

ORDINANCE NO. 089-019

AN ORDINANCE OF THE TOWN OF ADDISON, TEXAS,
GRANTING A FRANCHISE TO PLANNED CABLE SYSTEMS (PCS) TO
OPERATE AND MAINTAIN A CABLE COMMUNICATIONS SYSTEM IN
THE TOWN; SETTING FORTH CONDITIONS ACCOMPANYING THE
GRANT OF FRANCHISE, PROVIDING FOR CITY REGULATION AND
ADMINISTRATION OF THE CABLE COMMUNICATIONS SYSTEM;
PROVIDING FOR METHOD OF ACCEPTANCE; PROVIDING FOR
SEVERABILITY; PROVIDING FOR REPEAL; PROVIDING FOR
PENALTIES; AND PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE TOWN OF
ADDISON, TEXAS:

SECTION 1. INTENT.

The Town of Addison, Texas finds that the development of Cable Television and Communications Systems has the potential of having great benefit and impact upon the residents of Addison. Because of the complex and rapidly changing technology associated with cable television, the City further finds that the public convenience, safety and general welfare can best be served by establishing regulatory powers which should be vested in the City or such persons as the City shall designate. It is the intent of this ordinance and subsequent amendments to provide for and specify the means to attain the best possible public interest and public purpose in these matters.

SECTION 2. 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, words in the singular number include the plural number, and the use of any gender shall be applicable to all genders whenever the sense requires. The words "shall" and "will" are mandatory and the word "may" is permissive. Words not defined shall be given their common and ordinary meaning.

(a) "City" or "Town" shall mean the Town of Addison, a home rule city of the State of Texas, and all the territory within its present and future boundaries and including any area over which the City exercises jurisdiction.

(b) "City Council" or "Council" shall mean the City Council of the Town of Addison, Texas.

(c) "Cable Communications System" or "System," also referred to as "Cable Television System," "Cable System," "CATV System," or "Community Antenna TV System," shall mean a system of antennae, cables, wires, lines, towers, satellites, waveguides, or other conductors, converters, amplifiers, headend equipment, master controls, earth stations, equipment and facilities designed and constructed for the purpose of producing, receiving, transmitting, amplifying and distributing audio, video and other forms of electronic or electrical signals within City.

(d) "Completion of Construction" means that point in time when all requirements set out in Section 8 herein have been fulfilled by Grantee.

(e) "Franchise" shall mean the right granted by City and a Person authorizing such Person to erect, install, construct, reconstruct, operate, dismantle, test, use and maintain a Cable Communications System in City. Any Franchise shall be a nonexclusive Franchise.

(f) "Grantee" or "Company" shall mean Planned Cable Systems (PCS), its agents, employees, lawful successors, transferees or assignees.

(g) "Grantor" means the Town of Addison, Texas, as represented by the City Council or any delegate acting within the scope of its jurisdiction.

(h) "Franchise Fees" means any tax, fee or assessment of any kind imposed by a franchising authority or other governmental entity on Grantee solely because of its status as such. The term "Franchise Fee" does not include:

(1) Any tax, fee, or assessment of general applicability, including any such tax, fee, or assessment imposed on both utilities and cable operators or their services but not including a tax, fee or assessment which is unduly discriminatory against Grantee;

(2) Capital costs which are required by the Franchise to be incurred by Grantee for public, educational or governmental access facilities;

(3) Requirements or charges incidental to the awarding or enforcing of the Franchise, including payments for bonds, security funds, letters of credit, insurance, indemnification, penalties, or liquidated damages; or

(4) Any fee imposed under Title 17, United States Code.

(i) "Gross Revenues" shall mean all cash, credits, property of any kind or nature or other consideration derived directly or indirectly by Company, arising from or attributable to operation within City of the Cable Television System, including but not limited to:

(1) revenue from all charges for services provided to Subscribers of entertainment and non-entertainment services (including leased access fees);

(2) revenue from all charges for the insertion of commercial advertisements upon the Cable Television System;

(3) revenue from all charges for the leased use of studios;

(4) revenue from all charges for the installation, connection and reinstatement of equipment necessary for the utilization of the Cable Television System and the provision of Subscriber and other services;

(5) the sale, exchange or use or cablecast of any programming developed for community use or institutional users; and

(6) revenue from any and all data transmission and telecommunication.

"Gross Revenues" shall include, value at retail price levels, the value of any goods, services, or other remuneration in non-monetary form, received by Company in consideration for performance by Company of any advertising or other service in connection with the Cable Television System. Gross Revenue shall not include Franchise Fees and other taxes collected by Grantee.

(j) "Person" means any individual, corporation, partnership, association, joint venture or organization of any kind and the lawful trustee, successor, assignee, transferee or personal representative thereof.

(k) "Subscriber" means any Person who legally receives within the City any one or more of the services provided by the Cable Communications System.

(1) "Street" shall mean the surface of and the space above and below any public street, road, highway, freeway, easement lane, path, alley, court sidewalk, parkway, or driveway now or hereafter existing as such within the City.

SECTION 3. POLICE POWERS.

Nothing in this ordinance shall be construed as an abrogation by the City of any of its police powers.

SECTION 4. GRANT OF RIGHT, PRIVILEGE AND FRANCHISE FOR CONSTRUCTION AND MAINTENANCE OF CABLE SYSTEM.

(a) The Grantor does hereby grant to Grantee a nonexclusive, revocable Franchise to construct, operate, maintain, and reconstruct, a Cable Communications System within the City, said Franchise constituting both a right and an obligation to provide the services of a Cable Communications System within the City, as further described in this ordinance.

(b) The Franchise granted under the terms and conditions contained herein shall be consistent with federal laws and regulations and state general laws and regulations. In the event of conflict between the terms and conditions of the Franchise and the terms and conditions on which the Grantor can grant a Franchise, the general law and/or statutory requirements shall, without exception, control.

(c) The Franchise granted is hereby made subject to the general ordinance provisions now in effect or hereafter made effective. Nothing in the Franchise shall be deemed to waive the requirements of the other codes and ordinances of the Grantor regarding permits, fees to be paid or manner of construction.

(d) Notwithstanding the above grant to use Streets, no Street shall be used by Grantee if City, in its sole opinion, determines that such use is inconsistent with the terms, conditions or provisions by which such Street was created or dedicated, or presently used.

SECTION 5. NONEXCLUSIVITY OF FRANCHISE.

Any Franchise granted shall be nonexclusive. Grantor specifically reserves the right to grant, at any time, such additional Franchises for a Cable Communications System as it deems appropriate, provided however, that such additional grants shall not operate to materially modify, revoke, or terminate any rights previously granted to any Grantee.

SECTION 6. AUTHORITY FOR USE OF STREETS.

(a) For the purposes of operating and maintaining a Cable Communications System in City, Grantee may erect, install, construct, repair, replace, reconstruct and retain in, on, over, under, upon, across and along the Streets within City such lines, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, pedestals, attachments and other property and equipment as are necessary and appurtenant to the operation of the Cable System, provided that all applicable permits are applied for and granted, all fees paid and all other City codes and ordinances are otherwise complied with.

(b) Prior to construction or alteration, Grantee shall in each case file plans with all appropriate City officials and utility companies and receive written approval of such plans, which approval shall not be unreasonably withheld. Grantee shall provide a monthly progress report to City through Completion of Construction or alteration.

(c) Grantee shall construct and maintain a Cable Communications System so as not to interfere with other uses of Streets. Grantee shall make use of existing poles and other facilities available to Grantee. Grantee shall individually notify all residents affected by proposed construction prior to the commencement of that work.

SECTION 7. DATA SYSTEMS CAPABILITIES TO CERTAIN BUILDINGS

The System shall be constructed, reconstructed and maintained in accordance with plans approved by Grantor. Operator shall provide Grantor with reasonable notice of its proposed construction schedule. Grantor shall have the right where feasible to install coaxial cable, for the purpose of data transmission among City-owned buildings, in every trench where Operator is constructing the system. Grantor shall bear all incremental costs associated with such installation; provided however, that Operator shall bear the cost of installation between Town Hall and the Finance Building. Operator shall in no event be responsible for costs or maintenance of any other equipment used to carry data.

SECTION 8. CONSTRUCTION SCHEDULE.

The City shall be divided into three sectors, labelled "1," "2," and "3," as shown on the map attached hereto as Exhibit "A." Company shall provide service to every residence within the City where service is requested according to the following schedule:

Sector 1 within 6 months from the date of this ordinance
Sector 2 within 12 months from the date of this ordinance
Sector 3 within 24 months days from the date of this ordinance

Except as provided herein, Company shall not be required to provide service to remote or isolated areas which do not have at least fifty (50) potential Subscribers per mile of cable within such isolated or remote areas. Company shall not be required to provide service to residents of any multiple dwelling unit in which the owner thereof has granted an exclusive right of access to another cable television operator. Said System shall deem to have been completed when the entire City, except those located in isolated areas or areas described in the preceding sentence, shall have been provided with energized cable capable of providing adequate service. Grantee shall not be responsible for failure to complete the System in the above stated time because of unusual inclement weather conditions, labor strikes, material shortages, or circumstances beyond its control.

Grantee shall collect no money from inhabitants of City until Grantee is ready to render service of this System to said inhabitants.

SECTION 9. RATE REGULATION.

(a) At such time, if and when the Federal Communication Commission ("FCC") permits the City to regulate the rates, charges and fares of Grantee, the City Council shall thereafter have the full power allowed by law and subject to the regulations imposed by the Federal Communications Commission (FCC), and reserves the right, after notice and hearing, to regulate by ordinance the rates, charges and fares of Grantee. Rates shall be subject to adjustment, as provided for herein, so as to permit Grantee to recover its operating expenses, together with a reasonable return on its invested capital. The initial rates to be charged by Grantee are those fixed in Exhibit "B" attached hereto and incorporated herein by reference.

(b) If the City is able under Federal Regulations to control rates and in the event Grantee wishes to request a change in the rates, the following procedure will be followed.

Grantee shall petition City at a regularly scheduled meeting of the governing body and shall notify the Subscribers to the System of the request of the increase by publishing notice of such request in the official paper of City.

City shall call a public hearing on Grantee's request for rate increase. The hearing shall be set within sixty (60) days of the petition being filed. If City decides not to call a public hearing within sixty (60) days, Grantee may increase its basic rate only by seven (7) percent without further City action.

Should City require assistance in evaluation of the rate request, such assistance will be underwritten by Grantee, and such cost shall be recoverable through the additional rates which may be allowed. However, costs incurred by Grantee for the purpose of applying for rate increases shall not be considered as operating expenses; and therefore, shall not be recoverable through additional rates.

Any period of time may be extended for any period by joint agreement of City and Grantee.

SECTION 10. CONDITIONS ON STREET OCCUPANCY.

(a) All transmissions and distributions structures, lines, and equipment erected by Grantee within the City shall be so located as to cause minimum interference with the proper use of Streets, and other 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, or other public ways and places.

(b) In case of disturbance of any Street, sidewalk, public way, or paved area, Grantee shall, at its own cost and expense and in a manner approved by the Director of Streets, replace and restore such Street, sidewalk, public way, or paved area in as good a condition as before the work involving such disturbance was done.

(c) Grantee shall not permit any officer, agent, employee, contractor or subcontractor which it retains to remove or trim, or cause to be removed or trimmed, any tree or portion thereof (either above, at or below ground level), which is located within a Street without the prior written approval of the City Manager or his designee. Such consent may be given or withheld upon such terms and conditions as the City Manager or his designee deems appropriate. Each Grantee shall be responsible for, shall indemnify, defend and hold harmless the City and its officers, agents and employees from and against any and all damages arising out of or resulting from the removal, trimming, mutilation of or any injury to any tree or trees proximately caused by the Grantee or its officers, agents, employees, contractors or subcontractors.

SECTION 11. ERECTION OF POLES.

(a) This Franchise shall not be deemed to expressly or impliedly authorize the Grantee to construct or install poles or wire-holding structures within Streets for the purpose of placing cables, wires, lines or otherwise, without the written consent of the City within which the Street is situated. Such consent shall be given upon such terms and conditions as the City in its sole discretion may prescribe, which shall include a requirement that

the Grantee perform, at its sole expense, all tree trimming required to maintain the poles clear of obstructions.

(b) Grantee and appropriate public utilities shall work together as far as is practicable to ensure that pole, conduits, and other wire-holding structures owned or installed by one of them be utilized by the other so as to minimize the number of such structure within the City.

(c) Any and all poles to be placed shall be of sound material and reasonably straight, and shall be so set and maintained that they will not interfere with the flow of water to any gutter or drain, and so that the same will interfere as little as practicable with the ordinary travel on the Street or sidewalk. Grantee shall comply with City's general design standards and construction specifications and state and federal regulations affecting its installations. Grantee shall comply with all applicable subdivision restrictions, including but not limited to underground placement of facilities. Any proposed installation of Company facilities upon City property, including Streets, must be specifically approved by the City Engineer prior to any work being done. The City Engineer shall use his best efforts to provide space for the Company facilities in the City property. However, Company use of City's property is dependent upon design considerations.

(d) Grantee shall use only new cables and equipment with such shielding and protective devices as may be necessary to insure the best possible service with the least possible interference. In those areas where telephone and electric service lines are underground, the Grantee shall place its cables and service lines underground. In the event Grantee after notice fails or refuses to act, City shall have the power to remove or abate the same at the expense of Grantee, all without compensation or liability for damages from City to Grantee.

(e) Where electric and telephone lines are being installed in a new subdivision within City, Company will use its best efforts to install its cables in such new subdivision at the time the electric and telephone utility lines are installed in the subdivision, such installation of cables to be at Company's expense.

(f) All installations made by Grantee shall be made in good, substantial and safe condition and shall be maintained in such condition at all times.

(g) Any relocation of Company facilities required by the public convenience in order to improve, open, widen, grade or change in any manner, the existing or proposed City Streets, and rights of way or required by improvements of any nature to other

City lands, shall be borne solely by the Company. Any relocation of Company facilities required by the public convenience in order to construct, reconstruct, renew, repair or maintain any City owned utility facility, shall be borne solely by Company.

(h) Nothing in this Ordinance is intended to detract from any authority granted by the Legislature of the State of Texas to City.

SECTION 12. TEMPORARY REMOVAL OF WIRES.

Grantee shall, upon request by any Person holding a building moving permit franchise or other approval issued by the City or State of Texas, temporarily remove, raise or lower its wire to permit the movement of buildings. The expense of such removal, raising or lowering shall be paid by the Person requesting same, and Grantee shall be authorized to require such payment in advance. Grantee shall be given not less than forty-eight (48) hours oral or written notice to arrange for such temporary wire changes.

SECTION 13. STREETS TO BE RESTORED TO GOOD CONDITION.

(a) The surface and all appurtenant structures of any Street, or public place and the trees located thereon within the City disturbed by the Company in building, constructing, renewing or maintaining its Cable and System shall be restored within a reasonable time to as good a condition as before the commencement of the work and maintained to the satisfaction of the City Engineer. No such Street, or public place shall be encumbered for a longer period than shall be necessary to execute the work.

(b) Company and its contractors shall provide such safety barricades, lights and other warning devices in accordance with the Texas Manual on Uniform Traffic Control Devices as are reasonable and necessary to warn the public, upon the Streets, and public places within the City while it is in the process of building constructing, renewing or maintaining its Cable and System, and for such time thereafter as is necessary to restore the Street or other public place.

SECTION 14. FRANCHISE FEE.

For the use of the Streets and for the purposes of providing revenue with which to defray the costs of regulation arising out of the granting of Franchises under this ordinance and promoting, assisting and financing public, educational, and governmental access programming, Grantee shall pay Franchise Fees as follows:

Company agrees to pay to City quarterly during the pendency of this Franchise a sum of money equal to four percent (4%), or

the maximum percentage permitted by the Federal Communications Commission, of the quarterly Gross Revenues Company has received from Subscribers within the corporate limits of the City during the preceding calendar quarter. The first payment hereunder shall be equal in an amount to four percent (4%) of the Gross Revenues from the date of acceptance of this Ordinance through the last day of the first full calendar quarter following acceptance of this Ordinance, and shall be made within sixty (60) days following the last day of the period for which the payment is calculated; and thereafter payment shall be made quarterly, on or before the last day of the second calendar month of each succeeding calendar quarter, as herein provided. Late payments shall bear interest at the maximum amount allowable by law. Notwithstanding the foregoing, Grantee shall not be required to pay Franchise Fees at a rate higher than that collected by City from any other franchised cable television system operator.

SECTION 15. ACCOUNTING STANDARDS.

Not less than annually, Grantee shall provide City with an unqualified certification of an independent certified public accountant certifying the accuracy of the quarterly franchise Fee payments paid within the preceding twelve (12) months pursuant to Section 14 above. Said certification shall be prepared in accordance with generally accepted accounting standards.

SECTION 16. AUDITING AND FINANCIAL RECORDS.

(a) During the term of each Franchise, City may, not more frequently than once each year, conduct an audit of the books, records and accounts of Grantee for the purpose of determining whether Grantee has paid Franchise Fees in the amounts prescribed by Section 14 above. The audit may be conducted by City or by an independent certified public accounting firm retained by City, and shall be conducted at the sole expense of City. The party conducting the audit shall prepare a written report containing its findings, and the report shall be filed with City, and mailed to Grantee.

(b) Grantee shall make available for inspection by authorized representatives of City, its books, accounts, all other financial records and maintenance records at reasonable times and upon reasonable advance notice for the purpose of permitting exercise of the authorities conferred by this Section.

SECTION 17. CO PANY TO PROVIDE UNIFORM SERVICE.

The services furnished by Grantee shall be first class, state of the art services and the same shall be furnished to each Person within reasonable time after demand for such service has been made, upon equal and exact terms for the same class of service.

SECTION 18. INSURANCE.

(a) Grantee shall, at all times during the existence of this Franchise, carry and require its contractors to carry insurance, insuring City and Grantee as follows:

(1) Worker's Compensation Insurance in accordance with the laws of the State of Texas.

(2) Public Liability Insurance, with limits in the amount of \$5,000,000.00 per occurrence. In case City is impleaded in any suit by reason of any alleged act or omission of Grantee, its successors or assigns, City shall be entitled to Judgment over and against Grantee, its successors or assigns, in such amount as may be obtained against City, by reason thereof, provided due written notice is given by Grantee, its successors or assigns, on the filing of said suit, so that proper defense may be made of said action or suit.

(3) Grantee shall defend City against all lawful claims or injury to any Person or property caused by the act of Grantee; more particularly Grantee herein, its successors and assigns, does hereby agree to indemnify and hold harmless City from any and all liability, claim, demand or judgment growing out of any injury to any Person or property as a result of any injury to any Person or property as a result of the violation or failure on the part of Grantee, its successors and assigns, to observe their proper duty or because of negligence in whole or in part arising out of construction, repair, extension, maintenance or operation of its equipment of any kind or character used in connection with this Franchise.

(b) Each policy of insurance shall contain a statement on its face that the insuror will not cancel the policy or fail to renew the policy, whether for nonpayment of premium, or otherwise, and whether at the request of Grantee or for other reasons, except after thirty (30) calendar days advance written notice mailed by the insuror to the City Secretary.

SECTION 19. EMERGENCY AND MUNICIPAL ACCESS.

Grantee shall, as requested by City in each specific instance, provide the use of one or more video and/or audio channels to permit fire, police, civil defense and municipal authorities to make official public service and emergency announcements and programs. Such TV camera equipment, microphones and other essential program organization equipment, if any, shall be maintained at Grantee's control center or

head-end, and such technicians who are normally present at Grantee's control center or head-end at the time of the official public service, emergency, announcement, or program is made, shall be available to such authority or authorities without charge to City.

SECTION 20. SYSTEM CAPABILITIES.

(a) The System will be built to provide for carriage of a maximum of 54 channels as is.

(b) It is further provided that nothing contained herein shall be construed as a "blanket" Franchise; that is, any changes from cable televisions services to additional or different services must be submitted to the Council for approval by ordinance which shall not be unreasonably withheld.

(c) In order that all Subscribers shall receive the best possible service, Company shall install and maintain its System to conform with the high current state of the art and technical development in the field of cable television. Company's System shall meet or exceed all Federal Communications Commission specifications of engineering standards in effect as of the date of the grant of this Franchise and shall comply with all future modifications of these engineering standards. Company shall make provision to update, from time to time, capability of such System as new innovations are developed.

(d) Grantee shall file a complete System map with the City Engineer, updated every twelve months, showing location of Grantees' facilities within the City.

SECTION 21. LOCAL BUSINESS OFFICE AND SERVICE RESPONSE.

Company shall maintain a local business office within City or Carrollton, Texas, for receiving, by local telephone call, inquires or complaints regarding quality of service, equipment malfunctions, billing disputes and similar matters. The office hours are to be from 9:00 A.M. to 5:00 P.M., Monday through Friday, legal holidays excepted. Installations and normal maintenance service shall be performed from 8:30 A.M. to 5:00 P.M., Monday through Friday, legal holidays excepted. Emergency maintenance service shall be required upon receipt of service calls from three or more Subscribers within a reasonably contiguous geographical area. All complaints received shall be recorded on a company log and shall reflect the name, address, account number of Subscriber, the time or date of call, what the complaint is, to whom the service call is assigned, when the service Person received the work order, and when it was completed and what was found. During periods in which emergency service is to be provided, maintenance personnel shall check the log of service calls

at intervals of not less than two or more than three hours. Subscriber complaints involving degraded performance, i.e. snowy picture on one channel, shall be acted upon and resolved as expeditiously as possible and in any event within 48 hours of receipt, barring unforeseen circumstances beyond the control of Company. Company shall provide notice to each Subscriber, at the time of initial subscription and thereafter at intervals of not more than one year, of the procedure for reporting and resolving subscriber complaints.

SECTION 22. SUBSCRIBER TERMINATION OF SERVICES.

Upon termination of service to any Subscriber, Grantee shall promptly remove all of its facilities and equipment which are customarily removable in the cable television industry from the premises of such Subscriber upon his request, without cost to the Subscriber, repairing any damages that may be done in the removal.

SECTION 23. SERVICE INTERRUPTIONS AND CHANNEL DISCONTINUATION.

Except as caused by acts of God, in the event Grantee's service to three or more Persons in one sector, as set forth on Exhibit "A" attached hereto, is interrupted in its entirety for twenty-four (24) or more consecutive hours, Grantee shall pay to the City the sum of One Hundred and no/100 Dollars and no/100 (\$100.00) per incident.

SECTION 24. PERFORMANCE BOND.

(a) Grantee shall file with City within thirty (30) days of acceptance of this ordinance and maintain in full force and effect at all times thereafter until Completion of Construction, cash, a corporate surety bond or letter of credit acceptable to and approved by City to insure performance of construction. Such cash bond or letter shall be in an amount equal to the greater of

(1) Grantee's estimate of the total cost of construction of the System within the Franchise Area, or

(2) Twenty Thousand and no/100 Dollars (\$20,000.00)

(b) Neither the provisions of this section, any bond accepted pursuant thereto, nor any damages recovered thereunder shall be construed to excuse faithful performance by the Grantee or to limit the liability of the Grantee under the Franchise.

SECTION 25. INDEMNIFICATION BY GRANTEE.

(a) Grantee shall, at its sole expense, fully indemnify, defend and hold harmless City, and in their capacity as such, the

officers, agents and employees thereof, from and against any and all claims, suits, actions, liability and judgments for damages or otherwise:

(1) For actual or alleged injury to Persons or property, including loss of use of property, including loss of use of property due to an occurrence, whether or not such property is physically damaged or destroyed, in any way arising out of or through or alleged to arise out of or through the acts or omissions of Grantee or its officers, agents, employees, or contractors or to which Grantee's or its officers, agents, employees or contractors acts or omissions in any way contribute;

(2) Arising out of or alleged to arise out of any claim for damages for invasion of the right of privacy, defamation of any Person, firm or corporation, or the violation or infringement of any copyright, trade mark, trade name, service mark or patent, or of any other right of any Person, firm or corporation; or

(3) Arising out of or alleged to arise out of Grantee's failure to comply with the provisions of any statute, regulation or ordinance of the United States, State of Texas or any local government agency applicable to Grantee in its business.

(b) Nothing herein shall be deemed to prevent the parties indemnified and held harmless herein from participating in the defense of any litigation by their own counsel at Grantee's sole expense. Such participation shall not under any circumstances relieve Grantee from its duty of defense against liability or of paying any judgment entered against such party.

SECTION 26. NON-ENFORCEMENT.

Grantee shall not be relieved of any obligation to comply with any of the provisions of the Franchise or any rule, regulation, requirement or directive promulgated thereunder by reason of any failure of City or its officers, agents or employees to enforce prompt compliance.

SECTION 27. MAINTENANCE OF PLANS WITH CITY.

Company shall maintain a complete set of "as built" plans of the Equipment, which shall be available to City for inspection at all reasonable times. Company shall furnish copies of the same to City within ten (10) days of completion of work on any portion of the System.

SECTION 28. APPLICABLE LAW.

Grantee shall maintain and operate the CATV System according to all pertinent rules and regulations of the Federal Communications Commission or agency having jurisdiction in respect to any matters affecting CATV operations authorized pursuant to this Franchise; provided, however, should City construe any changed law, rule or regulation as impairing the existing obligations of this contract, it may take such legal action deemed necessary to defend the provisions of this contract and Grantee shall pay all expenses of such litigation or administrative appeal, including but not limited to reasonable legal and consultant fees. This ordinance shall be governed by the laws of the State of Texas. Exclusive venue shall be in Dallas County.

SECTION 29. RIGHT OF INSPECTION BY CITY.

City shall have and maintain the right to inspect the construction, operation and maintenance of the System by Grantee to insure the proper performance of the terms of this Franchise.

SECTION 30. DEFAULT.

In the event Company shall fail to perform any of its obligations hereunder or shall be in default under this Franchise and shall fail to correct such failure or default within sixty (60) days after written notice thereof by City (or, if such failure or default is not susceptible of being cured within said 60-day period, unless Company shall commence to cure such failure or default within said 60-day period and shall diligently proceed to completely cure such default or failure), the Franchise may be revoked, terminated or cancelled by City; provided, however, that Company shall not be responsible for any failure to perform due to federal, state or municipal action, statute, ordinance or regulations; strike or other labor trouble, act of God; riot or other civil disturbance; inability to secure materials or supplies, or, without limiting the foregoing, by any other company which hinders or prevents its performance under this Franchise. City may extend the period within which Company shall correct any failure to perform upon application of Company, but for good cause. No revocation of the Franchise shall occur except upon written notice thereof to Company by City and upon public notice and a public proceeding affording due process.

SECTION 31. PERIOD OF FRANCHISE.

The Franchise may be renewed by mutual agreement following a full public proceeding affording due process, during which Company's performance and adequacy of this Ordinance will be reviewed.

SECTION 32. ACTION AFTER EXPIRATION OF TERM OR DEFAULT BY GRANTEE.

At the expiration of the term for which this Franchise is granted, or upon its termination and cancellation, and provided herein, City shall have the right in its sole discretion to exercise one or none of the following options:

(a) Require Grantee to remove at its expense all portions of the CATV System from all Streets and public ways within City to be completed within one year after said termination or cancellation.

(b) Allow the Company to sell the CATV System to an unrelated third party reasonable approved by the City.

(c) Purchase the CATV system for the amount set forth in the bonafide offer described in paragraph (b) provided that if no offer exists, such amount shall be determined by three appraisers appointed as follows: one to be appointed by City; one to be appointed by Grantee and one to be appointed by those two first selected. Payment shall be in cash or other method as agreed by the parties. The appraisers shall determine fair market value by any method they shall deem appropriate. Grantee shall continue to operate the System during one year prior to purchase by City and shall suffer no waste. No value shall be attached to "good will" or for any right or privilege granted by this Franchise.

(d) If notice is given to City within six (6) months of the end of the initial 20-year term or additional terms thereof, grant Grantee an option to continue an additional ten (10) years under this Franchise, provided City determines after public hearing that Grantee's service has been adequate.

SECTION 33. FEEES TO BE PAID BY GRANTEE.

Grantee shall pay City all costs incurred by City in the adopting of this Franchise ordinance, including fees for attorneys employed by City for such purpose. City reserves the right to review the proposed System through the use of a consultant to assure that the System shall be the latest "state of the art" System, provided that the cost of said consultant shall be borne by all franchised cable television system operators within the City.

SECTION 34. NO EXCLUSIVE PRIVILEGES CONFERRED BY THIS ORDINANCE.

Nothing herein contained shall be construed as giving to Company any exclusive privileges.

SECTION 35. SUCCESSORS AND ASSIGNS.

The rights, powers, limitations, duties and restrictions herein provided for shall inure to and be binding upon the parties hereto and upon their respective successors and assigns.

Company shall not sell, assign or transfer the System or any right under this Franchise or transfer control of the stock of Grantee without the prior written consent of City, which consent shall not be unreasonably withheld, and such sale shall be conditioned upon the vendee, assignee or transferee filing with City an instrument duly executed, reciting the fact of such sale, assignment or transfer, and containing an acceptance of the terms of this Franchise and agreeing to perform all of the requirements thereof.

SECTION 36. VIOLATIONS.

(a) From and after the effective date of this ordinance, it shall be unlawful for any Person to construct, install or maintain within any public Street in City, or within any other public property of City, or within any privately-owned area within City which has not yet become a public Street but is designated or delineated as a proposed public Street or any tentative subdivision map approved by City, any equipment or facilities for distribution of any television signals or radio signals through CATV System, unless a Franchise authorizing such use of such Street or property or area has been first obtained, and unless such Franchise is in full force and effect.

(b) It shall be unlawful for any Person, firm or corporation to make any unauthorized connection, whether physically, electrically, acoustically, inductively or otherwise, with any part of the Franchise CATV System within City for the purpose of enabling himself or others to receive any television signal, radio signal, picture, program or sound, without payment to the operator of said System.

(c) It shall be unlawful for any Person, without the consent of the owner, to willfully tamper with, remove or injure any cables, wires, or equipment used for distribution of television signals, radio signals, pictures, programs or sound.

SECTION 37. PENALTIES.

Any Person violating or failing to comply with any of the provisions of Section 36 of this ordinance shall be guilty of a class "C" misdemeanor and for each day of violation or failure to comply may be punished by a fine not to exceed Five Hundred and no/100 Dollars (\$500.00).

SECTION 38. PARTIAL INVALIDITY AND REPEAL PROVISIONS.

If any section, sentence, clause, or phrase of this Ordinance is for any reason held to be illegal, ultra vires or unconstitutional, such invalidity shall not affect the validity of the remaining portions of this Ordinance. All ordinances and

agreements and parts of ordinances and agreements in conflict herewith with the exception of Franchises with other companies are hereby repealed.

SECTION 39. ACCEPTANCE OF AGREEMENT, EFFECTIVE DATE.

Company shall have thirty (30) days from and after the passage and approval of this Ordinance to file its written acceptance thereof with the City Secretary, and upon such acceptance being filed, this Ordinance shall take effect and be in force on SEPTEMBER, 7, 1989, and shall effectuate and make binding the agreement provided by the terms hereof.

TOWN OF ADDISON, TEXAS

BY: 

ATTEST:



City Secretary

EXHIBIT "B"

RATES

(a) Grantee shall not discriminate between the geographical sectors set forth on Exhibit "A" with regards to rates, charges and service.

(b) Grantee may prescribe the following initial rates and charges which shall not be changed during the first year of this Franchise:

Installation charge - first outlet	\$29.95
Installation charge - additional outlets	9.95
Relocation - first outlet	19.95
Reconnect	19.95
Transfer - cabled home to cabled home - first outlet	19.95
Monthly service - first outlet	14.95
Each set top converter furnished first free (Customer may furnish his own converter) and second	3.50
Each wireless remote converter furnished	3.50
Monthly service - additional "TV" outlets	3.50

DEPOSITS

Set top \$25.00 refundable deposit
Wireless Remote \$40.00 refundable deposit

OPTIONAL MOVIE CHANNELS

Monthly service (includes all cable sets):

Home Box Office/Showtime/The Movie Channel/Cinemax	9.75 each
Disney/Home Sports Entertainment	9.95 each

ACCEPTANCE

WHEREAS, the City Council of the Town of Addison, Texas, did on the 8th day of August, 1989, enact an Ordinance entitled:

AN ORDINANCE OF THE TOWN OF ADDISON, TEXAS, GRANTING A FRANCHISE TO PLANNED CABLE SYSTEMS (PCS) TO OPERATE AND MAINTAIN A CABLE COMMUNICATIONS SYSTEM IN THE TOWN; SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OF FRANCHISE, PROVIDING FOR CITY REGULATION AND ADMINISTRATION OF THE CABLE COMMUNICATIONS SYSTEM; PROVIDING FOR METHOD OF ACCEPTANCE; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL; PROVIDING FOR PENALTIES; AND PROVIDING AN EFFECTIVE DATE.

and

WHEREAS, said Ordinance was on the 8th day of August, 1989, duly approved by the Mayor of said City and the seal of said City was thereto affixed and attested by the City Secretary;

NOW THEREFORE, in compliance with the terms of said Ordinance as enacted, approved and attested, Planned Cable Systems hereby accepts said Ordinance and files this its written acceptance with the City Secretary of the Town of Addison, Texas, in her office.

Dated this 5th day of September, 1989.

PLANNED CABLE SYSTEMS

By Jim G. Taylor vice Pres.
Cablevision Monocomb Inc.
Title General Partner

ATTEST:

C. MORAN

Acceptance filed in the office of the City Secretary of Addison, Texas, this 5th day of September, 1989.

C. MORAN
City Secretary

Published
8-31-89

