convicted of violating any provision of the above sections shall be guilty of an offense against the City punishable by a fine of \$500 and/or six months in jail.

SECTION 18.

MISCELLANEOUS PROVISIONS

18.1

GOVERNING LAW

This Ordinance shall be construed pursuant to the laws of the State of Alabama.

18.2

DESCRIPTIVE HEADINGS

Section headings are descriptive and used merely for the purpose of organization and where inconsistent with the text are to be disregarded.

18.2

MODIFICATIONS

In the event of unforeseen circumstances beyond Franchisee's control that occur in connection with the construction, installation, maintenance or operation of its cable television system, Franchisee shall have the right to petition the municipality for modifications of the terms and/or the Ordinance where modifications sought

by Franchisee are shown to be necessary to ensure the economic viability of its cable television system.

18.4

SEVERABILITY

If any provision of this Ordinance or any portion of any provision hereof is deemed invalid under any applicable ordinance or rule of law, such provision shall be, to the extent invalid, deemed omitted and all remaining provisions shall remain in full force and effect.

18.5

FORCE MAJEURE

In the event that Franchisee's performance of any of the terms, conditions, obligations or requirements of this Ordinance is prevented or impaired due to any cause(s) beyond its reasonable control, including but not limited to Acts of God, labor disputes, manufacturers' or contractors' inability to timely provide personnel or material, failure of transportation, or any cause not reasonably foreseeable, such inability to perform shall be deemed to be excused and no penalties or sanctions shall be imposed as a result thereof.

18.6

APPLICABLE FEDERAL, STATE LAWS

All provisions of this Ordinance are subject to applicable state or federal laws, rules and regulations, and shall be governed by and shall be construed in accordance therewith.

ATTEST:

Eva C. Greene
THE CITY CLERK OF THE CITY OF PRICHARD

The foregoing terms and conditions of cable T.V.
franchise are hereby accepted in full this 15th day of
March, 1988.

COMCAST CABLEVISION CORPORATION
OF MOBILE, INC.

By: 
As its General Manager
FRANCHISEE

CLERK'S CERTIFICATE:

Ordinance Number 1679 was passed by a unanimous vote of the
City Council, the Mayor's veto notwithstanding, at a Regular Meeting
of the City Council held on April 5, 1988, in the City Hall of the
City of Prichard, Alabama. This Council action can be found in
Minute Book #117.

Eva C. Greene
Eva C. Greene, City Clerk-Treasurer

SECTION 19.

PUBLICATION AND EFFECTIVE DATE

The Mayor shall sign this Ordinance and the City Clerk shall attest to the same but its enactment is conditioned upon acceptance as provided in Section 20 below. If Franchisee fails to accept the same without modification, this Ordinance shall not become of force and effect. Upon becoming of force and effect the City Clerk shall cause this Ordinance to be published at least once in a newspaper of general circulation in the City of Prichard with costs of publication to be paid by Franchisee.

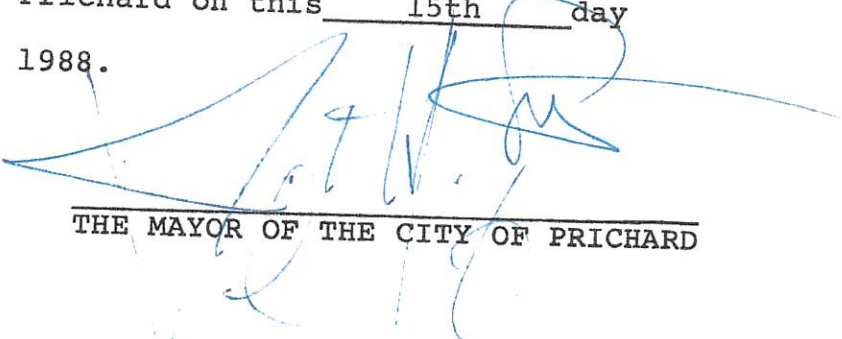
SECTION 20.

WRITTEN ACCEPTANCE

Within thirty (30) days of its effective date, Franchisee shall accept this franchise granted pursuant to this Ordinance by filing with the City Clerk of the City of Prichard, written acceptance of the terms and conditions set forth herein.

ADOPTED THIS 15th DAY OF March, 1988.

I certify that the foregoing Ordinance was adopted by the City Council of the City of Prichard on this 15th day of March, 1988.



THE MAYOR OF THE CITY OF PRICHARD

CLERK'S CERTIFICATE:

Ordinance Number 1679 was passed by a unanimous vote of the City Council, the Mayor's veto notwithstanding, at a Regular Meeting of the City Council held on April 5, 1988, in the City Hall of the City of Prichard, Alabama. This Council action can be found in Minute Book #117.



Eva C. Greene, City Clerk-Treasurer