

ORDINANCE NO. 94-3A D

AN ORDINANCE GRANTING A FRANCHISE TO SCOTT CABLE COMMUNICATIONS, INC., ITS SUCCESSORS AND ASSIGNS, TO OPERATE AND MAINTAIN A CABLE TELEVISION SYSTEM IN THE TOWN OF WOODLOCH, TEXAS, AND SETTING FORTH THE TERMS AND CONDITIONS ACCOMPANYING THE GRANT OF SAID FRANCHISE

WHEREAS, SCOTT CABLE COMMUNICATIONS, INC., a Texas corporation, owns, operates and maintains a cable television system in the TOWN OF WOODLOCH, a municipal corporation situated in Montgomery County, Texas pursuant to that certain franchise agreement dated June 6, 1979;

WHEREAS, the above-referenced franchise expired on or about June 5, 1994; and

WHEREAS, after due consideration, the Town desires to grant a franchise to Grantee to own, operate and maintain a cable television system in the Town on and subject to the terms and conditions hereinafter set forth;

NOW, THEREFORE, BE IT ORDAINED by the Town Council of the Town of Woodloch, Texas as follows:

SECTION 1. SHORT TITLE

This Ordinance shall be known and may be cited as the "Town of Woodloch Cable Television Franchise Ordinance" or the "Woodloch CATV Franchise".

SECTION 2. DEFINITIONS

For purposes of this Ordinance, the following words and phrases and their derivations (whether or not capitalized herein)

shall have the respective meanings 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. Words and phrases not defined herein shall be given their common and ordinary meaning.

2.01 "Applicable Law" shall mean, at any date, the material terms and provisions of such laws, ordinances, codes, rules, regulations and orders of the United States of America, the State of Texas and the Town of Woodloch as shall then be valid and applicable, including, without limitation, the material terms and provisions of (i) the Cable Act and (ii) the rules and regulations of the FCC.

2.02 "Cable Act" shall mean, at any date, the Cable Communications Policy Act of 1984, 47 U.S.C. section 521 et seq., as the same may have been amended or superseded in any respect at such date by any other enactment (including, without limitation, the Cable Television Consumer Protection and Competition Act of 1992).

2.03 "CATV" shall mean cable television.

2.04 "CATV System" shall mean a facility, consisting of a set of closed transmission paths and associated signal generation, reception and control equipment, that is designed to provide CATV service which includes video programming and which is provided to multiple subscribers within the Town. Such term shall not include (1) a facility that serves only to retransmit

the television signals of one or more television broadcast stations; (2) a facility that serves only subscribers in one or more multiple unit dwellings under common ownership, control or management, unless such facility crosses or otherwise uses a public right-of-way; (3) a facility of a common carrier that is subject, in whole or in part, to the provisions of the Common Carrier Title of the Communications Act of 1934, 47 U.S.C. section 201 et seq., except that such facility will be considered a CATV System to the extent that it is used in the transmission of video programming directly to subscribers; or (4) any facilities of any electric utility used solely for operating its electric utility system.

2.05 "Channel" shall mean a frequency band which is capable of carrying either one video signal or a number of audio, digital or other non-video signals, or some combination thereof.

2.06 "FCC" shall mean the Federal Communications Commission.

2.07 "Franchise" shall mean this Ordinance and all those rights and obligations created hereby.

2.08 "Grantee" shall mean Scott Cable Communications, Inc., a Texas corporation doing business in the State of Texas as "American Cable Entertainment", and its successors and assigns.

2.09 "Gross Basic Revenues" shall mean, for any fiscal year, all System revenues received by Grantee from Subscribers for Grantee's basic CATV service provided during such fiscal year, after deducting all taxes and other assessments attribu-

table thereto collected by Grantee for governmental authorities for such fiscal year.

2.10 "Owner" shall mean a Person with a legal or equitable interest in the ownership of real property.

2.11 "Person" shall mean any individual, corporation, partnership, association, joint venture or organization of any kind and any lawful trustee, successor, assign, transferee or personal representative thereof.

2.12 "Public Property" shall mean (i) any real property owned by the Town, (ii) the surface of and the space above and below any public street, road, freeway, lane, path, public way, alley, court, sidewalk, boulevard, parkway or drive, insofar as any such surface and space is within the Town, and (iii) any easement or right-of-way now or hereafter held by the Town or dedicated for use by the Town or the general public.

2.13 "Subscriber" shall mean any Person that is located within the Town and that lawfully subscribes to any television programming provided by Grantee by means of the System pursuant to this Franchise.

2.14 "System" shall mean the CATV System and other facilities owned, operated and maintained by Grantee in the Town for the provision of CATV and other telecommunications services pursuant to this Franchise. For purposes of this Franchise, the word System shall not include any facility (or portion thereof) - whether or not interconnected with (or constituting a portion of) the System - which is (i) located outside the legal boundaries of

the Town, (ii) located inside the legal boundaries of any incorporated city, county, town or village inside the legal boundaries of the Town or (iii) not subject to the franchising authority of the Town.

2.15 "Town" shall mean the Town of Woodloch, Texas in its present form or in any form which may subsequently be adopted.

2.16 "Town Council" shall mean the Town Council of the Town of Woodloch or any future entity constituting the legislative body of the Town of Woodloch.

SECTION 3. GRANT, TERM AND RENEWAL OF FRANCHISE

3.01 Grant of Franchise. There is hereby granted by the Town to Grantee the right to establish, construct, erect, operate, maintain, install, repair, replace, reconstruct and retain in, on, over, under, upon, across and along any and all Public Property such lines, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, pedestals, attachments and other property and equipment as are necessary or convenient to the operation of the System subject to the terms and conditions set forth herein.

3.02 Franchise Term. The initial term of this Franchise shall be deemed to have commenced as of June 6, 1994 and shall expire 15 years after said date, on June 5, 2009, unless this Franchise shall be revoked or renewed as herein provided.

3.03 Renewal. Not less than six months prior to the

expiration of the then current term of this Franchise, Grantee may, by written notice to the Town, request in writing that the Town hold a special Town meeting for the purpose of reviewing Grantee's performance under this Franchise. Within 30 days after the Town's timely receipt of any such written request from Grantee, the Town shall, by resolution, schedule the time and place of a special Town meeting for such purpose and shall give Grantee at least 15 days prior written notice thereof. Any such special Town meeting shall be a public meeting at which any interested person(s) shall have full opportunity to speak and be heard, and at which the Town and Grantee shall each be given the opportunity to present witnesses and evidence and make argument and examine and cross-examine any witnesses or other speakers, and the Town shall make and maintain a full and public transcript thereof. Within 30 days after the conclusion of such meeting, the Town shall issue a written determination as to whether or not Grantee has during the then current term hereof substantially complied with the material terms of this Franchise and Applicable Law. In the event that the Town shall determine that Grantee has so complied with this Franchise and Applicable Law, then the Town shall so confirm and shall thereupon grant to Grantee a 15-year renewal of this Franchise. In the event that the Town shall determine that Grantee has failed to so comply with this Franchise and Applicable Law and that the Town will not grant to Grantee any renewal of this Franchise, then the Town shall set forth in detail such determination and the specific reasons therefor, and

in that event such determination shall be deemed a revocation by the Town of Grantee's franchise upon the expiration date of the then current term thereof, provided that in any such event Grantee shall have the right to de novo judicial review of such non-renewal determination by any court of competent jurisdiction and in that event such non-renewal shall only become final at and upon the conclusion of the judicial review process, when a final court judgment is no longer subject to appeal or further review, pending which conclusion Grantee shall be entitled to the continuance of all of its rights under this Franchise.

SECTION 4. DESIGN AND SERVICE PROVISIONS

4.01 Technical Requirements. As of the effective date of this Franchise, Grantee's trunk and distribution system shall be capable of delivering at least 300 MHz to any Subscriber's tap. The System shall comply with all applicable FCC technical standards. Procedures for testing the technical capacity of the System shall conform to the technical and testing standards applied to CATV systems by the FCC.

4.02 Programming Services. Grantee shall have the right to add, delete and/or rearrange its programming services in any respect during the term of this Franchise.

4.03 Free Service to Schools. Upon written request by the Town, Grantee shall furnish a single connection to each primary and secondary school (whether public or private) located in the Town and provide Grantee's basic CATV service without

charge, provided that such connection can be made within 150 feet of an energized main or lateral cable. Grantee shall not impose any restriction upon any such school as to the number of television receivers that such school may operate from such connection, provided that the expense of installing and maintaining an internal distribution system within such school shall be the responsibility of such school. Any such internal distribution system installed by a school shall comply with Applicable Law and shall be installed and operated in such a manner as not to interfere with the System or Grantee's operation thereof.

4.04 Free Service to Municipal Building(s). Upon written request by the Town, Grantee shall furnish a single connection to one municipal office building located within the Town and thereafter provide Grantee's basic CATV service, without monthly charge, provided that such connections can be made within 150 feet of an energized main or lateral cable. Grantee shall not impose any restriction upon the Town as to the number of television receivers that any such municipal office building may operate within such building from such connection, provided that the expense of acquiring, installing and maintaining an internal distribution system within such building shall be the responsibility of the Town and provided, further, that all such television receivers shall be viewable solely by such Town employees as are located within the foregoing municipal office building. Any such internal distribution system installed by the Town shall comply with Applicable Law and shall be installed and operated in such a

manner as not to interfere with the System or Grantee's operation thereof.

SECTION 5. CONSTRUCTION PROVISIONS

5.01 Construction Requirements. Grantee may make use of existing poles and other facilities available to Grantee subject to Grantee's obtaining any necessary consents for such use, and Grantee may also erect its own poles and install its own conduit, with approval of the Town, which approval shall not be unreasonably withheld. All poles and conduit installed within the Town shall be made available for attachment or use by Grantee, at just and reasonable rates applied to public utilities under the formula established in the Pole Attachment Act, 47 U.S.C. section 224 (which Federal statute sets forth the formula for calculating various pole attachment rates).

5.02 Construction Codes and Permits. Grantee shall obtain any required permits from the Town before commencing construction involving the opening or disturbance of any Public Property. The Town shall cooperate with Grantee and shall use its best efforts to issue promptly to Grantee such permits as may be required.

SECTION 6. CONDITIONS OF OCCUPANCY OF PUBLIC PROPERTY

6.01 Location of Facilities. Grantee shall install its lines, poles, equipment and other facilities on any Public Property in such manner as to avoid unreasonable interference

with the usual and customary use of said Public Property by any Person.

6.02 Repair of Public Property. Any and all Public Property which is damaged directly by Grantee during construction or operation of the System shall be promptly repaired by Grantee at its expense and returned to a condition reasonably comparable to its condition prior to such damage.

6.03 Trimming of Trees. Grantee may cut or trim trees and vegetation in the vicinity of its cable or equipment. 6.04

6.04 Temporary Removal of Facilities. In the event that it shall be necessary temporarily to move or remove any of Grantee's aerial lines, poles, equipment or other facilities in order lawfully to transport a large object, vehicle, building or other structure over any Public Property, then upon five business days prior notice from the Town to Grantee, Grantee shall temporarily move or remove such of its facilities as may be necessary to permit such transport. Grantee shall be entitled to reimbursement for the costs of such temporary move or removal from the Person making such request, and Grantee may require such reimbursement in advance.

6.05 Relocation of Facilities. If at any time during the term of this Franchise the Town shall lawfully elect to alter or change the grade of any Public Property, then upon reasonable notice by the Town, Grantee shall remove, relay and relocate its lines, poles, equipment and other facilities at its own expense; provided, however, that where public funds or funds from Owners

are available for such relocation pursuant to law, Grantee shall not be required to pay the cost.

6.06 Placement of Facilities Underground. In all areas of the Town where the lines, wires or other like facilities of all public utilities are placed underground, Grantee shall also place its lines, wires or other like facilities underground.

SECTION 7. OPERATION AND MAINTENANCE

7.01 Inspection. Upon reasonable prior written notice and during ordinary business hours, the Town shall have the right to inspect the public records of Grantee relating to the System.

7.02 Service and Maintenance. Grantee shall render efficient service, make repairs promptly and interrupt System service only for good cause.

7.03 Franchise Subject to Other Laws, Police Power. Grantee shall be subject to and shall comply with Applicable Law.

7.04 Safety. Grantee shall at all times exercise reasonable care not to cause damage or injury to any Person or to any public or private property.

7.05 Subscriber Practices.

A. Grantee shall not deny service, deny access, or otherwise discriminate against any Subscriber on the basis of race, color, religion, national origin, sex or age. Grantee shall adhere to the equal employment opportunity requirements of the FCC.

B. Grantee may conduct promotional campaigns in which

rates are discounted or waived.

C. Grantee may make special contracts for non-profit charitable, educational, governmental and religious organizations.

D. Grantee may offer non-standard, individually negotiated rates for and among multiple unit dwellings, hotels, motels, restaurants, bars and other commercial establishments.

E. Grantee shall comply with Applicable Law regarding the protection of the privacy of Subscribers and System data relating to Subscribers.

F. Grantee shall have full authority to promulgate such rules, regulations, terms and conditions governing the conduct of its business as shall be necessary or appropriate to enable Grantee to operate under this Franchise.

SECTION 8. FRANCHISE FEE

Grantee shall, within 120 days after the end of each fiscal year of Grantee, pay to the Town a franchise fee in an amount equal to five percent (5%) of Grantee's Gross Basic Revenues for such fiscal year. Such franchise fee shall be in lieu of all taxes and impositions levied or imposed by the Town upon Grantee, its property, business or operations for such fiscal year. Grantee may designate and itemize that portion of any Subscriber's bill attributable to the franchise fee, any applicable taxes and any other payments to any governmental authority as separate line items on such bill.

SECTION 9. INDEMNITY AND INSURANCE

9.01 Indemnity. Grantee shall indemnify and hold harmless the Town at all times during the term of this Franchise from and against any and all claims for injury or damage to Persons or property, both real and personal, directly caused by Grantee's construction or operation of the System. No claim for indemnification shall be valid unless Grantee is provided with notice of the respective injury, loss or claim promptly after the occurrence thereof, and is provided with full and timely opportunity to defend.

9.02 Insurance. Throughout the term of this Franchise, Grantee shall maintain workers' compensation insurance sufficient to comply with all State requirements, and general comprehensive liability insurance with respect to the construction, operation and maintenance of the System which insurance shall name the Town as an additional insured, in amounts not less than the following:

- (1) For bodily injury, including death, \$500,000 for any one individual, and \$1,000,000 for any one accident; and
- (2) For property damage, \$500,000.

Upon request by the Town, Grantee shall provide the Town with satisfactory written evidence of such insurance.

SECTION 10. REVOCATION

10.01 Procedure.

A. This Franchise may be revoked by the Town solely on account of Grantee's material breach of a material provision of

this Franchise, as hereinafter provided. The Town shall give written notice to Grantee of any claimed material breach, which notice shall specify the basis therefor. If within 90 days of Grantee's receipt of such notice, such breach has not been corrected and Grantee is not conscientiously pursuing the correction thereof, then the Town Council may give written notice to Grantee of the Town's intent to consider revocation of this Franchise, stating the Town's reasons therefor.

B. Before any final action shall be taken, the Town Council shall hold a public hearing (and shall make and maintain a full and public transcript thereof) at which hearing Grantee shall be given an opportunity to present evidence and make argument and examine and cross-examine any witnesses. Within 30 days following such hearing, the Town Council shall issue a preliminary decision as to whether or not there has been a material breach by Grantee of a material provision of this Franchise and if so whether or not this Franchise should be revoked, based upon the evidence and arguments presented at the hearing. The Town Council's preliminary decision shall be set forth in a written memorandum containing the Town Council's reasons for such preliminary decision. Grantee shall have the right to respond to the Town Council's preliminary decision within 20 days of Grantee's receipt thereof. During such 20-day period, the Town Council shall not take any final action with respect to the revocation of this Franchise. In the event that the Town Council thereafter issues a final order revoking this Franchise, such order shall

state with specificity the reasons therefor, and shall address and answer separately, on an issue by issue basis, the issues raised in Grantee's response (if such a response has been timely filed by Grantee). Such order shall become final 15 days after the Town Council shall file a copy thereof with the Town Clerk and deliver a copy thereof to Grantee, provided that Grantee shall have the right to de novo judicial review of the Town Council's revocation of this Franchise by any court of competent jurisdiction and in that event such revocation shall only become final at and upon the conclusion of such judicial review process.

C. Grantee shall be entitled to the continuance of all of its rights under this Franchise at all times during the pendency of any revocation proceeding or judicial review thereof.

SECTION 11. UNAUTHORIZED OPERATION AND USE

11.01 Unauthorized Operations. The Town shall not permit any Person to establish, operate or carry on the business of distributing to any Person in the Town any audio or video signals by means of any CATV System unless a franchise therefor has first been obtained from the Town and is in full force and effect.

11.02 Unauthorized Use.

The Town shall not cause, assist or knowingly permit any Person to (i) intercept, descramble, decode or receive any signal from the System or (ii) tamper with, remove or injure any lines, poles, equipment or other facilities used with the System, unless specifically authorized to do so by Grantee.

SECTION 12. CONDITIONS OF ACCESS

A. Grantee shall have the right to require any Subscriber to agree that Grantee and Grantee's representatives may enter and have access to the property and premises of such Subscriber for purposes of recovering and removing Grantee's property and equipment when and if such Subscriber's service is terminated.

B. Except as the Applicable Law of the United States of America and the State of Texas shall otherwise require, the Town shall not permit any Person who owns or controls a residential multiple unit dwelling, trailer park, condominium, apartment complex, subdivision or other property to interfere with the right of any tenant, resident or lawful occupant thereof to receive cable installation, service or maintenance from Grantee.

C. Upon request by Grantee, the Town shall promptly exercise any rights it may have to permit or enable Grantee to obtain or utilize easements with respect to any residential multiple unit dwelling, trailer park, condominium, apartment complex, subdivision or other property as required to facilitate Grantee's use thereof for purposes of providing System service to the tenants, residents or lawful occupants thereof. In any such proceeding, the restitution to the Owner for the amount of space utilized by the System, considering the enhanced value to the premises resulting from the installation of CATV facilities, shall be a one-time charge of \$1.00 per dwelling unit.

SECTION 13. MISCELLANEOUS

13.01 Notices. All notices, requests, demands and other communications required or permitted hereunder shall be in writing and shall be deemed to have been duly given if delivered by hand, or mailed by certified or registered mail (return receipt requested) properly addressed with postage prepaid:

(1) If to the Town, to:

Town Secretary
P.O. Box 3487
Conroe, TX 77305-3487

or to such other person or address as the Town shall furnish to Grantee in writing in accordance herewith; and

(2) If to Grantee, to:

Mr. Bruce A. Armstrong
President and Chief Executive Officer
American Cable Entertainment
Landmark Square
Stamford, CT 06901

with complete copies, each under separate cover, to each of:

American Cable Entertainment
Attn: Law Department
Landmark Square
Stamford, CT 06901

and

American Cable Entertainment
Attn: Regional Manager
27326 Robinson Road, #140
Conroe, TX 77385

or to such other person or address as Grantee shall furnish to the Town in writing in accordance herewith. For purposes hereof, delivery by any recognized courier service (e.g., Federal Ex-

press, United Parcel Post, etc.) shall be deemed delivery by hand.

13.02 Severability. If any law, ordinance, regulation or court decision shall render any provision of this Franchise invalid, the remaining provisions of this Franchise shall remain in full force and effect.

13.03 Force Majeure. Any failure or delay by Grantee in its performance of any provision of this Franchise shall not be deemed noncompliance with or a violation or breach of this Franchise if such failure or delay is attributable to any Act of God or is due to any other circumstance beyond the reasonable control of Grantee.

13.04 Nonexclusivity. The rights herein granted to Grantee to construct, own, operate and maintain a CATV System in the Town shall be nonexclusive. In consideration of Grantee's acceptance thereof, the Town shall not authorize or permit any other Person to construct, own, operate or maintain any other CATV System within the Town on terms or conditions which are, either individually or in the aggregate, more favorable or less burdensome to such Person than those applied to Grantee pursuant to this Franchise; and if the Town shall hereafter authorize or permit any other Person to construct, own, operate or maintain any other CATV System within the Town, then the Town shall expressly require such Person to indemnify and hold harmless Grantee from and against any and all inspection, make-ready, construction and maintenance costs and expenses incurred by

Grantee (e.g., for strengthening or replacing poles, rearranging pole attachments, relocating underground facilities, etc.) in connection with such other Person's construction, ownership, operation or maintenance of such other CATV System in the Town.

13.05 Assignment and Change of Control. Grantee may assign this Franchise, provided that the assignee shall give prompt written notice thereof to the Town and shall, in such notice, covenant and agree to be bound by all of the terms and conditions of this Franchise.

13.06 Entire Agreement. This Franchise represents the entire understanding and agreement between the parties hereto with respect to the subject matter hereof, supersedes all prior oral or written negotiations between the parties, and can be amended, supplemented, modified or changed only by an agreement in writing which makes specific reference to this Franchise and which is signed by the party against whom enforcement of any such amendment, supplement, modification or change is sought.

13.07 Governing Law. This Franchise shall be governed by and construed in accordance with the laws of the State of Texas and applicable Federal law.

Passed and adopted this 10th day of January, 1995.

ATTEST:

TOWN OF WOODLOCH, TEXAS

By:

Paul Kondabak
Town Clerk
City Secretary

By:

Title:

Date:

Marian L. Lincoln
Mayor
January 10, 1995