

ORDINANCE NO. 416

AN ORDINANCE GRANTING TO FRANCHISEE, THE NON-EXCLUSIVE RIGHT TO ERECT, MAINTAIN AND OPERATE IN, UNDER, OVER, ALONG, ACROSS THE STREETS, LANES, AVENUES, SIDEWALKS, ALLEYS, BRIDGES, HIGHWAYS, EASEMENTS DEDICATED FOR COMPATIBLE USES AND OTHER PUBLIC PLACES IN THE CITY OF BAYOU LA BATRE, AL AND THE SUBSEQUENT ADDITIONS THERETO, TOWERS, CABLES AND ANCILLARY FACILITIES FOR THE PURPOSE OF CONSTRUCTING, OPERATING, MAINTAINING AND REPAIRING BROADBAND TELE-COMMUNICATIONS NETWORK, TRANSMISSION AND DISTRIBUTION BY CABLE OF TELEVISION SIGNALS FOR A PERIOD OF FIFTEEN (15) YEARS REGULATING THE SAME AND PROVIDING FOR COMPENSATION OF THE CITY.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF BAYOU LA BATRE, AL, U.S.A.

SECTION I. - DEFINITIONS

For the purposes of this Ordinance, the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory.

- A. "Basic Cable Service" means the service tier which includes the retransmission of local broadcast signals.
- B. "Grantor" is the GOVERNING BODY OF THE CITY OF BAYOU LA BATRE, AL.
- C. "Council" is the CITY OF BAYOU LA BATRE.
- D. "System" is a system utilizing certain electronic and other components which deliver to subscribing members of the public various broadband telecommunications services.
- E. "Cable Television Reception Service" means the delivery by Franchisee to television receivers (or any other suitable type of electronic terminal or receiver) of the electronic signals and other communications services carried over said system.
- F. "FCC" shall mean the Federal Communications Commission.
- G. "Franchisee" is MEDIACOM SOUTHEAST LLC or anyone who succeeds it in accordance with the provision of this Ordinance.

- H. "Person" is any person, firm, partnership, association, corporation or organization of any kind and any other legally recognized entity.
- I. "Subscribers" are those persons contracting to receive cable television reception services furnished under this Ordinance by Franchisee.

SECTION II. - GRANT OF NON-EXCLUSIVE AUTHORITY

- A. There is hereby granted by Grantor to Franchisee and its successors, assigns or designees, the non-exclusive right to erect, maintain and operate in, under, over, along, across and upon the present and future streets, lanes, avenues, sidewalks, alleys, bridges, highways, easements dedicated for compatible uses and other public places in the CITY, and subsequent additions thereto, towers, poles, lines, cable, wires, manholes and all other fixtures and equipment necessary for the maintenance and operation of a System for the purpose of transmission and distribution of analog and digital, audio, visual, electronic and electric impulses in order to furnish television and radio programs and various other communications services for a period ending JAN. 12, 2014 commencing from and after the effective date of this Ordinance.
- B. The right to use and occupy said streets, alleys, public ways and places for the purposes herein set forth shall not be exclusive.
- C. Grantor shall not permit any person to provide services similar to those provided by Franchisee without first having secured a non-exclusive franchise from Grantor. Such franchise shall be upon substantially the same terms and conditions with the same obligations and burdens, as contained herein.
- D. In the event that a non-franchised multi-channel video programmer provides service to residents of the community, the Franchisee shall have a right to request Franchise Agreement amendments that relieve the Franchisee of regulatory burdens that create a competitive disadvantage to the Franchisee. In requesting amendments, the Franchisee shall file a petition seeking to amend the franchise. Such petition shall: i) indicate the presence of a non-franchised competitor(s), ii) identify the basis for Franchisee's belief that certain provisions of this Franchise Agreement place Franchisee at a competitive

disadvantage, iii) identify the regulatory burdens to be amended or repealed in order to eliminate the competitive disadvantage. The Grantor shall not unreasonably withhold granting the Franchisee's petition and so amending the Franchise Agreement.

SECTION III. - COMPLIANCE WITH APPLICABLE LAWS AND ORDINANCES

Franchisee shall during the term hereof, except in those areas which have been preempted by the Communications Policy Act of 1984, as amended or which are regulated by the FCC, be subject to all lawful exercise of the regulating and police powers of Grantor.

SECTION IV. - TERRITORIAL AREA INVOLVED

This Ordinance relates to the present territorial limits of Grantor and to any area annexed thereto during the term of this Ordinance. Franchisee shall not be required to service residents of newly annexed areas of Grantor that are beyond four hundred feet (400') from existing distribution lines except upon payment by such residents of the capital costs incurred by Franchisee in bringing service to such residents. Franchisee shall service all residents requesting service within all City limits.

SECTION V. - LIABILITY AND INDEMNIFICATION

Franchisee shall, at all times, keep in effect the following types of coverage:

- A. Worker's Compensation.
- B. Property Damage Liability Insurance to the extent of Two Hundred Fifty Thousand Dollars (\$250,000.00) as to each occurrence and Two Hundred Fifty Thousand Dollars (\$250,000.00) aggregate, and Personal Injury Liability Insurance to the extent of Five Hundred Thousand Dollars (\$500,000.00) as to each occurrence and Five Hundred Thousand Dollars (\$500,000.00) aggregate. Excess Bodily Injury and Property Damage of One Million Dollars (\$1,000,000.00) each occurrence and One Million Dollars (\$1,000,000.00) aggregate. Automobile Bodily Injury and Property Damage Liability combined One Million Dollars (\$1,000,000.00) each occurrence.

Franchisee shall indemnify, protect, and save harmless Grantor from and against losses and physical damage to property and bodily injury or death to persons, including payments made under any Worker's Compensation law which may arise out of the erection, maintenance, use or removal of said attachments or

poles within the territory of Grantor, or by any act of Franchisee, its agents or employees. Franchisee shall carry insurance in the above described amounts to protect the parties hereto from and against all claims, demands, actions, judgments, costs, expenses and liabilities which may arise or result, directly or indirectly, from or by reason of such loss, injury or damage. Franchisee shall also carry such insurance as it deems necessary to protect it from all claims under the Worker's Compensation laws in effect that may be applicable to Franchisee. Insurance certificates evidencing such insurance coverage shall be deposited with and kept on file by the Grantor.

These damages or penalties shall include, but shall not be limited to, damages arising out of copyright, infringements, and all other damages arising out of the installation, operation, or maintenance of the System authorized herein, whether or not any act or omission complained of is authorized, allowed or prohibited by this Ordinance.

SECTION VI. - GENERAL SYSTEM SPECIFICATIONS

The facilities used by Franchisee shall have a minimum capacity of 550 MHz, and that a 77 channel capacity of entertainment and information will be available. The System shall also be capable of distributing color television signals, and when the signals Franchisee distributes are received in color, they shall be distributed in color where technically feasible.

SECTION VII. - TECHNICAL STANDARDS

Franchisee shall be governed by technical standards established by the FCC.

SECTION VIII. - CUSTOMER SERVICE STANDARDS/OPERATION AND MAINTENANCE OF SYSTEM

- A. Franchisee shall render efficient service, make repairs promptly, and interrupt service only for good cause for the shortest time possible, such interruptions, insofar as possible, shall occur during periods of minimum use of the System.
- B. All service requests and complaints should be responded to promptly, generally within forty-eight (48) hours of receipt.
- C. Failure on the part of Franchisee to return a customer to service within forty-eight (48) hours of receipt of complaint will, upon request by the customer, result in the issuance of a credit to that customer's account for

the portion of a month they were without cable service.

SECTION IX. - LOCAL BUSINESS AGENT

During the term of this franchise, and any renewal thereof, Franchisee agrees to maintain a local business agent and a local or toll free telephone line to be used by customers of the Franchisee to handle the receipt and investigation of complaints with respect to the quality of service, malfunctioning of equipment and other matters relating to the operation of the System.

SECTION X. - SERVICE TO SCHOOLS AND CITY

Franchisee shall, subject to the line extension provisions of Section IV, provide basic cable service at no cost to public and parochial elementary and secondary schools, at one terminal junction for educational purposes upon request of the school system.

Franchisee shall, subject to the line extension provisions of Section IV, also provide without charge, at one building other than a hospital, nursing home, apartment or building at the airport, to be selected by the Council, one junction terminal to said building and shall also furnish to the building, without charge, basic service to all sets connected within such building to the terminal junction.

SECTION XI. - ACCESS CHANNEL

The Franchisee shall provide one access channel for the transmission of community access broadcast programs by residents of Grantor and recognized community organizations, at no charge. This channel will be operated from City Hall.

SECTION XII. - EMERGENCY USE OF FACILITIES

In the case of any emergency or disaster, Franchisee shall, upon request of the Council, make available its facilities to Grantor for emergency use during the emergency or disaster. If Grantor wishes to operate a Civil Emergency Alert System on a plan that is mutually acceptable to Grantor and Franchisee and provides Franchisee with the necessary equipment for such system, Franchisee will permit the emergency System to be used on the System. Further, Franchisee will maintain said equipment and provide for regularly scheduled testing by Grantor to insure that the equipment is functioning properly.

SECTION XIII. - SAFETY REQUIREMENTS

Franchisee shall, at all times, employ ordinary care and shall use and maintain commonly accepted methods and devices for preventing failures and accidents which are likely to cause damages, injuries, or nuisances to the public.

SECTION XIV. - LIMITATIONS ON RIGHTS GRANTED

- A. All transmission and distribution structures, lines and equipment erected by Franchisee within Grantor shall be located as to cause minimum interference with the proper use of streets, alleys and the public ways and places, and to cause minimum interference with the rights and reasonable convenience of property owners who adjoin any of the said streets, alleys or other public ways and places, and said poles or towers shall be removed by Franchisee whenever Grantor reasonably finds that the same restrict or obstruct the operation or location of any future streets or public places within Grantor.
- B. Construction and maintenance of the System shall be in accordance with the provisions of the National Electrical Safety Code, prepared by the National Bureau of Standards, the National Electrical Code of the National Board of Fire Underwriters, and such applicable ordinances and regulations of Grantor, affecting electrical installation, which are presently in effect at the time of construction.
- C. In case of disturbance of any street, sidewalk, alley, public way or paved area, Franchisee shall, at its own cost and expense and in a manner approved by Grantor, replace and restore such street, sidewalk, alley, public way or paved areas in as good a condition as before the work involving such disturbance was done.
- D. If at any time during the period of this Ordinance Grantor shall lawfully elect to alter or change the grade of any street, sidewalk, alley or other public way, Franchisee, upon reasonable notice by Grantor, shall remove, relay and relocate its poles, wires, cables, underground conduits, manholes and other fixtures at its own expense.
- E. Franchisee shall on the request of any person holding a building moving permit or any person who wishes to remove trees or structures from their property, temporarily raise or lower its wires to permit the moving of buildings or tree removal. The expense of such temporary removal or raising or lowering of wires shall be paid by the person requesting the same, 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.

- F. Subject to Grantor approval, Franchisee shall have the authority to trim trees that are overhanging the streets, alleys, sidewalks and public ways and places so as to prevent the branches of such trees from coming in contact with the wires and cables of Franchisee, except that at the option of Grantor, such trimming may be done by it or under its supervision and direction at the expense of Franchisee.
- G. Franchisee, shall, at its expense, protect, support, temporarily disconnect, relocate on the same street, alley or public place, or remove from the street, alley or public place, any property of Franchisee when required by Grantor by reason of traffic conditions, change of establishments of street grade, installation of sewers, drains, water pipes, power lines, signal lines, and tracks or any other type of structures or improvements by governmental agencies when acting in a governmental or proprietary capacity, or other structure of public improvement; provided, however, that Franchisee shall in all cases have the privileges and be subject to the obligations to abandon any property of Franchisee in place as hereinafter provided.
- H. In all sections of Grantor where Grantor designates an area where all presently above ground services are to be placed underground, Franchisee shall place its wires underground on the same time schedule and on the same conditions that are applicable to the providing of other above ground services in the designated areas.
- I. In the event that the use of any part of the System is discontinued for any reason for a continuous period of twelve (12) months, or in the event such System or property has been installed in any street or public place without complying with the requirements of this Ordinance, or the rights granted hereunder have been subject to the rights of the Grantor to acquire or transfer the system as specified in Section XVI, promptly remove from the streets, or public places, all such property and poles of such System other than any which the City may permit to be abandoned in place. In the event of such removal, Franchisee shall promptly restore the street or other areas from which such satisfactory to Grantor.

- J. Any property of Franchisee to be abandoned in place shall be abandoned in such a manner as Grantor may prescribe. Upon permanent abandonment of the property of Franchisee in place, it shall submit to Grantor an instrument to be approved by Grantor, transferring to Grantor the ownership of such property.

SECTION XV. - OWNERSHIP AND REMOVAL OF FACILITIES

a). All cable and passive equipment for cable television reception service installed by Franchisee at a subscriber's location shall remain the property of Franchisee and Franchisee shall have the right to remove said cable and equipment. Upon termination of all service to any subscriber, Franchisee shall promptly remove all its above ground facilities and equipment from the premises upon the request of such subscriber.

b). Upon expiration, termination or revocation of this franchise, the Company at its sole cost and expense and upon direction of the Franchisor, shall remove the cables and appurtenant devices constructed or maintained in connection with the services authorized herein, unless the Company, its affiliated entities or assignees should, within six (6) months after such expiration, termination or revocation obtain certification from the FCC to operate an Open Video System or any other federal or state certification to provide telecommunication services.

SECTION XVI. - TRANSFER OF ORDINANCE

All right, title and interest of Franchisee in this Ordinance and the Non-exclusive Franchise granted herein shall be freely assignable without consent of Grantor.

SECTION XVII. - PAYMENT TO THE CITY

The Franchisee shall pay Grantor five percent (5%) of gross monthly receipts for services provided to all subscribers located within Grantor. Such payment shall be made annually within ninety (90) days after the end of each calendar year. All other license fees or taxes levied upon Franchisee by Grantor shall be credited against the payment required herein.

SECTION XVIII. - DURATION AND RENEWAL OF ORDINANCE

The rights granted to Franchisee herein shall become effective upon the passage of this Ordinance and shall continue for a period of fifteen (15) years.

SECTION XIX. - ERECTION, REMOVAL AND COMMON USE OF POLES

- A. No poles or other wire-holding structures shall be erected by Franchisee without prior approval of the designated representative of the Council with regard to locations, height, type or any other pertinent aspect, which approval shall not be unreasonably withheld. However, no locations of any pole or wire-holding structure of Franchisee shall be a vested interest and such poles or structures shall be removed or modified by Franchisee at its own expense whenever the Council or its designated representative determines that the public convenience would be substantially enhanced thereby.
- B. Where poles or other wire-holding structures already existing in use in serving Grantor are available for use by Franchisee, but it does not make arrangements for such use, the Council may require Franchisee 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 Franchisee are just and reasonable.
- C. Where Grantor or a public utility serving Grantor desires to make use of poles or other wire-holding structures of Franchisee but agreement therefore with Franchisee cannot be reached, the Council may require Franchisee to permit such use for such consideration as is just and reasonable and upon such terms as the Council determines the use would enhance the public convenience and would not unduly interfere with Franchisee's operations.

SECTION XX. - RATES AND CHARGES

The Grantor reserves the right to regulate such rates and charges to the extent permitted by any present or future regulatory law.

In the event that Grantor has authority to regulate rates, the following procedures shall be used:

Any rate subject to regulation under the above provisions may be increased subject to the rules and regulations according to the Cable Communications Act and the Federal Communications Commission.

The Franchisee shall not discriminate in rates between customers of the same category except to the extent permitted by the Cable Communications Policy Act of 1984 and Federal Communications Commissions regulations.

SECTION XXII - BOOKS AND RECORDS

The Franchisee shall keep full, true, accurate, and current books of accounts, which books and records shall be made available for inspection and copying by Grantor's Director of Finance or its authorized representative at all times.

SECTION XXIII. - MISCELLANEOUS

Franchisee's legal, financial, technical and other qualifications, and the adequacy and feasibility of its construction arrangements, if any, have been approved by the Council after consideration in a full public proceeding affording due process to all interested persons.

SECTION XXIV. - MODIFICATION OF OBLIGATIONS

In addition to any other remedies provided by law or regulation, Franchisee's obligations under this Ordinance may be modified, at its request, in accordance with Section 625 of Cable Communications Policy Act of 1984 as it now exists, or as hereafter amended.

SECTION XXV. - SEVERABILITY

If any Section, subsection, sentence, clause, phrase or portion of this Ordinance is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, or amended by the United States Congress or is superseded or preempted by Federal Communications Commission regulation, 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 XXVI. - PUBLICATION

Franchisee shall assume the costs of any required publication of this Ordinance.

SECTION XXVII. - NOTICES

All notices and other communications hereunder this Ordinance shall be in writing and shall be deemed to have been given on the date of actual delivery if mailed, first class, registered or certified mail, return receipt requested, postage paid to the following respective addresses:

To Grantor:

THE CITY OF BAYOU LA BATRE, AL.
33 South Wintzell Ave.

BAYOU LA BATRE, AL. USA 36509

To the Franchisee:

MEDIACOM SOUTHEAST LLC
LEGAL DEPT: BRUCE GLUCKMAN
100 Crystal Run Road
Suite 406-A
Middletown, NY 10941

With a copy to:

MEDICOM SOUTHEAST LLC
1101 Gulf Breeze Pkwy.
Box 53
Gulf Breeze, Fl. 32561
Attention: Legal Department

Either of the foregoing parties to this Ordinance may change the address to which all communications and notices may be sent to it by addressing notices of such change in the manner provided hereunder.

SECTION XXII. - PRIOR ORDINANCES

All ordinances and parts of ordinances in conflict herewith are hereby repealed as of the effective date of this Ordinance.

SECTION XXIX. - EFFECTIVE DATE

This Ordinance shall take effect after its passage, approval, publication and acceptance as provided by law.

Published prior to passage on the _____ day of _____, 199_.

Read and approved on the first reading on this _____ day of _____, 199_.

Read and approved on the second reading on this 12th day of January, 1999.

BY: Warren F. Seaman
THE HONORABLE MAYOR WARREN SEAMAN

ATTEST:

Amelda B. McClellan
CITY CLERK AMELDA McCLELLAN

ACCEPTANCE

The Non-Exclusive Franchise as granted under this Ordinance is approved and accepted on this 25 day of FEB, 199 , by MEDIACOM SOUTHEAST LLC.

BY: *[Signature]*
MEDIACOM SOUTHEAST LLC
(by its authorized representative)

mexico beach