

RECORDED
10-14-92

O R D I N A N C E

0-23-92

AN ORDINANCE TO APPROVE ASSIGNMENT AND CHANGE OF OWNERSHIP OF EXISTING CABLE TELEVISION FRANCHISE WITHIN THE CITY OF BEAUFORT FROM LOW COUNTRY CABLEVISION LTD. PARTNERSHIP TO FALCON VIDEO COMMUNICATIONS, L.P.

WHEREAS, on June 28, 1977, the City of Beaufort granted a non-exclusive cable television franchise (hereinafter the "Franchise") to Cablevision of Beaufort, its successors and assigns, to own and operate a cable television system (hereinafter the "System") within the City of Beaufort; and

WHEREAS, on June 21, 1978, such Ordinance was amended to change the ownership of the Franchise from Cablevision of Beaufort to Beaufort Cable Television Company; and

WHEREAS, ACTON CATV, Inc. and Beaufort Cable Television Company entered into a joint venture agreement on September 27, 1979, in which ACTON CATV, Inc., became the managing joint venturer and operator of the System; and

WHEREAS, on September 8, 1986, ACTON CATV, Inc. and Beaufort Cable Television Company entered into a Purchase and Sale Agreement wherein ACTON CATV, Inc. purchased and assumed the interest of Beaufort Cable Television Company in the System and in the assets of the venture including the Franchise as evidenced by formal Assignment; and

WHEREAS, by Ordinance 0-05-89, dated February 14, 1989, Beaufort City Council approved this transfer of ownership to ACTON CATV, Inc.; and

WHEREAS, by Ordinance 0-05-89, dated February 14, 1989, Beaufort City Council approved the assignment of the Franchise by ACTON CATV, Inc., to Low Country Cablevision Ltd. Partnership subject to the terms and conditions of said ordinance; and

WHEREAS, Low Country Cablevision Ltd. Partnership has expressed a desire to sell, convey and transfer all right, title and interest in the Franchise to Falcon Video Communications, L.P. (Hereinafter "Falcon"); and

WHEREAS, Falcon has expressed a desire to purchase said Franchise from Low Country Cablevision Ltd. Partnership subject to the terms and conditions set forth herein; and

WHEREAS, pursuant to Section 4 of the Franchise Ordinance dated June 28, 1977, public notice was given in the Beaufort Gazette on August 18, 1992 in which the public was invited to participate in a public hearing and to comment upon the performance of Low Country Cablevision Ltd. Partnership, the legal, technical, character, financial and other qualifications of Falcon Video Communications, L.P., and the adequacy and terms of the Franchise herein granted; and

WHEREAS, a public hearing was held on August 25, 1992, for the noticed purpose as set forth above; and

WHEREAS, the City Council of Beaufort does hereby desire to approve the transfer of ownership as requested subject to the terms and conditions set forth herein; and

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Beaufort in Council duly assembled and by the authority of the same, as follows:

Section 1: The City of Beaufort hereby acknowledges and approves the request for sale, assignment and transfer of the Franchise by Low Country Cablevision, Ltd. to Falcon Video Communications, L.P. The City further acknowledges that such transfer shall only be

effective upon joint written notice of the completion of the sale, assignment and transfer by Low Country Cablevision, Ltd. Partnership and Falcon Video Communications, L.P. to the City.

Section 2: The Franchise term of ten (10) years commencing February 14, 1989 granted by Ordinance 0-05-89 shall remain in effect as the term of this Franchise. This section shall supersede Section 4 of the Franchise dated June 28, 1977.

Section 3: The City and Falcon have heretofore agreed on a Franchise fee of three (3%) percent of gross receipts payable to the City on a semi-annual basis, January 1 and July 1. With this exception, the payment provisions of Section 6 of the Franchise dated June 28, 1977 are incorporated herein and shall remain in effect as part of the terms of this transfer and assignment authorization.

Section 4: The City and Falcon acknowledge the right of any subscriber to reject any portion of cable service and will provide any subscriber, upon request, the equipment required to prevent reception of such signals. Falcon has the right to charge a reasonable onetime installation fee for the purpose of installing the equipment necessary to prevent reception. This fee may be charged only in the event Falcon is required to make a special service call for the purpose of installing such signal prevention equipment. The customer shall not be charged for installation of such equipment if the equipment is installed at the time the customer's service is initiated.

Section 5: Except for those provisions which are superseded by or which are in conflict with the terms and provisions which are superseded by or which are in conflict with the terms and provisions of this Ordinance, the terms, conditions, rights and obligations of the existing Franchise dated June 28, 1977 shall remain in full force and effect as between Falcon Video Communications, L.P. and the City of Beaufort.

Section 6: Approval is also granted for the assignment of a security interest in the cable television system, its assets, and the Franchise by Falcon to the banks or financial institutions providing funds for the financing of the acquisition and operation of the cable television system. In the event that such banks or financial institutions enforce their security interest in the Franchise upon a default by Falcon under its financing documents, such banks or financial institutions will be required to obtain the consent of the City in order to assign the Franchise and the cable television system to any third party or to operate said system.

Section 7: The City hereby affirms that, as of the date of this Ordinance, the Franchise is the current, lawful holder of the Franchise, the Franchise was validly issued and remains in full force and effect and, to the best of the City's knowledge as of this date, no event has occurred which, except for the failure to give notice or the passage of time or both, would constitute a breach or non-compliance or default by the Franchise under the terms of the Franchise.

Section 8: The City Manager is hereby authorized and directed to take such other and further action as may be necessary to effect such assignment and transfer of this Franchise, and to enforce the terms and conditions thereof, and shall have full authority in accordance with this Ordinance.

David M. Taub
DAVID M. TAUB, MAYOR

ATTEST:
Beverly W. Gay
BEVERLY W. GAY, CITY CLERK

1st Reading September 8, 1992
2nd Reading September 22, 1992
& Adoption

Reviewed by William B. Harvey, III
William B. Harvey, III, City Attorney

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)
)
CITY OF BEAUFORT)

AN ORDINANCE GRANTING A FRANCHISE TO CABLEVISION OF BEAUFORT, A JOINT VENTURE OF CROWN COMMUNICATIONS CORPORATION and BFM CONSTRUCTORS, INC., ITS SUCCESSORS AND ASSIGNS TO OPERATE AND MAINTAIN A CABLE TELEVISION SYSTEM IN THE CITY: SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OF FRANCHISE AND PROVIDING FOR CITY REGULATION AND USE OF THE CABLE TELEVISION SYSTEM.

WHEREAS, a public hearing was held on April 25, 1977 at the National Guard Armory in Beaufort, South Carolina concerning the subject of this Ordinance, of which public notice was given in the Beaufort Gazette on April 8 and 22, Hilton Head News on April 7, 21 and The Island Packet on April 8, 22, 1977, which notice invited the public to participate in said hearing and to comment on the extension of service policy for cable television in the City of Beaufort and on the legal, technical character, financial and other qualifications of CABLEVISION OF BEAUFORT, A JOINT VENTURE OF CROWN COMMUNICATIONS CORPORATION and BFM CONSTRUCTORS, INC., the franchise right and privilege to operate and maintain a cable television system in the City of Beaufort, within its corporate limits as the same exists or may be hereafter extended or altered, as contained and set out in the following franchise ordinance for the term and upon and subject to the terms, provisions and limitations herein stated.

NOW, THEREFORE, be it ordained by the City Council of the City of Beaufort, South Carolina:

Section 1. SHORT TITLE. This Ordinance shall be known and may be cited as the "Cablevision of Beaufort Cable Television Franchise Ordinance."

Section 2. DEFINITIONS. For the purposes of this Ordinance, the following terms, phrases and words and their derivations shall have the meaning given herein. Such meaning or definitions of terms is supplemental to those definitions of the Federal Communications Corporation, (F.C.C. Rules and Regulations, Section 76.5, 47 C.F.R. 420, 37 Fed. Reg. 13864 (July, 1972); 37 Fed. Reg. 25844 (Dec., 1972); 40 Fed. Reg. 2690 (Jan., 1975); 41 Fed. Reg. 1063 (Feb., 1976), and shall in no way be construed to broaden, alter or conflict with the Federal definitions:

- a) "CABLE TELEVISION SYSTEMS" shall mean a system of antennas, cables, wires, lines, towers, wave guides and other equipment or facilities by which signals of one or more television or radio stations are received and distributed primarily by wire or coaxial cable to subscribing members of the public who pay for such service.
- b) "GROSS RECEIPTS" shall mean the Cablevision's gross subscribers revenue from Cable Television operated in the City and shall include all revenue derived therefrom, but be limited to those subscriber services charged applicable to and required by the F.C.C. Revenues derived from auxiliary services, such as advertising revenues, leased channel revenues, and pay cable revenues are specifically (excluded) from gross revenues. Gross receipts will also include installation fees, disconnect and reconnect fees.

Section 3. GRANT OF NON-EXCLUSIVE AUTHORITY. The City does hereby grant to Cablevision the non-exclusive right and privilege to construct, erect, operate and maintain in, upon, along, across, above, over and under the streets, public ways and public places now laid out or dedicated, and all extensions or additions thereof, in the City, poles, wires, cables underground conduits, manholes and other television conductors and fixtures necessary for the maintenance and operation in the City of a cable television system.

Section 4. TERM AND RENEWAL OF FRANCHISE. The term of the Ordinance herein granted shall expire in fifteen (15) years from the effective date of this Ordinance. The franchise shall be subject to renewal for two (2) additional fifteen (15) year periods only after review of the performance of Cablevision and the adequacy of the terms of the Franchise herein granted in a full public proceeding. Cablevision shall be required to petition Council for approval authorizing the continued operation during the period following the expiration of the franchise granted herein until such time as a decision is made by Council relative to renewal of the said license. Such petition shall be filed at least sixty (60) days prior to the expiration of the license granted herein. Cablevision shall bear the costs of having the public hearing.

Section 5. TERMINATION OF FRANCHISE.

- a) The City may terminate this franchise in the event of failure, refusal or neglect of the Cablevision upon due notice to accomplish or comply with the requirements, regulations, or any other valid authority. Prior to such termination, the Council shall give written notice to Cable-

vision of its intent to terminate and allow Cablevision a period of thirty (30) days to correct such deficiency. Said period for correction shall be extended for a reasonable length of time if factors, such as, but not limited to delivery times of equipment, installation schedules, strikes, etc. prevent the correction within the prescribed period.

b) If this Franchise is terminated by reason of the Cablevision's default or expires, that part of the system located on the public ways may either become the property of the City, if so elected by the City, at a cost not to exceed the fair market price then prevailing; or removed or relocated, if required by the City, by the Cablevision at the cost of the Cablevision.

Section 6. PAYMENTS TO THE CITY.

a) Cablevision shall pay on a semi-annual basis, January 1 and July 1 to the City, three (3%) per cent of the gross receipts, as defined herein, received by Cablevision for cable television service provided to the subscribers located in the City.

b) Cablevision shall also file, at the same time, with the City Manager, a verified statement showing the total gross receipts, as defined herein, during the fiscal period in question. Cablevision shall also provide on an annual basis such other relevant financial information as the City may request in writing.

Section 7. RATES.

a) The rates and charges for the services to be provided by Cablevision shall be fair, reasonable and nondiscriminatory. The Cablevision's rates for services rendered to residential customers shall not exceed the following schedules:

- 1) For basic service to residential subscribers a sum not to exceed \$8.00 per month for the first outlet and a sum not to exceed \$2.00 per month for each additional outlet.
- 2) For installation for the first outlet a sum not to exceed \$10.00 and for each additional outlet a sum not to exceed \$5.00.
- 3) At its discretion, Cablevision may increase any of the rates set forth herein up to the maximum rate allowable under this Ordinance.

b) In the event that Cablevision desires to increase any of its covered rates, as set forth in Section 6 (a) (1), (2) and (3) herein, over

the allowable limits therein, Cablevision shall first petition the Council setting forth its reasons for such an increase. Council shall consider the petition and reach a determination within sixty (60) days of receipt of the petition. Failure to act by Council within sixty (60) days, will allow the proposed rate to take effect automatically.

Section 8. FRANCHISE TERRITORY AND EXTENSION OF SERVICE.

a) The Franchise is operative within the present limits of the City and any new areas added during the Franchise term.

b) Construction of the system having been completed to serve a substantial area, the Cablevision, whenever it shall receive a request for service from fifteen (15) subscribers per 1500 feet to its trunk or distribution system, shall extend such service at no cost other than its usual subscriber connection fees.

c) Upon receipt of a complaint from a group of potential subscribers less in number and/or greater in distance from the trunk than set forth in Section 8 (b) herein, Cablevision may provide service upon appropriate sharing of the costs between subscribers for extension of the trunk.

d) The Cablevision shall construct the system so as to provide service to all parts of the City having a density of at least seventy (70) potential subscribers per mile of cable length.

Section 9. CONSTRUCTION REQUIREMENTS.

a) To facilitate the installation and maintenance of any above-ground sections of the cable television system that may be installed, Cablevision shall have the authority to trim trees upon and overhanging streets, sidewalks and public ways and places of the licensed area so as to prevent the branches of such trees from coming in contact with the cable. Such trimming only to be done to the extent necessary to maintain proper clearance for cablevision's wires and cables.

b) In the event that Cablevision or its agents shall disturb any pavement, streets, sidewalks, driveways or any other property owned by the City or any other person or corporation, Cablevision shall at its own expense restore and replace such places or things so disturbed in as good condition as existed prior to commencement of said work.

Section 10. COLOR TELEVISION AND CARRIAGE OF SIGNALS.

a) The facilities used by the Cablevision shall distribute black and white and color television signals.

b) Cablevision shall receive and distribute the following television signals which are disseminated by broadcasting stations licensed by the F.C.C., to-wit:

<u>CHANNEL</u>	<u>CALL LETTERS</u>	<u>NEWS</u>	<u>LOCATION</u>
2	WCBD-TV	ABC	Charleston, S. C.
3	WSAV-TV	NBC	Savannah, Ga.
4	WCIV	NBC	Charleston, S. C.
5	WCSC	CBS	Charleston, S. C.
7	WITV	EDUC.	Charleston, S. C.
9	WVAN-TV	EDUC.	Savannah, Ga.
11	WTOC	CBS	Savannah, Ga.
16	WJWJ-TV	EDUC.	Beaufort, S. C.
17	WTCG	INDEP.	Atlanta, Ga.
22	WJCL	ABC	Savannah, Ga.

All F.C.C. regulations shall be complied with regarding the carriage of programming of any existing or future television broadcasting station which covers the City in its principal broadcasting area.

c) Cablevision shall make available to the City closed circuit channel time as the City may reasonably request in advance for the closed circuit transmission of programs prepared by the City. Such programs must be presented to Cablevision by the City in such a format able to be utilized in Cablevision's system. In meeting these requirements, Cablevision shall comply with all of the applicable rules and regulations now or hereafter established by the F.C.C.

Section 11. SERVICE TO PUBLIC BUILDINGS. The Cablevision shall provide a connection to each public building within the service area upon request by the City and at no cost to it or any agency. The Cablevision will, at its election, provide similar services without cost to accredited institutions such as private schools, and including parochial or other religious schools. Connections provided for in this section shall be available during the life of the Franchise.

Section 12. OPERATION, MAINTENANCE AND COMPLAINT PROCEDURE OF SYSTEM.

a) The Cablevision shall render efficient service, make repairs promptly and interrupt service only for good cause and for the shortest time possible. Such interruptions insofar as possible shall be preceded by notice and shall occur during periods of minimum use of the system.

b) The Cablevision shall maintain an office in the County of Beaufort, which shall be open during all usual business hours, have a listed telephone, and be so operated that complaints and request for repairs or adjustments may be received at any time.

c) The City appoints the City Manager as the official with primary responsibility of this Franchise Ordinance and the Cablevision shall provide the City with the name, address and phone number of the individual who will act as Cablevision's agent to receive complaints regarding quality of service, equipment malfunctions and similar matters, and at least once a week informs all subscribers by appropriate announcement (e.g., by a slide card) over the system's origination channel of the name, address and phone number of the Cablevision's registered agent for the City. The local business office shall be open to receive inquiries or complaints from subscribers during normal business hours, and in no event less than thirty-five (35) hours per week. Any complaints shall be acted upon as soon as possible, but at least within three (3) business days of their receipt.

d) Cablevision shall give each subscriber, at the time of initial subscription to the cable system, notice of the procedure for reporting and resolving complaints.

Section 13. LIABILITY AND INDEMNIFICATION.

a) Cablevision shall indemnify and hold the City harmless from and against all claims for injury or damage occurring during the period of this Ordinance, as well as any liability which might arise out of Cablevision's operations, including any litigation or threat thereof, administrative actions, or other governmental matters.

b) Cablevision agrees to maintain and keep in full force and effect and at its sole expense at all times during the term of this Franchise sufficient liability insurance to protect the City and Cablevision from any and all claims for injury or damage to persons or property, insuring against loss by any such claims, suit, judgment, execution or demand in the minimal amount of THREE HUNDRED THOUSAND AND NO/100 (\$300,000.00) DOLLARS for bodily injury or death from any one accident, and ONE HUNDRED THOUSAND AND NO/100 (\$100,000.00) DOLLARS for property damage resulting

from any one accident.

c) Within fifteen (15) days of the execution of this Ordinance and thereafter on a yearly basis, Cablevision shall provide to the City certificates of insurance evidencing the fact that insurance coverage in an amount no less than that stated in Section 12 (b) herein, is in full force and effect.

d) Cablevision shall provide a performance bond in favor of the City in the amount of TEN THOUSAND AND NO/100 (\$10,000.00) DOLLARS. Said bond to be cancelled upon completion of the cable television system.

Section 14. OTHER BUSINESS ACTIVITIES.

a) Cablevision hereunder shall not engage in the business of selling, repairing, or installing television receivers, radio receivers, or accessories or such receivers within the City during the term of this Franchise; and the Cablevision shall not allow any of its employees to so engage in such business.

b) This Franchise authorizes only the operation of the cable television system as provided for herein, and does not take the place of any other Franchise, license or permit which might be required by law of the City.

Section 15. MAPS, PLATS AND REPORTS. The Cablevision shall provide a map of the system to the City Manager, and shall update the map no less than every twelve (12) months.

Section 16. PUBLICATION COSTS. Cablevision shall assume the costs of publication of this Ordinance as such publication is required by law.

Section 17. Cablevision shall comply with all other Ordinances of the City of Beaufort and shall be subject to the Business License Tax Ordinance also.

Section 18. SEPARABILITY. If any section, sub-section, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any Court of competent jurisdiction, such portion shall be determined a separate, distinct and independent provision, and such holdings shall not affect the validity of the remaining portions hereof.

Section 19. All ordinances or parts of ordinances in conflict with provisions of this ordinance are hereby repealed.

Section 20. EFFECTIVE DATE. This Ordinance shall take effect upon its passage and approval.

FIRST READING June 14, 1977

SECOND READING June 28, 1977


MAYOR

ATTEST:


CLERK-TREASURER