

Resolution No. 1996-23

A RESOLUTION GRANTING A NON-EXCLUSIVE FRANCHISE FOR CABLE  
TELEVISION IN WEAKLEY COUNTY, TENNESSEE

WHEREAS Rifkin/Tennessee, Ltd. has requested a franchise to operate a cable television system in Weakley County, Tennessee; and

WHEREAS, the Cable Television Act of 1977 enacted by the Tennessee Legislature and the Cable Communications Policy Act of 1984 enacted by the Congress of the United States provide that each operator of a cable television system must have a franchise issued in order to provide cable television service within a jurisdiction.

NOW, THEREFORE, BE IT RESOLVED, that the County Commission of Weakley County, Tennessee, adopt the following resolution in order to provide a consistent format which the County Commission shall utilize when contracting with companies desiring to construct, own and operate a cable television system within Weakley County, Tennessee, as follows:

SECTION 1

DEFINITIONS

For the purpose of this Resolution, the following terms, phrases, words, and their derivations shall have the meanings given herein, unless the context clearly indicates that another meaning is intended. The word "shall" is always mandatory, and not merely directory:

- A. Unincorporated County - "Unincorporated County" shall mean the unincorporated portions of Weakley County, Tennessee.
- B. County - "County" shall mean the County of Weakley.
- C. State - "State" shall mean the State of Tennessee
- D. Chairperson - "Chairperson" shall mean the existing or succeeding Chief Executive Officer of the County, or his designee.
- E. County Commission; Commission - "County Commission" or "Commission" shall mean the present governing body of the County or any successor to the legislative powers of the present County Commission.
- F. Chief Administrative Officer - "Chief Administrative Officer" shall mean the existing or succeeding Chief Administrative Officer or Clerk of the County Commission of Weakley County, Tennessee.
- G. County Attorney - "County Attorney" shall mean the existing or succeeding retained legal counsel of the County or his assistants.
- H. Franchise - "Franchise" shall mean the permission, license or authorization given hereunder to construct, operate and maintain a cable television system in the Unincorporated County including this Resolution.
- I. Franchisee - "Franchisee" shall mean any grantee under this Resolution receiving a franchise granted herein; or the successors, transferees or assignees of such grantee.

J. Cable Act - "Cable Act" shall mean the Cable Communications Policy Act of 1984 and any subsequent legislation relating thereto, whether federal or state.

K. Federal Communications Commission, FCC - "Federal Communications Commission" or "FCC: shall mean that administrative agency of the Federal government responsible for cable television regulation on a national level, or its lawful successor. To the extent that the FCC does not specifically regulate cable television, the County shall become, subject to the Cable Act, the lawful successor to said agency for the promulgating of rules and regulations for the cable television operation, solely to the extent that said operation relates to and affects the Unincorporated County.

L. Community Antenna Television System: CATV - "Community Antenna Television System: or "CATV" or "Cable Television System" Shall mean any facility which:

(1) In whole or in part receives directly or indirectly over the air, by microwave, or otherwise, and amplifies or otherwise modifies the signals transmitting programs broadcast by one or more television and Am and FM radio stations and distributes such signals by wire or cable to subscribing members of the public who pay for such services;

(2) Distributes by cable or wire, news, weather and other information, including civil defense type information, as required, as an incidental part of cable television service to all subscribers without additional charges.

M. Application - "Application" shall include all written communications, in whatever form, made by the Franchisee to the County concerning the construction, rendition of services, maintenance, or any other matter pertaining to the cable television system contemplated herein.

N. Person - "Person" shall mean any person, firm, partnership, association, corporation, company or organization of any kind.

O. Subscriber - "Subscriber" shall mean a purchaser of any service delivered over the system to an individual dwelling unit or of service to be utilized in connection with a business, trade or profession.

P. Resolution - "Resolution" as used herein shall include this Resolution and as the same from time to time may be amended.

Q. Channel - "Channel" shall mean a band of frequencies in the electromagnetic spectrum which is capable of carrying either one (1) audio-video television signal and/or a number of non-video signals.

R. Access Channels - "Access Channels" shall mean those channels set aside for specific access purposes, as described in Sections 611 and 612 of the Cable Act.

S. Basic Subscriber Services: Basic Service - "Basic Subscriber Services" or "Basic Service" shall mean the simultaneous delivery by the Franchisee to all subscribers within the confines of the Unincorporated County of;

(1) All signals of off-air television broadcasters as may be required by the FCC to be carried by a cable television system as defined by the FCC; and

(2) All channels designated for carrying currently received or in the future received local County television broadcast stations; and

(3) All public, educational, local government, local origination, and leased access channel signals as defined in the Cable Act, and

(4) Any and all additional basic cable television services currently carried or in the future carried by the Franchisee, specifically excluding those services sold on a pay per channel (e.g., HBO, etc.) and pay per view basis.

T. Additional Service - "Additional Service" shall mean any communications service other than Basic Service provided over the cable television system by Franchisee directly or as a carrier for its subsidiaries, affiliates, or any other person engaged in communications services including, but not limited to, premium pay programming, burglar alarms, computer controlled services or other electric intelligence transmissions, facsimile reproductions, meter readings, home shopping, fire and smoke detectors, medical alarms, and police alert systems.

U. Normal Service Interval - "Normal Service Interval" shall mean the period between the time that Franchisee is notified by a subscriber of a service deficiency and two business days following the receipt of such notice, provided that the subscriber or his representative is available during this period at the premises to be serviced.

V. Pay Television - "Pay Television" shall mean the delivery over the cable television system of video and/or audio signals in intelligible form to Subscribers for a fee or charge (over and above the charge for Basic Service) on a per program, per channel or other subscription basis.

W. Annual Gross Revenue - "Annual Gross Revenue" shall mean any and all compensation received from the provision of monthly Basic Subscriber Services as defined herein.

X. Street - "Street" shall mean the surface of and the space above and between 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 County 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 County which shall, within their proper use and meaning, entitle the County and its Franchisee to the use thereof for the purpose of installing or transmitting cable television system 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 television system.

Y. Public School - "Public School" shall mean any school, college or university which is a part of an educational program operated by the County of Weakley or the State of Tennessee.

Z. Private School - "Private School" shall mean any school, college or university which is part of a parochial or religious school system and is operated not for profit.

AA. Local Educational Authorities - "Local Educational Authorities: shall mean those individuals, groups, organizations, or governmental entities which provide for primary or secondary education, whether public or private, within the Unincorporated County.

BB. Good Cause - "Good Cause" shall represent that set of facts and circumstances which, in an individual case, a reasonable man would adjudge to be beyond Franchisee's reasonable control and which would, therefore, represent a justifiable excuse of non-performance. Depending on the facts and circumstances, good cause may include, but shall not be limited to, delays or interruptions arising from necessary utility changes, rearrangements, power outages, damage to the equipment of Franchisee by the County or a third party, the fulfillment of any Federal, state and/or local governmental or regulatory restrictions or requirements, national emergency, uncontrollable material shortages, fire, earthquakes or the elements and acts of God.

CC. Substantial Uniformity - "Substantial Uniformity" shall mean having incorporated all terms and provisions of this Resolution which may legally be contracted for between the County and Franchisee into the acceptance instrument.

#### Section 2

#### FRANCHISE AGREEMENT

There is hereby granted by the County of Weakley, and the Chairperson of the Weakley County Commission is hereby authorized to execute a contract providing for, the right, privilege and franchise to construct, operate and maintain a cable television system within the franchise area as herein defined, for a period of twelve (12) years from the effective date of the contract with the County based on this Resolution, subject to the conditions and restrictions as hereinafter provided. Said contract may be renewed by the County for subsequent additional ten (10) year period if such renewal is made in writing and in compliance with the Cable Act. The County shall provide appropriate public notice and opportunity to comment on such renewal requests.

#### Section 3

#### AUTHORITY NOT EXCLUSIVE

The right to use and occupy said franchise area as defined in Section 2 herein for the purposes herein set forth shall not be exclusive, and the County reserves the right to grant a similar use of said franchise area to any person or entity at any time during the period of this Franchise, in accordance with Title 7, Chapter 59, Part 201 of the Tennessee Code Annotated.

#### Section 4

#### FRANCHISE TERRITORY

This Franchise is for the present territorial limits of Unincorporated Weakley County, Tennessee, and for any area henceforth added thereto during the term of this Franchise.

#### Section 5

#### EXTENSION OF UNINCORPORATED COUNTY LIMIT

Upon the annexation of any unincorporated territory by the County (other than through a governmental consolidation process, as to which the County makes no agreement), the rights of Franchise hereby granted shall extend to the territory so annexed to the extent which the County

has authority; and all facilities owned, maintained or operated by Franchisee, located within, under or over streets of the territory so annexed, shall thereafter be subject to all terms hereof.

## SECTION 6

### OPERATIONAL STANDARDS

A. The cable television system as contemplated herein shall be installed and maintained in accordance with the highest accepted industry standards to the end that the subscriber may receive the most desirable form of service. The cable television system will be built in all areas of the unincorporated territory of the County having a density of 40 occupied dwelling units per cable mile. The number of miles will be calculated starting at the closest point of active distribution system and will continue until reaching 250 feet of the dwelling unit.

B. The cable television system shall be installed and remain capable of using all band equipment and of passing the entire UHF and FM spectrum and it shall have the further capability of converting UHF for the distribution to subscribers on the VHF band.

C. The cable television system shall be installed and remain capable of transmitting and passing the entire color television signals without the introduction of material degradation of color fidelity and intelligence.

D. The cable television system shall be installed and remain capable of twenty-four (24) hours per day continuous operation.

E. The cable television system shall be capable of and will produce a picture upon any subscriber's television screen in black and white or color (provided the subscriber's television set is capable of producing a color picture) that is materially undistorted and free from ghost images and accompanied by proper sound, assuming the technical, standard production television set is in good repair and that the television broadcast signal transmission is receivable satisfactorily at the Franchisee's antenna site. In any event, the picture produced shall be as good as is generally accepted in the cable television industry.

F. The cable television system shall transmit or distribute signals of adequate strength to produce good pictures with good sound in all television receivers operating within the manufacturer's specifications of all subscribers without causing cross modulation in the cables or interference with other electrical or electronic systems.

G. Franchisee shall not allow its cable or other operations to interfere with the television reception of persons not served by Franchisee, nor shall the system interfere with, obstruct or hinder in any manner the operation of the various utilities serving the residents of the County. Should Franchisee discover or otherwise become aware of such interference, Franchisee shall respond with reasonable diligence to eliminate the interference.

H. Franchisee shall continue, throughout the term of this Franchise, to maintain the technical standards and quality of service set forth in this Resolution.

I. The requirements of A through H above shall be waived by the County upon showing by the Franchisee of good cause.

## SECTION 7

### CONSTRUCTION STANDARDS

A. Franchisee shall, at all times, employ reasonable care and shall install and maintain devices or systems for preventing failures and accidents which are likely to cause damage, injuries or nuisances to the public.

B. Franchisee shall install and maintain its wires, cables, fixtures and other equipment so as not to interfere with the equipment of any utility serving the residents of the County or any other entity lawfully and rightfully using the conduit, pole or other part of the right of way.

C. The cable television system shall at all times conform to the construction and maintenance standards set forth below.

(1) Methods of construction, installation and maintenance of the cable television system shall comply with the national Electrical Safety Code 1975 (ANSI CI-1975), and any future amendments, modifications or replacements thereof, to the extent that such Code is consistent with the local law affecting the construction, installation and maintenance of electrical supply and communications lines. To the extent that such Code is inconsistent with the other provisions of this Franchise or with local law, the latter shall govern.

(2) Any tower constructed or maintained in the County for use in the cable television system shall comply with the standards contained in Structured Standards for Steel Antenna Towers and Antenna Supporting Structures, EIE Standards RS-222-A, as published by the Engineering Department of the Electronic industries Association, 20001 I Street, N.W., Washington, D.C. 20006 and as the same may be, from time to time, modified, amended or replaced.

(3) Installations and physical dimensions of any tower constructed in the County for use in the cable television system shall comply with all appropriate Federal Aviation Agency Regulations including, but not limited to, Objectives Affecting Navigable Airspace, 14 C.F.R. Section 77.1 et seq., February, 1965 and as the same may be, from time to time, modified, amended or replaced.

(4) Any antenna Structure in the cable television system shall comply with Construction, Marking and Lighting of Antenna Structure, 47 C.F.R. Section 77.1 et seq., February, 1965 and as the same may be, from time to time, modified, amended or replaced.

(5) All working facilities and conditions used during construction, installation and maintenance of the cable television system shall comply with the standards of the Occupational Safety and Health Administration.

(6) Franchisee shall at all times use reasonable care and shall install and maintain in use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries or nuisances to the public.

(7) Franchisee shall construct and operate the system and related facilities in accordance with generally accepted related industry codes, standards and recommendations that are applicable now or that may hereafter become applicable.

D. As stated above, Franchisee shall be required to reasonably comply with standards as set forth in the publications recited above, this to include any modifications, replacements and/or amendments thereto. However, in the event any publications mentioned herein should become obsolete or should expire, then Franchisee shall be required to comply with the latest set of published standards available at such time of obsolescence or expiration.

E. All conductors, cables, towers, poles and other components of the system shall be located and constructed by the Franchisee in back of the street curbs, except insofar as such components cross streets and public rights of way, so as to provide minimum interference with access by adjoining property owners to the street and public ways, and no pole or other fixture of the Franchisee shall be placed in the public way so as to interfere with the usual travel on such public way.

F. The requirements of A through E above shall be waived by the County upon showing of good cause.

## SECTION 8

### CONDITIONS OF STREET OCCUPANCY

A. All transmissions and distribution structures, lines and equipment erected by Franchisee within the Franchise area shall be located so as to not cause unreasonable interference with the proper use of streets, alleys and other public ways and places and to cause minimum interference with the rights and reasonable convenience of property owners who adjoin any of said streets, alleys or other public ways and places. The cable television system shall be constructed and operated in compliance in all material respects with all adopted local, state and national construction and electrical codes which are in effect as of the date of this construction.

B. Prior to commencing construction, Franchisee shall submit to the County detailed maps showing proposed construction locations. These plans shall show the proposed placement of Franchisee's cables on the County right of way, and poles that are to be erected by Franchisee as required for construction, and locations where Franchisee proposes to attach to existing utility poles. Franchisee shall cooperate with the County and any of its agents during any initial construction period and throughout the full term of the Franchise in regard to construction procedures, practices and locations.

C. Whenever the County or State of Tennessee shall require the relocation or reinstallation of any property of Franchisee in any of the streets of the franchise area, it shall be the obligation of the Franchisee, upon notice of such requirements, to cooperate in the timely removal and relocation or reinstallation of said property so as not to cause unreasonable delay. Such relocations, removal or reinstallations by Franchisee shall be at the sole cost of Franchisee.

D. Whenever in any place within the Franchise area, all or any part of both the electric and telephone utilities shall be located underground, it shall be the obligation of the Franchisee to locate or to cause its property to be located underground within such places. If the electric and telephone utilities shall be relocated underground in any place within the franchise area after Franchisee shall have previously installed its property, Franchisee shall, nevertheless,

at the same time or in a timely manner thereafter, remove and relocate its property also underground in such places. Any facilities of Franchisee placed underground at the property owner's request, in an area where electric or telephone facilities are aerial, shall be installed with the additional expense being paid by the property owner.

E. Franchisee shall have the authority to trim trees upon and overhanging streets of the franchise area so as to prevent the branches of such trees from coming into contact with Franchisee's wires and cables. Franchisee shall obtain from the County, if required, a permit to conduct any such trimming and the same shall be conducted in strict obedience of all local laws and ordinances and at the sole expense of Franchisee.

F. In the case of any disturbance of any road, ditch or other area within the County right-of-way caused by Franchisee, Franchisee shall, at its own cost and expense and in a manner approved by the County, replace and restore such street or sidewalk in as good a condition as before the work involving such disturbance was done.

G. Franchisee shall maintain, repair and keep in good condition for a period of one (1) year following such disturbance all portions of a sidewalk or street disturbed by it or its agents, provided such maintenance and repair shall be made necessary because of defective workmanship or materials supplied by Franchisee.

H. Franchisee shall, upon the request of any person holding a building permit issued by the County, temporarily remove, raise or lower its wires to permit the moving of such building(s). The expense of such temporary removal or raising or lowering of the wires shall be paid by the person requesting the same, and the Franchisee shall have the authority to require such payment in advance. Franchisee shall be given not less than seventy-two (72) hours' advance notice to arrange for such temporary wire changes.

I. If at any time, in case of fire or disaster in the Franchise area, it shall become necessary in the judgment of the County Emergency Management Director or Fire Chiefs to cut or move any of the wire cables, amplifiers, appliances or other fixtures of Franchisee, this may be done and the repairs thereby rendered necessary shall be made by Franchisee, which expense shall be reimbursed by the County.

J. Franchisee's work, while in progress, shall be properly executed at all times with suitable barricades, flags, lights, flares or other devices as are reasonably required to protect all members of the public having occasion to use the portion of the street involved or adjacent property.

## SECTION 9

### SUPERVISION BY THE COUNTY

A. Franchisee shall construct, operate and maintain the cable television system in strict compliance with all laws, ordinances and departmental rules and regulations affecting the cable television system.

B. The cable television system and all parts thereof shall be subject, upon reasonable notice, to the right of periodic inspection by the County.



C. If at any time, the powers of the Commission or any agency or official of the Commission are transferred by law to any other board, authority, agency or official, then such other board, authority, agency or official shall have the powers and rights previously vested under this Resolution in the Commission or any agency or official of the County.

D. The County and the Franchisee, by its acceptance hereof, agree that the purposes of the provisions hereof are to create the relationship of Franchiser and Franchisee, to provide for the terms and conditions of that relationship, including compensation for the use of County property and County supervision, and the conditions upon which such property may be utilized.

## SECTION 10

### FRANCHISE FEES

A. Franchisee herein shall pay to the County for the use of the streets and other facilities of the County in the operation of the cable television system and for the County supervision thereof a sum equal to five percent (5%) of the Annual Gross Revenues, as defined herein, from receipts from subscribers within the County. Said fee shall be paid on a quarterly basis within sixty (60) days after the end of a calendar quarter, along with a statement clearly showing in detail the Annual Gross Revenues received by the Franchisee during the preceding calendar quarter.

B. In the event this Franchise should be terminated or forfeited prior to the end of the Franchise term, as defined herein, Franchisee shall immediately submit to the County a financial statement prepared by a certified public accountant or chief financial officer of Franchisee acceptable to the County showing the Annual Gross Revenues of Franchisee for the time elapsed since the last fiscal year report. Franchisee shall pay to the County not later than sixty (60) days following the termination of this Franchise a like percentage of such Annual Gross Revenues and any other sums legally due and owing the County.

C. In the event that any payment is not made on or before the applicable date fixed herein, Franchisee shall be subject to the penalty provided for hereinafter.

D. The County shall have the right to inspect the Franchisee's records showing the Annual Gross Revenues from which its franchise payments are computed. The right of audit and computation of any and all amounts paid under this franchise shall always be accorded to the county. Should the county notify Franchisee in writing of its desire to inspect and/or audit Franchisee's records, Franchisee shall be obligated to produce such records and make them available to the County of Weakley within twenty (20) working days of such notification.

## SECTION 11

### SERVICE MAINTENANCE STANDARDS

A. Franchisee shall maintain sufficient repair and maintenance crews capable of responding to subscriber complaints or requests for service within the normal service interval as defined herein.

B. Service to Subscribers

(1) Any verbal, telephonic or written complaint relating to the quality or continuity or service shall be attended to within the normal service interval as defined herein.

(2) The provisions contained in the Subsection shall not apply if the discontinuation of service is occasioned because of an act of God, strike, national emergency, or any other circumstance beyond the control of Franchisee. Similarly, this provision shall not apply to service requests or complaints pertaining to television set malfunctions or other breakdowns not related to the operation of the cable television system.

(3) Franchisee shall have the right to prescribe reasonable service rules, regulations and rates for the conduct of its business, which service rules and regulations shall be kept on file with the city along with any modifications thereof. All charges for basic service must be applied on a non-discriminatory basis. Franchisee may, however, conduct promotional campaigns in which rates are discounted or waived, and may offer bulk rate discounts for multiple unit dwellings, hotels, motels and similar institutions.

SECTION 12

COMPLAINT PROCEDURES

A. (1) Franchisee shall establish procedures for receiving, acting upon and resolving subscriber complaints. Franchisee shall furnish a notice of such procedures to each subscriber at the time of the initial subscription to the system. In addition, Franchisee shall maintain a written record, or "log", listing the date and time of each customer's complains, identifying the subscriber, describing the nature of the complaints, and when and what action was taken by Franchisee in response thereto. Such records shall be kept for a period of two (2) years reflecting the operations to date and shall be available for inspection during normal business hours.

(2) The Chief Administrative Officer or his authorized designee is hereby designated as the County Complaint Officer and shall have the primary responsibility for the continuing administration of the complaint procedures hereunder. Any subscriber, user, programmer or other interested person who has a complaint regarding the quality of cable television service, equipment malfunctions, billings, or any other matters, which remain unsolved for thirty (30) days after same have been brought to Franchisee's attention, may file a complaint in writing with the County Complaint Officer. Upon the filing of such a complaint, such County Complaint Officer shall notify Franchisee and make an investigation to determine whether or not there is probable cause to credit the allegations. If he determines after such investigation that there is probable cause to credit the allegations of the complaint, he shall so notify Franchisee and complainant in writing and promptly endeavor to resolve the matter by conciliation and persuasion. In the event that the County Complaint officer is unable to obtain conciliation within a reasonable time, he shall promptly set the matter for a hearing where all parties may give evidence and the merits of the dispute will be decided. The County Complaint Officer shall make public his decision, along with a statement reciting the basis therefor. Within thirty (30) days thereafter, either Franchisee or the complainant may appeal in writing the decision rendered

by the County Complaint Officer to a Committee of three county Commissioners appointed to hear said appeals. At the appeal hearing, the aggrieved party may contest the findings of fact or interpretation of controlling law, at which time the three-member Committee may affirm, reject, or modify in writing the decision of the County Complaint Officer. The affirmance, rejection or modification of said decision by the three-member Committee shall be final, subject to judicial review upon request of the Franchisee.

B. Franchisee shall notify each subscriber at the time of initial installation of the name and address of the County Complaint Officer and of the procedures contained in this section.

### SECTION 13

#### CONSTRUCTION BOND

A. Prior to the commencement of any new construction within the County, Franchisee shall deposit with the County Clerk a Construction Bond from surety authorized to do business in the State of Tennessee, in an amount to cover the entire cost of such new construction. The form and content of such Construction Bond shall be acceptable to the County. The Construction Bond shall be used to ensure the faithful performance by Franchisee of defaults under this Franchise which arise by reason of failure to perform such construction of the system.

B. If Franchisee fails to perform any construction required hereby, and fails after receipt of thirty (30) days' written notice of such failure by the County to perform such construction, the County may, subject to Subsection C herein, demand payment of the amount thereof, with interest and any penalties, from the Construction Bond. Upon such demand for payment, the County shall notify Franchisee of the amount and date thereof.

C. Notwithstanding Subsection B hereinabove, in the case of a bona fide dispute regarding compliance, Franchisee may request a hearing before the Chief Administrative Officer within thirty (30) days after written notification of non-compliance and penalty by the County. At such hearing, all parties may file evidence and the merits of the dispute will be decided. The Chief Administrative Officer shall make public his decision, along with a statement reciting the basis therefor. Within thirty (30) days, Franchisee may appeal to the County Commission, in writing, the decision rendered by Chief Administrative Officer. At the appeal hearing, Franchisee may contest the findings may contest the findings of fact or interpretation of controlling law, at which time the County Commission may affirm, reject or modify the decision of the Chief Administrative Officer. The affirmance, rejection or modification of said decision by the County Commission shall be final, subject to judicial review upon request of Franchisee.

D. The rights reserved to the County with respect to the Construction Bond are in addition to all other rights by the County, whether reserved by negotiation with Franchisee or authorized by law, and no action, proceeding or exercise of a right with respect to such Construction Bond shall affect any other rights the County may have.

### SECTION 14

## LIABILITY INSURANCE

A. Franchisee shall maintain, and by its acceptance of this Franchise specifically agrees that it will maintain, throughout the term of this Franchise, liability insurance insuring the County and Franchisee with regard to any and all damages for the following.

(1) A general comprehensive public liability insurance policy indemnifying, defending and saving harmless the County, its officers, boards, commissions, agents or employees from any and all claims by any person or entity whatsoever on account of injury to or death of a person or persons or derivative from any injury to or death of a person or persons (i.e., including but not limited to claims for loss of services, medical and other expenses) occasioned by the operations of Franchisee under this Franchise or alleged to have been so caused or occurred with a minimum liability of Five Hundred Thousand Dollars (\$500,000.00) per personal injury or death of any one (1) person and One Million Dollars (\$1,000,000.00) per personal injury or death of any two (2) or more persons in one (1) occurrence.

(2) Property damage insurance indemnifying, defending and saving harmless the County, its officers, boards, commissions, agents and employees from and against all claims by any person or entity whatsoever for property damage, including loss of use and all consequential damages, occasioned by the operation of Franchisee under this Franchise or alleged to have been so caused or occurred with a minimum liability of Two Hundred Fifty Thousand Dollars (\$250,000.00) for property damage to any one (1) person and Five Hundred Thousand Dollars (\$500,000.00) for property damage to any two (2) persons in any one (1) occurrence.

(3) One Million Dollars (\$1,000,000.00) for all other types of liability. All insurance shall be kept in full force and effect by Franchisee throughout the term of this Franchise and until after the removal of all poles, wires, cables, underground conduits, manholes and other conductors and fixtures incident to the maintenance and operation of the cable television system as defined in this Franchise.

B. An insurance certificate obtained by Franchisee in compliance with this Section shall be filed and maintained with the Clerk of the Commission during the term of this Franchise. Said certificate shall contain an endorsement that such insurance may not be canceled or amended with respect to the County except upon thirty (30) days prior written notice to the County.

C. Neither the provision of this Section nor any damages recovered by the County hereunder shall be construed as limiting the terms, obligations or liabilities imposed under any other Section of this Franchise.

## SECTION 15

### GENERAL INDEMNIFICATION

A. Franchisee agrees by the acceptance of this Franchise to indemnify, hold and save the County free and harmless from all liability on account of injuries, deaths or damages to persons or property arising out of the construction, maintenance, repair and operation of its cable television system. In the event that suit shall be brought against the County, either independently or jointly with Franchisee on account thereof, Franchisee shall upon written notice by the

County, defend the County in any such suit at the cost of Franchisee, and, in the event of a settlement approved by Franchisee or final judgment being obtained against the County, which franchisee had notice and opportunity to defend, Franchisee shall indemnify the County and pay such settlement of judgment, together with all costs, and hold the County harmless therefrom.

B. Franchisee shall pay, and by its acceptance of this Franchise specifically agrees that it will pay, all expenses incurred by the County in defending itself with regard to all damages and penalties mentioned in Subsection A hereinabove, provided Franchisee had written notice and declined to defend the County. These expenses shall include, but not be limited to, all out-of-pocket expenses, such as attorney's fees, and shall also include the reasonable value of any services rendered by the County Attorney or his assistants or any employees of the County or its agents.

#### SECTION 16

##### ASSIGNMENT OF FRANCHISE

A. No assignment of this Franchise shall take place, whether by forced or voluntary sale, lease, or assignment, without prior written notice to and approval by the Commission which shall not be unreasonably withheld. The notice shall include full identifying particulars of the proposed transaction, and the Commission shall act by resolution. The Commission shall have forty-five (45) days within which to approve or disapprove an assignment. If no action is taken within such forty-five (45) day period, approval shall be deemed to have been given.

B. Franchisee shall have the right to mortgage, pledge or otherwise hypothecate the assets of its cable television system including the rights granted under this Franchise.

#### SECTION 17

##### REVIEW & RENEWAL

A. The Commission shall not make a decision involving the renewal, cancellation or expiration of Franchisee's Franchise unless the County's Chief Administrative Officer has advised Franchisee in writing, at least thirty (30) days prior to such meeting, as to its time, place and purpose. Such renewal procedures will be conducted pursuant to Section 626 of the Cable Act, or any modifications thereof.

B. It shall be the policy of the County to amend this Franchise upon application of the Franchisee when necessary to enable Franchisee to take advantage of advancements in the state of the art which will afford it an opportunity to more effectively, efficiently or economically serve its subscribers, provided, however, that this Section shall not be construed to require the County to make any amendment. No such amendment shall create any rights in Franchisee other than those specifically set out in such amendments.

C. Should any material amendment be made to the Cable Act, the County and Franchisee agree to enter into good faith negotiations to negotiate those discretionary portions of such amendment(s). For any provision which would be "grandfathered" under an existing franchise or any provision that would be allowed in a new franchise under the Cable Act, the County and Franchisee agree to enter into good faith negotiations to negotiate those provisions. In addition, should the County at some future date be allowed to regulate rates for the provision

of Basic Subscriber Services, the County may, at its discretion, institute such regulation to the extent permitted by law.

## SECTION 18

### REVOCATION OF FRANCHISE

A. In addition to all other rights and powers reserved or pertaining to the County, the County reserves, as an additional and as a separate and distinct remedy, the right to revoke this Franchise and all rights and privileges of Franchisee hereunder in any of the following enumerated events or for any of the following reasons:

(1) Franchisee shall, by act or omission, violate any material or substantial term or condition of this Resolution or Franchise Agreement and shall within thirty (30) days following written notice by the County fail to effect such compliance; or

(2) Franchisee becomes insolvent, unable or unwilling to pay its debts, or is adjudged a bankrupt, or all or part of Franchisee's facilities should be sold under an instrument to secure a debt and are not redeemed by Franchisee within thirty (30) days from said sale; or

(3) Franchisee fails to restore service following ninety-six (96) consecutive hours of interrupted service, except when an act of God, disaster, or other action beyond the control of the Franchisee caused such service interruption; or

(4) Franchisee attempts to or does practice any fraud or deceit or pattern of material misrepresentation in its conduct or relations with the County under this franchise.

B. No such revocation shall be effective unless or until the Commission shall have adopted a Resolution setting forth the cause and reason for the revocation and the effective date thereof, which Resolution shall not be adopted without thirty (30) days' prior written notice thereof to Franchisee and an opportunity for the Franchisee to be heard upon the proposed adoption of said Resolution. Franchisee shall furnish to the County a written statement at least ten (10) days prior to the date on which Commission convenes to consider such proposed Resolution setting out its position said Resolution depends upon finding of fact, such finding of fact as made by the Commission shall be in writing, after the hearing provided for, if requested by Franchisee.

C. Notwithstanding the grounds for termination herein, no termination procedure shall be held except in compliance with FCC regulations and the Cable Act.

D. Franchisee shall not be declared in default nor be subject to any sanction under any provision of this Section in any case in which the performance of such provision is prevented for reasons of good cause. Any final determination shall be subject to judicial review upon request of the Franchisee.

## SECTION 19

### FRANCHISEE'S OBLIGATION TO REMOVE

#### OR TO SELL ITS FACILITIES

#### IN THE EVENT OF REVOCATION OR NON-RENEWAL

A. In the event of revocation of this Franchise as provided for in Section 18 herein or in the event this Franchise is not renewed as provided for in Section 17 herein, the County shall

have the option of either requiring Franchisee to remove from the public streets where its properties are located all or any part of its equipment and facilities so located within ninety (90) days of the effective date of such revocation or non-renewal, or of requiring Franchisee to leave all of its equipment and facilities in place within the Franchise area.

B. The County's Chief Administrative Officer is hereby authorized to enforce the provisions of this Section as hereinafter provided.

The County's Chief Administrative Officer shall immediately notify Franchisee in writing of such revocation or non-renewal. Within ninety (90) days following receipt of such notice, Franchisee shall, if required, remove from the streets of the County upon, over and under which its properties are located all of said properties. Such removal, if required, shall be performed by Franchisee in such a manner so as to not permanently destroy, mar or damage the franchise areas in which such removal is being conducted. The County Emergency Management Director shall make an inspection of the areas in which the removal is being or has been conducted, and should it be found that Franchisee has unreasonably destroyed, marred or damaged such areas, Franchisee shall be held responsible for the expenses of repairing such areas to the satisfaction of the County.

C. In the event Franchisee has not removed its facilities within ninety (90) days as described herein, or in the event the County elects not to require Franchisee to remove its facilities, Franchisee shall be obligated to sell its facilities in place within the franchisee area to either the County or to any new franchise operator. Any sale of facilities as required by this subsection shall be pursuant to the valuation requirements of Section 626 of the Cable Act.

## SECTION 20

### LIQUIDATED DAMAGES

Should it be found, after conducting the hearing and appeal procedure provided for herein, and after written receipt by Franchisee of a finding of violation by the Chief Administrative Officer or his designee, that Franchisee is in violation of the terms of this Ordinance, the liquidated damages chargeable to the Franchisee shall be as follows:

A. For failure to provide or maintain data and reports as requested by the County or as required herein, Franchisee shall forfeit One Hundred Dollars (\$100) per day or part thereof that the violation continues, if after twenty (20) days written notice such data or reports are not supplied.

B. For failure to comply with the operation standards as specified in Section 6 hereof, following the County Commission's resolution directing Franchisee to make improvements within a reasonable time period, Franchisee shall forfeit One Hundred Dollars (\$100) per day or part thereof that the violation continues unless cause can be shown for said delay.

C. For failure to test, analyze and report on the performance of the system following the reasonable request of the County, Franchisee shall forfeit One Hundred Dollars (\$100) per day or part thereof that the violation continues unless cause can be shown for said delay.

D. For failure to pay the franchise fee when due pursuant to Section 10 herein, Franchisee shall forfeit One Hundred Dollars (\$100) per day or part thereof that the violation continues.

E. The rights in this Section are separate, distinct and in addition to those enumerated elsewhere in this Ordinance.

F. Any liquidated damages imposed by the County in accordance with this license may be reduced by the County if it finds that the failure of the Franchisee resulted from conditions beyond the Franchisee's control and/or Acts of God.

G. Any damages assessed under this Section 20, shall be subject to judicial review at the request of the Franchisee.

#### SECTION 21

##### RIGHTS RESERVED TO THE COUNTY

Without limitation upon the rights which the County might otherwise have, the County does hereby expressly reserve the following rights, powers and authorities:

A. To exercise its governmental police powers now or hereafter to the full extent that such powers may be vested in or granted to the County.

B. To grant additional franchises within the County to other persons for the construction of a cable television system.

C. To exercise any other rights, powers or duties required or authorized under the Constitution of the State of Tennessee, the laws of Tennessee or the County Charter.

#### SECTION 22

##### COMPLIANCE WITH MUNICIPAL, STATE AND FEDERAL LAWS, RULES AND REGULATIONS

A. Notwithstanding any other provision of this Franchise to the contrary, Franchisee shall at all times reasonably comply with all laws, rules and regulations of the State and Federal governments or any administrative agencies thereof; provided, however, that if any such State or Federal law, rule or regulation shall require Franchisee to perform any service or shall prohibit Franchisee from performing any service or shall permit Franchisee to perform any service in conflict with the terms of this Franchise or of any law, rule or regulation of the County, then as soon as possible following knowledge thereof, Franchisee shall notify the County's Chief Administrative Officer of the point of conflict believed to exist between such law, rule or regulation and the laws, rules or regulations of the County or this Franchise. Provided, however, that nothing herein shall compel Franchisee to act in any way which violates or contravenes any local, State or Federal law, rule or regulation.

B. Franchisee shall be subject to all reasonable County resolutions, rules and regulations and Franchisee shall also be subject to all applicable rules and regulations which, from time to time, may be promulgated by the Federal Communications Commission for cable television systems.

#### SECTION 23

##### FRANCHISEE TO HAVE NO RECOURSE



A. Except as expressly provided for in this Franchise, Franchisee herein shall have no recourse whatsoever against the County for any loss, cost or expense of damage arising out of any of the provisions or requirements of this Franchise or because of the enforcement thereof by the County.

B. Franchisee further acknowledges by the acceptance of this Franchise that it has not been induced to enter into this Franchise by any understanding or promise or other statement, whether verbal or written, by or on behalf of the County or by any other third person concerning any term or condition of this Franchise not expressed herein.

C. Franchisee further acknowledges by the acceptance of this Franchise that it has carefully read the terms and conditions hereof and is willing to and does accept all of the risks of the meaning of such terms and conditions.

D. Franchisee further acknowledges by the acceptance of this Franchise that this Franchise is non-exclusive.

#### SECTION 24

##### NOTICES TO FRANCHISEE

At any time the County Administrative Officer, Chairperson, Commission, members of the commission, or resident of the County brings an issue regarding this Resolution, agreements or applications thereunder, or the activities of any Franchisee to a meeting or work session of the Commission, the County Administrative Officer will notify Franchisee. Such notification shall take place at least seven (7) days prior to the meeting, unless a different notice period is required by another section of this Franchise.

#### SECTION 25

##### CONTINUITY OF SERVICE MANDATORY

It shall be the right of all subscribers to receive all available services insofar as their financial and other obligations to Franchisee are honored. In the event that Franchisee elects to overbuild, rebuild, modify or sell the cable television system, or the Commission terminates or fails to renew the Franchise, Franchisee shall do everything in its power to ensure that all subscribers receive continuous, uninterrupted services regardless of the circumstances. In the event of a change of Franchisee, the current Franchisee shall cooperate with the County to operate the system for a temporary period in maintaining continuity of service to all subscribers.

#### SECTION 26

##### SEVERABILITY

If any section, subsection, sentence, clause, phrase or portion of the Resolution 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 holdings shall not affect the validity of the remaining portions thereof.

#### SECTION 27

##### TIME ESSENCE OF THIS FRANCHISE

Whenever this Franchise shall set forth any time for any action to be performed by or on behalf of Franchisee, such time shall be deemed of the essence and any failure of Franchisee to

perform within the time allocated may be sufficient grounds for the County to revoke this Franchise in accordance with the provisions of Section 18 hereof.

SECTION 28


ACCEPTANCE

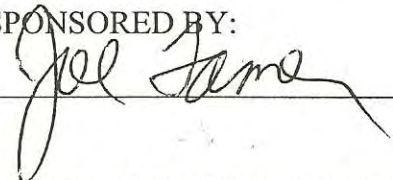
This resolution and its terms and provisions shall be accepted by Franchisee by a written Franchise Agreement executed and acknowledged by Franchisee and filed with the Clerk of the Commission. Said Agreement shall incorporate Franchisee's written application, if any, to the County for the cable television Franchise and shall bind and obligate Franchisee to perform and carry out all provisions of said application. The Commission may require Franchisee to clarify any portion of its written application, if any, prior to final acceptance.

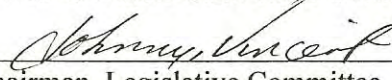
All resolutions or parts of resolutions in conflict herewith are hereby repealed.

On adoption by the Chairperson and the Commission of the County of Weakley, this Resolution shall be permanently recorded by the County Court Clerk as part of the official minutes of the County Commission, and shall have the full force and effect of all resolutions therein recorded.

**Pursuant To The Rules Of The Commission, This Resolution Is Sponsored By The Following Members Of The Weakley County Board Of County Commissioners:**

SPONSORED BY:  
  
\_\_\_\_\_

SPONSORED BY:  
  
\_\_\_\_\_

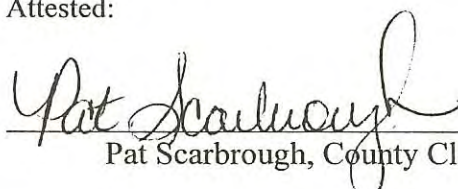
ACKNOWLEDGED AND APPROVED:  
  
\_\_\_\_\_  
Chairman, Legislative Committee

ADKNOWLEDGED AND APPROVED:  
\_\_\_\_\_  
\_\_\_\_\_

Motion made by Commissioner Salmon that the foregoing resolution be adopted:

Motion seconded by Commissioner Vincent.

Upon being put to a roll call vote, Motion carried by a vote of 19 Yeas, no Nays, no Passed and 1 Absent.

Attested:  
  
\_\_\_\_\_  
Pat Scarbrough, County Clerk

Approved:  
  
\_\_\_\_\_  
Ron Gifford, County Executive

THIS THE 18th DAY OF March, 1996.