

ORDINANCE NO. 003-98

AN ORDINANCE GRANTING A FRANCHISE TO FRIENDSHIP CABLE OF TEXAS, INC., A TEXAS CORPORATION, ITS SUCCESSORS AND ASSIGNS, TO BUILD, CONSTRUCT, OPERATE AND MAINTAIN A CABLE TELEVISION SYSTEM IN THE CITY OF DELEON, TEXAS, AND SETTING FORTH CONDITIONS ACCOMPANYING THE GRANTING OF THIS FRANCHISE;

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF DELEON, TEXAS, THAT:

SECTION 1--TITLE

This ordinance shall be known and may be cited as the City of DeLeon CATV Franchise Ordinance ("Franchise").

SECTION 2--DEFINITIONS

For the purpose of this Ordinance, and when not inconsistent with the context, words used herein in the present tense include the future; words in plural include the singular, and vice versa. The word "shall" is always mandatory. The captions supplied herein for each section are for convenience only. Said captions have no force of law, are not part of the section, and are not to be used in construing the language of the section. The following terms and phrases, as used herein, shall be given the meaning set forth below:

(A) "Cable Service" is any service tier which includes the retransmission of local television signals and any service tier that includes satellite delivered cable programming services.

(B) "Cable television system" or "CATV System" or "cable system" is a facility consisting of a set of closed transmission paths and associated signal generation, reception and control equipment designed to provide video and other programming and information

to subscribing members of the public.

(C) "City" is the City of DeLeon, a municipal corporation under the laws of the State of Texas.

(D) "Grantee" is Friendship Cable of Texas, Inc., a corporation organized and existing under the laws of the State of Texas, and it is the grantee of rights under this Franchise.

(E) "City Council" is the City Council of the City of DeLeon, Texas.

(F) "Federal Communications Commission" or "FCC" is the present Federal agency of that name as constituted by the Communications Act of 1934, or any successor agency created by the United States Congress.

(G) "Person" is any individual, firm, partnership, association, corporation, company or organization of any kind.

(H) "Gross Annual Subscriber Revenues" shall include all receipts derived by Grantee from charges for Cable Service or any other service provided pursuant to the terms of this Franchise or applicable laws, within the City. It shall not include bad debt or any refunds or credits made to subscribers or any taxes imposed upon the services furnished by Grantee.

SECTION 3--GRANT OF AUTHORITY

There is hereby granted by the City to Grantee the right and privilege to construct, erect, operate and maintain in, upon, along, across, above, over, or under the streets, alleys, public utility easements, public ways and public places now laid out or dedicated and all extensions thereof and additions thereto in the City, all poles, wires, cables, underground

conduits, manholes and other conductors and fixtures necessary for the maintenance and operation in the City of a cable television system for the transmission of television signals either separately or upon or in conjunction with any public utility maintaining the same in the City, with all of the necessary and desirable appliances and appurtenances pertaining thereto. Without limiting the generality of the foregoing, this Franchise and grant shall and does hereby include the right in, over, under and upon the streets, sidewalks, alleys, public utility easements and public grounds and places in the City to install, erect, operate or in any way acquire the use of, as by leasing or licensing, all lines and equipment necessary to a cable television system and the right to make connections to subscribers and the right to repair, replace, enlarge and extend said lines, equipment and connections. The rights herein granted for the purposes set forth shall not be exclusive, and the City reserves the right to grant a similar use of said streets, alleys, public utility easements, public ways and places to any person at any time during the period of this Franchise.

SECTION 4--POLICE POWERS

Grantee shall at all times during the term of this Franchise be subject to all lawful exercise of the police power of the City. The right is hereby reserved to the City to adopt, in addition to the provisions herein contained and any other existing applicable ordinances, such additional applicable ordinances as it shall find necessary in the exercise of its police power; provided, however, that such additional ordinances shall be reasonable, shall not conflict with or alter in any manner the rights granted herein, and shall not conflict with the laws of the State of Texas or the United States of America.

SECTION 5--INDEMNIFICATION

Grantee shall save the City, its officers, agents and employees harmless from all loss sustained by the City on account of any suit, judgment, execution, claim or demand whatsoever against the City resulting from negligence on the part of Grantee in the construction, operation or maintenance of its cable television system in the City; and for this purpose Grantee shall carry property damage and personal injury insurance with some responsible insurance company or companies qualified to do business in the State of Texas. The amounts of such insurance to be carried for liability due to property damage shall be \$500,000 as to any occurrence; and against liability due to injury to or death of person, \$500,000 as to any one person and \$1,000,000 as to any one occurrence. The City shall notify Grantee, in writing, within ten (10) days after the presentation of any claim or demand, either by suit or otherwise, made against the City on account of any negligence as aforesaid on the part of Grantee. Where any such claim or demand against the City is made by suit or other legal action, written notice thereof shall be given by the City to Grantee not less than five (5) days prior to the date upon which an answer to such legal action is due or within ten (10) days after the claim or demand is made upon the City, whichever notice period yields Grantee the larger amount of time within which to prepare an answer. Failure by the City to notify Grantee properly in accordance with the foregoing of any such claim, suit, or demand against the City shall, to the extent of any liability or damages resulting from the failure to timely provide such notice, release Grantee from its obligation to indemnify the City as provided herein.

SECTION 6--CONSTRUCTION AND MAINTENANCE

(A) All 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, alleys, public utility easements and other public ways and places and to cause minimum interference with the rights of reasonable convenience of property owners, and Grantee shall comply with all reasonable, proper and lawful ordinances of the City now or hereafter in force. Existing poles, posts, conduits, and other such structures of electric power system, telephone company, or other public utility located in the City shall be made available to Grantee for leasing or licensing upon reasonable terms and rates and shall be used to the extent practicable in order to minimize interference with travel and avoid unnecessary duplication of facilities. The City shall reasonably assist Grantee in obtaining reasonable joint pole or conduit use agreements from the owners of existing poles or conduits. To the extent that existing poles, posts, conduits, and other such structures are not available, or are not available under reasonable terms and conditions, including excessive cost or unreasonable limitation upon the use of Grantee's cable television system, Grantee shall have the right to purchase, lease, or in any other manner acquire land, rights-of-way, or public utility easements upon or under which to erect and maintain its own poles, conduits, and other such structures as may be necessary for the construction and maintenance of its cable television system.

(B) In case of any disturbance by Grantee of pavement, sidewalk, driveway or other surfacing, Grantee shall, at its own cost and expense and in a manner approved by the City, replace and restore all paving, sidewalk, driveway or surface so disturbed in as good condition as before said work was commenced.

(C) In the event that at any time during the period of this Franchise the City shall lawfully elect to alter or change any street, alley, public utility easement, or other public way requiring the relocation of Grantee's facilities, then in such event Grantee, upon reasonable notice by the City shall remove, relay and relocate the same at its own expense; provided, however, that where public funds are available for such relocation pursuant to law, Grantee shall not be required to pay the cost.

(D) Grantee shall, on the request of any person holding a building moving permit issued by the City, temporarily raise or lower its lines to permit the moving of the building. The expense of such temporary removal shall be paid by the person requesting the same, and Grantee shall have the authority to require such payment in advance.

(E) Grantee shall have the authority to trim trees and/or shrubs upon and/or overhanging all streets, alleys, public utility easements, sidewalks and public places of the City so as to prevent the branches of such from coming into contact with Grantee's facilities.

(F) All poles, lines, structures and other facilities of Grantee in, on, over and under the streets, sidewalks, alleys, public utility easements and public grounds or places of the City shall be kept by Grantee at all times in a safe and substantial condition. All equipment, lines, poles, structures, cables and other facilities installed in the City as being a part of Grantee's distribution system, up to and including that part of the system installed within the individual residences or commercial buildings of the City, shall remain the sole property of Grantee, unless so otherwise stated.

(G) Grantee shall extend its distribution system so as to service the people within the franchise area. However, Grantee shall not be required to extend such distribution

system to any potential subscriber who is located in an isolated area from the main trunk system, unless Grantee can be guaranteed a fair rate of return as per industry standards by those subscribers who request the extension of the distribution system into such areas.

(H) Grantee shall rebuild its CATV System to a minimum channel capacity of sixty (60) channels within 18 months of the effective date of this Franchise.

SECTION 7--CUSTOMER SERVICE STANDARDS

(A) The Grantee will maintain a local, toll-free or collect call telephone access line which will be available to customers 24 hours a day, seven days a week. Trained representatives of the Grantee will be available to respond to customers telephone inquiries during Normal Business Hours, as defined herein. After Normal Business Hours, an access line will be available to be answered by a service or an automated response system, including a phone answering system. Inquiries received after Normal Business Hours must be responded to by a trained representative of the Grantee on the next business day.

(B) Under Normal Operating Conditions, as defined herein, telephone answer time by a customer representative, including wait time, will not exceed 30 seconds when the connection is made. If the call needs to be transferred, transfer time will not exceed 30 seconds. These standards will be met no less than 90 percent of the time under Normal Operating Conditions, as measured by the Grantee on a quarterly basis.

(C) The Grantee shall not be required to acquire equipment or perform surveys to measure compliance with the telephone answering standards set forth above unless an historical record of complaints indicates a clear failure to comply with such standards.

(D) Under Normal Operating Conditions, the customer will receive a busy signal less than 3 percent of the time.

(E) Under Normal Operating Conditions, each of the following four standards will be met no less than 95 percent of the time, as measured by the Grantee on a quarterly basis:

(1) Standard installations will be performed within seven business days after an order has been placed. "Standard" installations are those that are located up to 125 feet from the existing distribution system.

(2) Excluding conditions beyond its control, the Grantee will begin working on Service Interruptions, as defined herein, promptly and in no event later than 24 hours after the interruption becomes know. The Grantee will begin actions to correct other service problems the next business day after notification of the service problem.

(3) The Grantee will provide "appointment window" alternatives for installations, service calls, and other installation activities, which will be either a specific time or, at maximum, a four-hour time block during Normal Business Hours.

(4) The Grantee shall not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment.

(F) If a representative of the Grantee is running late for an appointment with the customer and will not be able to keep the appointment as scheduled, the customer will be contacted. The appointment will be rescheduled, as necessary, at a time which is convenient for the customer.

(G) The Grantee shall provide written information on each of the following areas at the time of installation of service, at least annually to all customers, and at any time upon request:

(1) products and services offered;

- (2) prices and options for services and conditions of subscription to programming and other services;
- (3) installation and service maintenance policies;
- (4) instructions on how to use the service;
- (5) channel positions of programming carried on the Cable System: and
- (6) billing and complaint procedures, including the address and telephone number of the cities cable office.

(H) Customers will be notified of any changes in rates, programming services or channel positions as soon as possible through announcements on the Cable System and in writing. Notice will be given to customers a minimum of 30 days in advance of such changes if the change is within the control of the Grantee. In addition, the Grantee shall notify customers 30 days in advance of any significant changes in the other information required by the preceding paragraph.

(I) Bills will be clear, concise and understandable. Bills will be fully itemized, with itemizations including, but not limited to, basic and premium service charges and equipment charges. Bills will also clearly delineate all activity during the billing period, including optional charges, rebates and credits. In case of a billing dispute, the Grantee will respond to a written complaint from a customer within 30 days from receipt of the complaint.

(J) Refund checks will be issued promptly, but no later than either (i) the customers next billing cycle following resolution of the request or 30 days, whichever is earlier, or (ii) the return of the equipment supplied by the Grantee if service is terminated.

(K) Credits for service will be issued no later than the customers next billing cycle following the determination that a credit is warranted.

(L) Definitions - For purposes of this Section, the following definitions shall apply:

(1) Normal Business Hours - The term "Normal Business Hours" means those hours during which most similar businesses in the community are open to serve customers. The Grantee will notify its customers and the City of its Normal Business Hours.

(2) Normal Operating Conditions - The term "Normal Operating Conditions" means those service conditions which are within the control of the Grantee. Those conditions which are not within the control of the Grantee include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Those conditions which are ordinarily within the control of the Grantee include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of the Cable System.

(3) Service Interruption - The term "service interruption" means the loss of picture or sound on one or more channels.

SECTION 8--APPLICABLE LAW

This Franchise is governed by and subject to all applicable rules, regulations and policies of the Federal Communications Commission and the laws of the State of Texas.

SECTION 9--FRANCHISE TERM

This Franchise shall take effect and be in full force from and after acceptance by Grantee, as provided in Section 15, herein, and shall continue in full force and effect for a term of fifteen years (15) years.

SECTION 10--RENEWAL PROCEDURE

This Franchise may with the approval of the City Council be renewed for an additional term or terms as found in the public interest. The City and the Grantee agree that any proceedings undertaken by the City 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, as amended; provided this Franchise may be renewed by ordinance only; and it shall be the responsibility of both the City and the Grantee to give notice to the other of the Section 626 procedural requirements..

SECTION 11 — ENFORCEMENT AND TERMINATION OF FRANCHISE

(A) In the event that the City Council believes that the Grantee has not complied with the terms of the Franchise, it shall notify the Grantee in writing of the exact nature of the alleged noncompliance. The Grantee shall have thirty (30) days from receipt of the notice: (a) to respond to the City Council, contesting the assertion of noncompliance, or (b) to cure such default, or (c) in the event that, by the nature of default, such default cannot be cured within the 30-day period, initiate reasonable steps to remedy such default and notify the City Council of the steps being taken and the projected date that they will be completed.

(B) In the event that the Grantee fails to respond to the notice described in Paragraph A above or in the event that the alleged default is not remedied within thirty (30) days of the date of receipt of notice, the City Council shall schedule a public hearing to investigate the default. Such public hearing shall be held at a meeting of the City Council which is scheduled at a time which is no less than five business days therefrom. The City Council shall notify the Grantee in writing of the time and place of such meeting and provide the Grantee with an opportunity to be heard. If, at such meeting, Grantee shall show and establish that steps are being taken to remedy

the default in a timely manner; such default could not have been reasonably cured within the thirty (30) days; such default did not result from the neglect or breach of this Franchise by Grantee; Grantee will proceed in a timely and continuous manner to cure such default; the reasonable time period required to cure such default; and that the default will be cured by a specific date within such reasonable time period; the City shall extend the time for cure of the default.

(C) Subject to applicable federal and state law, in the event the City Council, after such meeting, determines that the Grantee is in substantial default of a material provision of the Franchise, the City Council may declare the Franchise to be revoked as follows. The City Council shall give written notice to the Grantee of its intent to revoke the Franchise on the basis of a pattern of noncompliance by the Grantee, including one or more instances of noncompliance with a material provision of the Franchise. The notice shall set forth the exact nature of the noncompliance. The Grantee shall have fifteen (15) days from such notice to object in writing and to state its reasons for such objection. In the event the City Council has not received a response satisfactory from the Grantee, it may then terminate the Franchise at a public meeting. The City Council shall cause to be served upon the Grantee, at least ten (10) days prior to such public meeting, a written notice specifying the time and place of such meeting and stating its intent to consider such termination. At the designated meeting, the City Council shall give the Grantee an opportunity to state its position on the matter after which it shall determine whether or not the Franchise shall be revoked. The Grantee may appeal such determination to an appropriate court. Such appeal to the appropriate court must be taken within sixty (60) days of the issuance of the determination of the City Council. The City Council may, at its sole discretion, take any lawful

action which it deems appropriate to enforce the City Council's rights under the Franchise in lieu of revocation of the Franchise.

(D) The Grantee shall not be held in default or noncompliance with the provisions of the Franchise, nor suffer any enforcement or penalty relating thereto, where such noncompliance or alleged defaults are caused by strikes, acts of God, power outages, or other events reasonably beyond its ability to control.

(E) In the event that termination is imposed upon Grantee, it shall be afforded a period of six (6) months within which to sell, transfer, or convey the Cable System to a qualified purchaser at an equitable price based on the fair market value of the Cable System as a going concern. Reasonable extensions of time in which to effect said sale, transfer or conveyance shall be granted by resolution of the City Council. During this six (6) month period, which shall run from the effective date of the final order or decision imposing termination, including any appeal, Grantee shall have the right to operate this Cable System pursuant to the provisions of this Franchise.

SECTION 12 -- SURRENDER RIGHT

Grantee may surrender this Franchise at any time upon filing with the City Council of the City a written notice of its intention to do so at least three (3) months before the surrender date. On the surrender date specified in the notice, all of the rights and privileges and all of the obligations, duties and liabilities of Grantee in connection with this Franchise shall terminate.

SECTION 13--TRANSFERS

All of the rights and privileges and all of the obligations, duties and liabilities created

by this Franchise shall pass to and be binding upon the successors of the City and the successors and assigns of Grantee; and the same shall not be assigned or transferred without the written approval of the City Council expressed by ordinance, which approval shall not be unreasonably withheld; provided, however, that this Section shall not prevent the assignment or hypothecation of the Franchise by Grantee as security for debt without such approval; and provided further that transfers or assignments of this Franchise between any parent and subsidiary corporation or between entities of which at least fifty percent (50%) of the beneficial ownership is held by the same person, persons, or entities, or entities which are controlled or managed by the same person, persons, or entities, shall be permitted without the prior approval of the City Council.

SECTION 14--FRANCHISE FEE

In consideration of the terms of this Franchise, Grantee agrees to pay the City a sum of money equal to five percent (5%) of Grantee's Gross Annual Subscriber Revenues per year. Such annual payment shall be paid within ninety (90) days after January 1st each year.

SECTION 15--EFFECTIVE DATE

This Ordinance shall become effective when all terms and conditions are accepted by both Grantee and City and shall then be and become a valid and binding contract between the City and Grantee.

SECTION 16--UNLAWFUL ACTS

(A) It shall be unlawful for any person to intercept or assist in intercepting or receiving, whether physically, electrically, acoustically, inductively or otherwise any television signals, radio signals, pictures, programs, sounds or any other information, impulses or

intelligence transmitted over Grantee's cable system without full payment to Grantee or its lessee by all parties receiving service. For purposes of this provision "assist in intercepting or receiving" shall include the manufacture or distribution of equipment intended by the manufacturer or distributor for unauthorized reception of any communications service offered over a cable system.

(B) It shall be unlawful for any person, without the consent of the Grantee, to willfully tamper with, remove, or injure any cable, wires, or other equipment used for the distribution of television signals, radio signals, pictures, programs, sounds, or any other information, impulses, or intelligence transmitted over Grantee's cable system.

(C) It shall be a misdemeanor punishable by a fine of not more than Five Hundred Dollars (\$500.00) for any person to violate any of the provisions of this Section.

(D) The prohibitions, penalties and remedies set forth in this Section are in addition to the prohibitions, penalties and remedies for theft of cable service provided by federal and state law.

SECTION 17--NOTICE ADDRESSES

When in this Ordinance notice is provided to the other party, such notice shall be in writing and given by mailed letter or by personal delivery

To City: City of DeLeon
 105 S. Texas
 DeLeon, Texas 76444

To Grantee: Friendship Cable of Texas, Inc.
 P. O. Box 9090
 Tyler, Texas 75711

Personal Delivery:
13850 Paluxy, Building A
Tyler, Texas 75703

or at such other location as either party may designate from time to time in writing.

SECTION 18--SEVERABILITY

If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any Federal or State court or administrative or governmental agency of competent jurisdiction, specifically including the FCC, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions hereof.


PASSED at first reading at a regular meeting on the 14th day of April, 1998 by a majority vote of the City Council.

PASSED at second reading at a regular meeting on the 28th day of April, 1998 by a majority vote of the City Council.

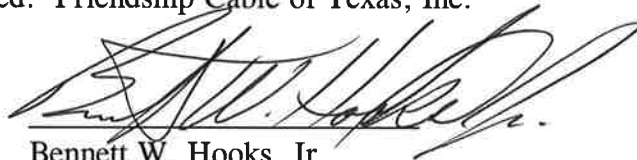
PASSED AND APPROVED THIS 28TH DAY OF APRIL, 1998.

ATTEST:


Norma Jo Locke, Mayor


Florence Wood, City Secretary

Accepted: Friendship Cable of Texas, Inc.

By: 
Bennett W. Hooks, Jr.
Its: President

Date: May 1, 1998