

ORDINANCE NO. 284

AN ORDINANCE GRANTING A THREE (3) YEAR NON-EXCLUSIVE FRANCHISE TO OPERATE AND MAINTAIN A CABLE TELEVISION SYSTEM WITHIN THE INCORPORATED AREAS OF GREENLAND, ARKANSAS, AND SETTING FORTH CONDITIONS ACCOMPANYING THE GRANTING OF THIS FRANCHISE”.

WHEREAS, on May 13, 1991, the City Council for the City of Greenland, Arkansas, passed Ordinance No. 124, which granted a new franchise to Warner Cable Communications Inc., to operate a cable television system within the City of Greenland, Arkansas, and which superseded and nullified all such previous franchises and amendments thereto;

WHEREAS, a three year extension of Ordinance No. 124 was granted June 12, 2006 by Ordinance No. 244.

WHEREAS, the City of Greenland, Arkansas, has determined that granting Cox Communications, Inc., a three (3) year franchise to operate and maintain a cable system within Greenland is in the best interest of the citizens and residents of the City of Greenland, Arkansas;

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL FOR THE CITY OF GREENLAND, ARKANSAS:

Section 1. That the Franchise Agreement attached hereto should and hereby is approved and ratified effective the 14 day of May, 2009, and expiring on the 14th day of May, 2012.

Section 2. This Ordinance shall take effect and be in force from and after its passage and publication as required by law.

PASSED AND APPROVED this 8th day of June, 2009.

John Gray
JOHN GRAY, Mayor

ATTEST:

Donna Cheevers
DONNA CHEEVERS, Recorder-Treasurer

FRANCHISE AGREEMENT

This Franchise Agreement ("Franchise") is between the City of Greenland, Arkansas, hereinafter referred to as "Franchising Authority," and CoxCom, Inc., d/b/a Cox Communications, hereinafter referred to as "Grantee."

The Franchising Authority, having determined that the financial, legal, and technical ability of the Grantee is reasonably sufficient to provide services, facilities, and equipment necessary to meet the future cable-related needs of the community, and having afforded the public adequate notice and opportunity for comment, desires to enter into this Franchise Agreement with the Grantee for the construction and operation of a Cable System on the terms set forth herein.

SECTION 1 Definition of Terms

1.1 Terms. For the purpose of this Franchise, the following terms, phrases, words, and abbreviations shall have the meanings ascribed to them below. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number. The words "shall" and "will" are mandatory, and the word "may" is permissive.

- A. "Basic Cable" means the lowest priced tier of Cable Service that includes the retransmission of local broadcast television signals.
- B. "Cable Act" means Title VI of the Communications Act of 1934, as amended by the Cable Communications Policy Act of 1984, by the Cable Television Consumer Protection and Competition Act of 1992, and by the Telecommunications Act of 1996, and as the same may be further amended from time to time.
- C. "Cable Services" means (A) the one-way transmission to Subscribers of (i) video programming, or (ii) other programming service, and (B) Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.
- D. "Cable System" means a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes video programming and which is provided to multiple Subscribers within a community, but such term does not include (A) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (B) a facility that serves Subscribers without using any Public Way; (C) a facility of a common carrier which is subject, in whole or in part, to the provisions of title II of the Cable Act, except that such facility shall be

considered a Cable System (other than for purposes of Section 621(c)) to the extent such facility is used in transmission of video programming directly to Subscribers unless the extent of such use is solely to provide interactive on-demand services; (D) an open video system that complies with Section 653 of title VI of the Cable Act; or (E) any facilities of any electric utility used solely for operating its electric utility system.

- E. "FCC" means the Federal Communications Commission, or successor governmental entity thereto.
- F. "Franchise" means the initial authorization, or renewal thereof (including a renewal of an authorization which has been granted subject to section 626 of the Cable Act), issued by the Franchising Authority, whether such authorization is designated as a franchise, permit, license, resolution, contract, certificate, agreement or otherwise, which authorizes the construction and operation of the Cable System.
- G. "Franchising Authority" means the City of Greenland, Arkansas or the lawful successor, transferee, or assignee thereof.
- H. "Grantee" means CoxCom, Inc., d/b/a Cox Communications, or the lawful successor, transferee, or assignee thereof.
- I. "Gross Revenues" mean any subscriber revenues received by the Grantee for charges for Cable Services provided to Subscribers in the Service Area. Gross Revenues shall be calculated and reported based on generally accepted accounting principles (GAAP). Gross Revenues shall not include: (i) any fees or taxes which are imposed directly or indirectly on any Subscriber thereof by any governmental unit or agency and which are collected by the Grantee on behalf of such governmental unit or agency, including without limitation the franchise fee required by Section 4.1 hereof; (ii) any tax, fee, or assessment of any kind imposed by the Franchising Authority or other governmental entity on a cable operator, or Subscriber, or both, solely because of their status as such, including a tax, fee or assessment of general applicability which is unduly discriminatory against cable operators or Subscribers); (iii) any other special tax, assessment, or fee such as a business, occupation, and entertainment tax; (iv) any fee for the recovery of costs incurred to collect late payments for Cable Services; (v) net unrecovered bad debt (vi) revenues from commercial advertising; (vii) sales to the Grantee's subscribers by programmers of home shopping services and (viii) reimbursements paid by programmers for launch fees or marketing expense.
- J. "Person" means an individual, partnership, association, joint stock company, trust, corporation, limited liability company or governmental entity.
- K. "Public Way" shall mean the surface of, and the space above and below, any public street, highway, freeway, bridge, land path, alley, court, boulevard, sidewalk,

parkway, way, lane, public way, drive, circle, or other public right-of-way, including, but not limited to, public utility easements, dedicated utility strips, or rights-of-way dedicated for compatible uses and any temporary or permanent fixtures or improvements located thereon now or hereafter held by the Franchising Authority in the Service Area which shall entitle the Franchising Authority and the Grantee to the use thereof for the purpose of installing, operating, repairing, and maintaining the Cable System. Public Way shall also mean any easement now or hereafter held by the Franchising Authority within the Service Area for the purpose of public travel, or for utility or public service use dedicated for compatible uses, and shall include other easements or rights-of-way as shall within their proper use and meaning entitle the Franchising Authority and the Grantee to the use thereof for the purposes of installing, operating, repairing and maintaining the Grantee's Cable System over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments, power supplies, network reliability units and other property as may be necessary or pertinent to the Cable System.

- L. "Service Area" means the present municipal boundaries of the Franchising Authority, and shall include any additions thereto by annexation or other legal means, subject to the exceptions in Section 3.8.
- M. "Subscriber" means a Person who lawfully receives Cable Services of the Cable System with the Grantee's express permission.

SECTION 2 Grant of Franchise

2.1 Grant. The Franchising Authority hereby grants to the Grantee a nonexclusive Franchise which authorizes the Grantee to construct and operate a Cable System in, along, among, upon, across, above, over, under, or in any manner connected with Public Ways within the Service Area, and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain, or retain in, on, over, under, upon, across, or along any Public Way and all extensions thereof and additions thereto, such poles, wires, cables, conductors, ducts, conduits, vaults, manholes, pedestals, amplifiers, appliances, attachments, power supplies, network reliability units and other related property or equipment as may be necessary or appurtenant to the Cable System. Nothing in this Franchise shall be construed to prohibit the Grantee from offering any service over its Cable System that is not prohibited by federal or state law.

2.2 Other Ordinances. The Grantee agrees to comply with the terms of any lawfully adopted generally applicable local ordinance, to the extent that the provisions of the ordinance do not have the effect of limiting the benefits or expanding the obligations of the Grantee that are granted by this Franchise. Neither party may unilaterally alter the material rights and obligations set forth in this Franchise. In the event of a conflict between any ordinance and this Franchise, this Franchise shall control.

2.3 Equal Protection. The right to use and occupy the Franchising Authority's Public Ways for the purpose herein provided shall not be exclusive; provided, however, that no Person shall enter into the Franchising Authority's Public Ways for the purpose of constructing or operating a Cable System or other network, or for the purpose of providing Cable Service or other video programming service to any part of the Service Area, including by means of an "open video system" (as such term is defined in the Cable Act), without first obtaining a Franchise, permit, license, authorization or other agreement from the Franchising Authority. In the event the Franchising Authority authorizes or permits any Person other than the Grantee to enter into the Franchising Authority's Public Ways for the purpose of constructing or operating a Cable System or other network, or for the purpose of providing Cable Service or other video programming service to any part of the Service Area, including by means of an "open video system" (as such term is defined in the Cable Act), the material provisions thereof shall be reasonably comparable to those contained herein, and the obligations imposed on the grantee thereunder shall be no less burdensome nor more favorable than the obligations imposed upon the Grantee hereunder, in order that one operator not be granted an unfair competitive advantage over another, and to provide all parties equal protection under the law.

2.4 Term. The Franchise granted hereunder shall be for an initial term of three (3) years commencing on the effective date of the Franchise as set forth below, unless otherwise lawfully terminated in accordance with the terms of this Franchise.

SECTION 3 Standards of Service

3.1 Conditions of Occupancy. The Cable System installed by the Grantee pursuant to the terms hereof shall be located so as to cause a minimum of interference with the proper use of Public Ways and with the rights and reasonable convenience of property owners who own property that adjoins any of such Public Ways.

3.2 Restoration of Public Ways. If during the course of the Grantee's construction, operation, or maintenance of the Cable System there occurs a disturbance of any Public Way by the Grantee, the Grantee shall replace and restore such Public Way to a condition reasonably comparable to the condition of the Public Way existing immediately prior to such disturbance.

3.3 Relocation at Request of the Franchising Authority. Upon its receipt of reasonable advance written notice, not to be less than five (5) business days, the Grantee shall protect, support, raise, lower, temporarily disconnect, relocate in or remove from the Public Way, as necessary, any property of the Grantee when lawfully required by the Franchising Authority by reason of traffic conditions, public safety, street abandonment, freeway and street construction, change or establishment of street grade, installation of sewers, drains, gas or water pipes, or any other type of public structures or improvements which are not used to compete with the Grantee's services. The Grantee shall in all cases have the right of abandonment of its property. Such removal or relocation shall be paid for by Grantee; provided, however, that Grantee shall have substantially the same obligations with respect to the cost of such relocation as all other users of the public rights-of-way. If any portion of the removal or relocation costs of the other right-of-

way users is being borne by a non-public entity, that City will work with Grantee and such non-public entity to ensure that such non-public entity bears the cost of removal or relocation of Grantee's facilities to the same extent that it is covering such costs of removal or relocation of the facilities of other users of the right-of-way. If any portion of the City project is being funded, repaid or reimbursed by any non-public entity, the cost of removal or relocation of Grantee's facilities shall be borne by the source of the non-public funds in the same ratio as the non-public funds bear to the total project cost. To the extent that public funds are available to compensate utilities and other affected rights-of-way users for the costs of such location, Grantee shall be entitled to receive such funds on an equal basis with all other utilities and users.

3.4 Relocation at Request of Third Party. The Grantee shall, on the request of any Person holding a lawful building moving permit issued by the Franchising Authority, protect, support, raise, lower, temporarily disconnect, relocate in or remove from any Public Way, as necessary, any property of the Grantee, provided: (a) the expense of such is paid by said Person benefiting from the relocation, including, if required by the Grantee, making such payment in advance; and (b) the Grantee is given reasonable advance written notice to prepare for such changes. For purposes of this Section, "reasonable advance written notice" shall be no less than ten (10) business days in the event of a temporary relocation, and no less than one hundred twenty (120) days for a permanent relocation.

3.5 Trimming of Trees and Shrubbery. The Grantee shall have the authority to trim trees or other natural growth in order to access and maintain the Cable System.

3.6 Safety Requirements. Construction, operation, and maintenance of the Cable System shall be performed in an orderly and workmanlike manner. All such work shall be performed in substantial accordance with applicable federal, state, and local regulations and the National Electric Safety Code. The Cable System shall not unreasonably endanger or interfere with the safety of Persons or property in the Service Area.

3.7 Aerial and Underground Construction.

A. In those areas of the Service Area where all of the transmission or distribution facilities of the respective public utilities providing telephone communications and electric services are underground, the Grantee likewise shall construct, operate, and maintain all of its transmission and distribution facilities underground; provided that such facilities are actually capable of receiving the Grantee's cable and other equipment without technical degradation of the Cable System's signal quality. In those areas of the Service Area where the transmission or distribution facilities of the respective public utilities providing telephone communications, and electric services are both aerial and underground, the Grantee shall have the sole discretion to construct, operate, and maintain all of its transmission and distribution facilities, or any part thereof, aerially or underground. Nothing contained in this Section shall require the Grantee to construct, operate, and maintain underground any ground-mounted appurtenances such as Subscriber taps, line extenders, system passive devices (splitters, directional couplers), amplifiers, power supplies, network reliability units, pedestals, or other related equipment.

B. Notwithstanding anything to the contrary contained in this Section, in the event that all of the transmission or distribution facilities of the respective public utilities providing telephone communications and electric services are placed underground after the effective date of this Franchise, the Grantee shall only be required to construct, operate, and maintain all of its transmission and distribution facilities underground if it is given reasonable notice and access to the public utilities' facilities at the time that such are placed underground.

C. The Franchising Authority shall provide the Grantee with written notice of the issuance of building or development permits for planned commercial/residential developments within the Service Area requiring undergrounding of cable facilities. The Franchising Authority agrees to require as a condition of issuing any permit for open trenching to any utility or developer, that the utility or developer give the Grantee reasonable access to open trenches for deployment of cable facilities and written notice of the date of availability of trenches. Such notice must be received by the Grantee at least ten (10) business days prior to availability.

3.8 Required Extensions of Service. The Grantee agrees to provide Cable Service to all residences in the Service Area, subject to the density requirements specified in this Section. Whenever the Grantee receives a request for Cable Service from a potential Subscriber in a contiguous unserved area where there are at least forty (40) residences within one (1) mile from the portion of the Grantee's trunk or distribution cable which is to be extended, the Grantee shall extend its Cable System to such Subscribers at no cost to said Subscribers for the Cable System extension, other than the applicable installation charge; provided that such extension is technically feasible, and will not adversely affect the operation, financial condition, or market development of the Cable System. Notwithstanding the foregoing, the Grantee shall have the right, but not the obligation, to extend the Cable System into any newly-annexed area which is not contiguous to the present Service Area of the Grantee, or into any area which is financially or technically infeasible due to extraordinary circumstances, such as a runway or freeway crossing. Grantee shall not be required to offer Cable Service to individual units of a multiple dwelling unit (MDU) facility within the Service Area unless the owner of the facility consents in writing to the following: (i) to Grantee's providing of Cable Service to individual units of the facility; (ii) to reasonable conditions and times for installation, maintenance, and inspection of the portion of the Cable System on the facility premises; (iii) to reasonable conditions promulgated by Grantee to protect Grantee's equipment and to encourage widespread use of the Cable System; and (iv) to not demand or accept payment from Grantee for permitting Grantee to provide Cable Service to the facility and to not discriminate in rental charges, or otherwise, between tenants who receive Cable Service from the Grantee and those who do not.

3.9 Subscriber Charges for Extensions of Service. If a potential Subscriber resides in an area that does not meet the density requirements of Section 3.8 above, the Grantee shall only be required to extend the Cable System if the Subscribers in that area are willing to share the capital costs of extending the Cable System by making a capital contribution in aid of construction, including cost of material, labor, and easements. Specifically, the Grantee shall contribute a capital amount equal to the construction cost per mile, multiplied by a fraction whose numerator equals the actual number of residences per mile of its trunk or distribution cable, and whose denominator equals 40. Subscribers who request service hereunder shall bear the remaining

construction costs on a *pro rata* basis. The Grantee may require that the payment of the capital contribution in aid of construction borne by such potential Subscribers be paid in advance. Subscribers shall also be responsible for any applicable installation charges to extend the Cable System from the tap to the residence.

3.10 Emergency Use. The Grantee shall comply with the applicable rules and regulations of the FCC regarding emergency alert systems (47 C.F.R. Part 11). If the Grantee provides an Emergency Alert System ("EAS"), then the Franchising Authority shall permit only appropriately trained and authorized Persons to operate the EAS equipment and shall take reasonable precautions to prevent any use of the Grantee's Cable System in any manner that results in inappropriate use thereof, or any loss or damage to the Cable System. Except to the extent expressly prohibited by law, the Franchising Authority shall hold the Grantee, its employees, officers and assigns harmless from any claims arising out of the Franchising Authority's use of the EAS, including, but not limited to, reasonable attorneys' fees and costs.

3.11 Discrimination Prohibited. Grantee shall not, because of age, race, creed, color, national origin, or sex, unlawfully (i) refuse to hire or employ, (ii) bar or discharge from employment, or (iii) discriminate against any person in terms, conditions or privileges of employment.

SECTION 4

Regulation by the Franchising Authority

4.1 Franchise Fee.

A. The Grantee shall pay to the Franchising Authority a franchise fee equal to five percent (5%) of Gross Revenues (as defined in Section 1.1 of this Franchise), on a quarterly basis. The franchise fee payment shall be due and payable forty-five (45) days after the close of the preceding calendar quarter. The franchise fee payable hereunder shall be paid and received in lieu of any tax, license, charge, fee or any other character of charge for use and occupancy of the Public Ways.

B. The period of limitation for recovery of any franchise fee payable hereunder shall be three (3) years from the date on which payment by the Grantee is due. Upon request, Cox shall make their financial records relevant to the provision of cable service in the franchise area available to the City to demonstrate compliance with this section for a period of up to but no more than three(3) years preceding the request.

4.2 Rates and Charges.

A. The Franchising Authority may regulate rates for the provision of Basic Cable and equipment as expressly permitted by applicable law.

B. The Grantee may charge a fee for the recovery of costs incurred to collect late payments for Cable Services if the following conditions have been met:

- (1) The Subscriber's bill sets forth when the fee will be assessed;
- (2) The fee is not assessed any earlier than the tenth (10th) day after the due date as reflected on the Subscriber's bill; and
- (3) The bill sets forth the amount of the fee.

Any fee imposed by the Grantee that does not exceed \$8.00 in 2007 dollars (as adjusted annually for inflation based on the Consumer Price Index) shall be presumed reasonable to cover the costs associated with the delinquent payment. The assessment of a fee pursuant to this Section shall not be construed as a limitation on the Grantee's right to charge any other lawful fees or charges.

4.3 Renewal of Franchise.

A. The Franchising Authority and the Grantee agree that any proceedings undertaken by the Franchising Authority that relate to the renewal of the Grantee's Franchise shall be governed by and comply with the provisions of Section 626 of the Cable Act.

B. Notwithstanding anything to the contrary set forth in this Section, the Grantee and the Franchising Authority agree that at any time during the term of the then-current Franchise, while affording the public appropriate notice and opportunity to comment, the Franchising Authority and the Grantee may agree to undertake and finalize informal negotiations regarding renewal of the then-current Franchise and the Franchising Authority may grant a renewal thereof.

C. The Grantee and the Franchising Authority consider the terms set forth in this Section to be consistent with the express provisions of Section 626 of the Cable Act.

4.4 Transfer of Franchise. The Grantee's right, title, or interest in the Franchise shall not be sold, transferred, assigned, or otherwise encumbered, other than to an entity controlling, controlled by, or under common control with the Grantee, without the prior consent of the Franchising Authority, such consent not to be unreasonably withheld. No such consent shall be required, however, for a transfer in trust, by mortgage, by other hypothecation, or by assignment of any rights, title, or interest of the Grantee in the Franchise or Cable System in order to secure indebtedness. Within thirty (30) days after receiving the request for transfer, the Franchising Authority shall notify the Grantee in writing of any additional information it reasonably requires to determine the legal, financial and technical qualifications of the transferee. If the Franchising Authority has not taken action on the Grantee's request for transfer within one hundred twenty (120) days after receiving such request, consent by the Franchising Authority shall be deemed given.

SECTION 6