

CITY OF CORDOVA  
ORDINANCE NO. 101-85

AN ORDINANCE TO BE ENTITLED:

AN ORDINANCE GRANTING WALKER COUNTY CABLEVISION, INC., ITS SUCCESSORS AND ASSIGNS, A NONEXCLUSIVE CABLE TELEVISION ("CATV") FRANCHISE FOR THE CITY OF CORDOVA, ALABAMA FOR AN INITIAL TERM OF TWENTY (20) YEARS; AND FOR OTHER PURPOSES.

WHEREAS, the City of Cordova (the "City") has determined it to be in the best interests of its citizens to consent to the sale of Live Line, Inc.'s cable television system assets to Walker County Cablevision, Inc. ("Company"); and

WHEREAS, the City desires to cancel the existing CATV Franchise of Live Line, Inc. and grant a new CATV Franchise to Company, effective upon Company's acquisition of Live Line, Inc.'s assets.

NOW, THEREFORE, be it ordained by the City Commission of the City as follows:

Section 1. Definitions. For purposes of this CATV franchise ordinance, the following terms and words shall have the meanings given herein:

"Act" shall mean the Cable Communications Policy Act of 1984 enacted by Congress as of October 30, 1984.

"City" shall mean the City of Cordova, Alabama acting through its duly authorized legislative bodies and officials.

"Company" shall mean Walker County Cablevision, Inc. and its successors and assigns.

"Franchise Area" shall mean all of the area now incorporated or hereafter incorporated into the City.

"Gross Basic Service Revenues" shall mean all revenue received directly by Company from subscribers for Company's Basic Service, but not including revenues derived from any taxes on services furnished by Company imposed directly on any subscriber or user by any city, county, state or other governmental unit and collected by Company for such governmental unit.

"Property" shall mean any and all property, real or personal, tangible or intangible, used, leased, installed, or owned by Company in the construction, maintenance or operation of its cable system.

"Street" shall mean the surface of and the space above and below any public place, street, right-of-way, road, highway, bridge, lane, path, valley, court, sidewalk, parkway, drive, or easement, now or hereafter existing as such within the Franchise Area.

"Subscriber" shall mean any person receiving Company's Basic Service or other noncable services.

Other terms and words used, to the extent defined in the Act, shall have the meanings given them in the Act.

Section 2. Grant of Franchise. Having considered in full public proceedings, Company's legal character and financial, technical and other qualifications, and in consideration of the privileges and convenience to be derived from Company's cable system by the citizens and residents of the City, the City hereby grants to Company a nonexclusive franchise, right and privilege to construct, maintain and operate a cable system in the City for the purpose of providing cable and other services, if any, as Company may from time to time provide. There is, therefore, granted to Company the nonexclusive franchise, right and privilege to erect, install, construct, repair, replace, reconstruct, maintain, retain and operate in, over, under, upon, across and along any Street now laid out or dedicated and all extensions thereto in the City, such Property as may be necessary and appurtenant to the purpose for which this franchise is granted.

Section 3. Term. This Franchise shall expire twenty (20) years from the effective date hereof.

Section 4. Construction and Technical Standards. Company's cable system shall be constructed, installed, maintained, and operated so as to cause the least possible inconvenience to the public as is reasonable. Company's cable system shall not interfere with the sewerage system or the storm sewerage system of the City and shall not interfere with the flow of water in any gutter or drain in the City. If Company, in constructing or operating its system, disturbs or damages any Street, Company shall, at its own expense and to the extent reasonably possible, repair such Street to as good a condition as existed before such disturbance or damage was done.

Grantee may trim the trees which are located upon or which overhang Streets within the City so as to prevent the limbs or branches of such trees from coming into contact with Company's Property.

Company shall be subject to the Federal Communications Commission's technical standards (47 CFR Subpart K) as may be amended from time to time, with respect to the technical performance of its cable system.

Section 5. Insurance and Indemnification. Company shall hold the City free and harmless of all damages, costs and expenses that may arise from its own or its employees' or agents' negligence in constructing, maintaining or operating its cable system.

Company shall purchase and maintain during the term of this Franchise, with reputable insurance companies licensed to do business in the State of Alabama, the following types of insurance coverage:

(i) Workers compensation, in those amounts and as required under the laws of the State of Alabama;

(ii) Property damage liability insurance to the extent of \$100,000 as to any one person and as to any one accident, and personal injury liability insurance to the extent of \$500,000 as to any one person and \$1,000,000 as to any one accident.

Company shall defend, at its own expense, all claims and proceedings brought against the City which are covered by the above indemnification; provided that the City must deliver written notice of any such claim to Company within fourteen (14) days after notice of such claim is received by the City for the indemnification to be effective. Company shall have the right to compromise or defend, at its expense and by its own counsel, any such claim. If Company undertakes to compromise or defend as provided herein, it shall promptly notify City in writing of its intention to do so, and City shall reasonably cooperate with Company or its counsel in such defense. City may, at its own expense, assist in the defense of any such claim or proceeding.

Section 6. Services and Rates. Company has contemporaneously herewith provided the City with:

- (1) A program listing for its basic cable service;
- (2) A program listing for any other service tiers which it offers;  
and
- (3) A rate schedule for all service tiers, ancillary equipment and installation services which it offers.

Company will use its best efforts to keep the City informed of the individual cable and noncable services it provides from time to time.

Company shall give the City sixty (60) days notice of any change in the rates Company charges for basic cable service ancillary equipment, and related installation service. Company will provide the City, upon request, rate schedules for any other cable or noncable services it provides from time to time.

Section 7. Franchise Fees. Within ninety (90) days after the end of Company's fiscal year, Company will pay to the City a franchise fee equivalent to three percent (3%) of Company's Gross Basic Service Revenues received from subscribers in the City. No other fees, charges or consideration shall be imposed upon Company by the City. Company shall keep complete books and records of accounts relating to its Gross Basic Service Revenues. Authorized representatives of the City shall have the right to inspect and audit such records of the Company, at any reasonable time and upon reasonable notice, for any annual period within three (3) years after the end of such period.

Section 8. Plant Extensions. Company shall provide cable service to all residential areas in the City in existence as of the effective date hereof within a reasonable time; provided, however, Company shall not be required to extend its unenergized cable plant to any area or Street of the City which does not contain at least fifty (50) occupied or otherwise "available for service" residences per strand miles as measured and computed from the nearest energized cable plant of Company.



Section 9. Nondiscrimination. Company will not discriminate among citizens and residents of the City in providing its cable services. Nothing in this Franchise shall prohibit Company from (i) conducting reasonable marketing promotions and test marketing activities in targeted portions of the Franchise Area or from (ii) Company privately negotiating independent rates for commercial or "bulk" multiunit complex subscribers.

Section 10. Subscriber Complaints. Company shall be capable of receiving service complaints or requests via a listed, local telephone number on a twenty-four (24) hours per day basis. Company shall dispatch service personnel within a reasonable period of time thereafter.

Section 11. Public Institutions. Company shall furnish, free of charge, one drop cable and outlet capable of providing Company's cable services to the following public buildings:

- (1) City Hall or such other city building designated by the City;
- (2) Each public school operated by the City's Board of Education;
- (3) One police station designated by the City; and
- (4) One fire station designated by the City;

provided, however, that Company shall not have any obligation to provide such drops unless the particular public building is located within a cabled area of the City and that the length of the cable drop is no more expensive to Company than the cost of a three hundred (300) foot aerial drop. The drops and outlets required of Company by this section shall be maintained and kept in good operating condition at all times at no cost to the City.

Section 12. Violations, Terminations, and Revocation. If Company fails to comply substantially with any material provision of this Franchise, the City shall have the right to terminate this Franchise and revoke the privileges granted hereunder. All of the following procedures and requirements must be met before any such termination and revocation can be effective:

- (1) The City shall notify Company, in writing, of any failure to comply substantially with a material term of this Franchise which it believes has occurred;
- (2) Company shall have thirty (30) days, after receipt of such written notice from the City, to commence and, within a reasonable time thereafter, to correct such violation;
- (3) If, after the thirty (30) day period, Company has failed to begin correcting the violation, or if Company has failed to correct the violation within a reasonable time thereafter, the City shall immediately schedule an administrative hearing, after providing prompt public notice of such hearing, at which time Company's alleged violation of the Franchise shall be considered. In any such administrative hearing, Company shall be afforded adequate

notice and the fair opportunity for full participation, including the right to introduce evidence, to require the production of evidence and to question witnesses. A transcript shall be made of any such proceeding;

(4) If, after the administrative hearing, the City still concludes that the Company has violated or failed to comply substantially with a material provision of this Franchise, it shall formally terminate this Franchise and revoke the rights granted hereunder. Written notice of the City's decision, and the reasons for it, shall be promptly delivered to the Company.

Nothing contained in this Franchise shall in any way affect Company's rights, in law or in equity, to pursue appropriate action and remedies against the City, nor shall the City's authority, actions or decisions be accorded more weight than those of a private party in any subsequent court proceedings.

Section 13. Assignment or Transfer of Franchise. Company shall not sell, transfer or assign its rights under this Franchise without the prior approval of the City. The City's consent shall not be unreasonably withheld. Regardless, Company may grant to any reputable lender security interests in any or all of the Property or other assets of Company, tangible or intangible, including this Franchise, in order that Company may secure financing necessary or appropriate to finance acquisition cost or for the construction, operation or maintenance of its cable system.

Section 14. Impossibility of Performance. Without limiting or restricting the applicability of the law relating to and governing the impossibility of performance of contracts, Company shall be relieved of and from undertakings, duties and responsibilities imposed upon Company by virtue of this Franchise where the performance of such undertakings has been prevented, curtailed or delayed by virtue of circumstances beyond Company's reasonable control, including, but not limited to, strikes, war (whether declared or not), acts of God, changes of law (whether the result of legislative, executive, administrative, or judicial action). Under such circumstances, Company shall not be deemed to have committed a breach of, or to be in default under the pertinent term, or terms, of this Franchise.

Section 15 Gross Revenue Report. For information and statistical purposes, the Company shall file with the City within ninety (90) days after the end of the Company's fiscal year, a report showing the gross revenues received by the Company on all sales of television signals and similar services rendered by the Company pursuant to this franchise in the City since the preceding report. If this report is computer generated, it shall show the information required above or some approximation or variation thereof to which the parties may hereafter reasonably agree.

Section 16. Applicable Law and Severability. This Franchise is subject to all applicable laws, rules and regulations of the State of Alabama, the United States of America, and any agencies thereof having jurisdiction

over the relevant subject matter, including, but not limited to, the Federal Communications Commission and the Act.

If any provision of this Franchise is held by any Court, or federal or state agency having jurisdiction, to be invalid, or is held by such court or agency to be modified in any way in order to conform to the requirements of any particular law, rule or regulation, said provision shall be considered separate, distinct and an independent part of this Franchise; and such holding shall not affect the validity and enforceability of all other provisions subsequently changed, so that the provisions hereof which had been held invalid or modified is no longer in conflict with the laws, rules or regulations in effect, said provisions shall thereupon return in full force and effect and shall thereafter be binding on Company or City, as the case may be.

Section 17. Effective Date. This Franchise shall become effective immediately upon the last of the following events to occur and only upon the occurrence of all of the following events:

- (1) Publication of this Franchise Ordinance in The Daily Mountain Eagle, a newspaper of general circulation published in the City. The City Clerk of the City is hereby ordered and directed to cause a copy of this Franchise to be published one time in said newspaper (at the expense of Company);
- (2) Company's written acceptance of this Franchise and delivery of such acceptance to the City; and
- (3) Certification by the Company to the City of the consummation of Company's acquisition of the cable television system assets of Live Line, Inc.

Upon this Franchise's becoming effective, the existing CATV Franchise of Live Line, Inc. shall be immediately cancelled and of no further force or effect.

Section 18. Other Ordinances. All ordinances and parts of ordinances that conflict herewith are hereby repealed.

SO ORDAINED THIS, 7<sup>th</sup> DAY OF May, 1985.

Neal V. Stone  
Mayor

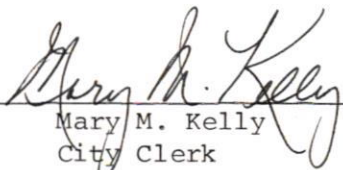
C. H. Hushencliff  
City Commissioner

W. H. Mendenhall  
City Commissioner

CERTIFICATE

I, the undersigned Clerk of the City of Cordova, Alabama, hereby certify that the foregoing is a true and correct copy of Ordinance Number 101-85, that was duly adopted and enacted by the Mayor and Board of Aldermen of the City of Cordova, Alabama, at a regular meeting in the City Hall of the City of Cordova, Alabama, held on May 7, 1985.

This the 7th day of May, 1985.

  
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Mary M. Kelly  
City Clerk  
City of Cordova, Alabama