

**CITY OF GAUTIER
MEMORANDUM**

To: Samantha Abell, City Manager
From: Cindy Steen, Purchasing Agent
Through: Cindy Russell
Date: July 9th, 2013
Subject: Ratify Consent Resolution Authorizing the Transfer of Cable Television Franchise

REQUEST:

City Council is requested to ratify the Consent Resolution Authorizing the Transfer of Cable Television Franchise

BACKGROUND:

The City hereby grants to Cable One, Inc. a non-exclusive franchise, for a period of fifteen (15) years from the effective date hereof, to construct, operate and maintain throughout the City, in, upon, along, across, above, over and under the streets, alleys, easements, public ways and public places as now laid out or dedicated, and all extensions thereto, a system of wires, poles, cables, underground conduits, ducts, trenches, conductors, amplifying equipment, manholes, fittings, and any and all other fixtures, appliances and appurtenances necessary for the construction, operation and maintenance in the City of a Cable Television system for the purpose of distribution of Cable Television and related services to the residents of the City.

RECOMMENDATION:

The Council may:

- (1) Ratify the Contract
- (2) Direct the City Manager to negotiate terms and conditions, and or
- (3) Terminate the Contract

ATTACHMENT(S):

Yes

RESOLUTION NO 23-98

CONSENT RESOLUTION AUTHORIZING THE TRANSFER OF
CABLE TELEVISION FRANCHISE

WHEREAS, the cable television franchise in the City of Gautier, Mississippi (the "Franchise") is currently owned and operated by Marcus Cable Associates, L.P. (the "Franchisee"); and

WHEREAS, pursuant to that certain Asset Purchase Agreement dated as of March 30, 1998 (the "Purchase Agreement"), between Cable One, Inc., a Delaware corporation ("Buyer"), and Marcus Cable Associates, L.P., the City Council of the City of Gautier (the "Franchising Authority") has received a request for approval to assign the Franchise from the Franchisee to Buyer, or at Buyer's election, any affiliated entity controlling, controlled by, or under common control with Buyer (Buyer, or any such entity, a "Transferee"); and

WHEREAS, Transferee, as the proposed assignee and transferee of Franchisee, from and after the date of the closing of the transactions described in the Purchase Agreement (the "Closing Date") shall assume and agree to perform each and every obligation of the Franchisee under the Franchise that arises from events or circumstances occurring from and after the closing date;

NOW, THEREFORE, BE IT RESOLVED, that the sale, transfer and assignment to Transferee of the rights, responsibilities and benefits arising under the Franchise from events or circumstances occurring from and after the Closing Date is hereby permitted and approved; and

BE IT FURTHER RESOLVED, that (i) the Franchise is in full force and effect and expires on March 4, 2002, (ii) all provisions of the Franchise have been complied with by Seller or waived by the Franchising Authority, (iii) Franchisee is recognized as the present holder and owner of the Franchise, (iv) the Franchise supersedes all other agreements between Franchisee and the Franchising Authority and represents the entire understanding between Franchisee and the Franchising Authority, and Franchisee has made no commitments and owes no obligations to the Franchising Authority other than those specifically stated in the Franchise, and (v) no event has occurred or exists or that, with the passage of time or the giving of notice or both, would constitute a default or breach under the Franchise or that would permit the Franchising

Authority to revoke or terminate the Franchise; and

BE IT FURTHER RESOLVED, that the Franchising Authority waives any rights of first refusal that it may have to assume the Franchise upon any transfer contemplated hereunder; and

BE IT FURTHER RESOLVED, that Transferee may, at any time and from time to time, assign or grant or otherwise convey one or more liens or security interests in its assets, including its rights, obligations and benefits in and to the Franchise (the "Collateral") to any lender ("Secured Party") providing financing to Transferee, from time to time, that the Franchising Authority agrees that consent to a transfer is hereby deemed approved if the Collateral is assigned and referred as a result of a foreclosure if Secured Party is the purchaser of the interest conveyed as a result of the foreclosure, that the Franchising Authority agrees that consent to a transfer from Secured Party to a subsequent purchaser is hereby deemed approved and if Secured Party is the purchaser of the Collateral as a result of a foreclosure, Secured Party shall have no duty to preserve the confidentiality of the information provided in the Franchise with respect to any disclosure (a) to Secured Party's regulators, auditors or attorneys, (b) made pursuant to the order of any governmental authority, (c) consented to by the Franchising Authority or (d) any of such information which has, prior to the date of such disclosure, disclosed by the Franchising Authority to any third party and such party is not subject to any confidentiality or similar disclosure restriction with respect to such information subject, however, to each of the terms and conditions of the Franchise (and the related CATV ordinance); and

BE IT FURTHER RESOLVED, that the consent to transfer herein provided shall be effective upon and only effective concurrent with the Closing Date and the subsequent transfer of the assets related to the Franchise to Transferee. Transferee shall notify the Franchising Authority promptly upon the closing of such transactions.

Motion was made by Phillips, seconded by Savage, and the following vote was recorded:

Resolution No. 23-98
Page 3

AYES: Charles A. Keith

Ken Taylor

Johnny Jones

Hurley Ray Guillotte

James T. Savage

Bernard Phillips

NAYS: NONE

ADOPTED by the Franchising Authority on this 19th day of May, 1998.

CITY OF GAUTIER, MISSISSIPPI

Charles A. Keith
[Mayor]

Attest:

Paul B. [Signature]
[Clerk-Treasurer]

FILE COPY

X.C. J. Trussell

[Signature]
9-23-03

ORDINANCE NO. 128-2002

AN ORDINANCE GRANTING TO CABLE ONE, INC. A FIFTEEN (15) YEAR NON-EXCLUSIVE FRANCHISE TO BUILD, OPERATE AND MAINTAIN A CABLE TELEVISION SYSTEM WITHIN THE CITY OF GAUTIER, MISSISSIPPI; SETTING FORTH THE CONDITIONS; PROVIDING FOR THE REGULATION AND USE OF THE SYSTEM; PROVIDING A GROSS RECEIPTS CHARGE PAYABLE TO THE CITY; PROVIDING CERTAIN PROVISIONS RELATIVE TO INSURANCE AND INDEMNIFICATION OF THE CITY OF GAUTIER, MISSISSIPPI.

BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF GAUTIER, MISSISSIPPI.

SECTION 1. SHORT TITLE

This Ordinance shall be known and cited as the Cable One, Inc. Cable Television System franchise.

SECTION 2. DEFINITIONS

For the purpose of this Ordinance, the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense shall include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory.

- (a) "CITY" is the CITY OF GAUTIER, MISSISSIPPI.
- (b) "Cable Television System", "Cable System" and "System" mean the equipment and materials used to distribute electronic or light signals, including but not limited to, television signals and radio signals as permitted by the Federal Communications Commission and other entities of competent jurisdiction.
- (c) "Franchise" means the non-exclusive right to construct, erect, operate and maintain a Cable Television System within the corporate limits of the City as they now exist and may exist from time to time, and to install poles, underground and aerial cable, pedestals, and electronic equipment over, under and across the surface of, and the

space below public streets, roads, highways, freeways, lanes, alleys, courts, sidewalks, parkways, drives or easements now or hereafter existing as such within the City.

- (d) "Grantee means Cable One, Inc. and/or any lawful successor or assignee.
- (e) "Gross Subscriber Revenues" shall mean the sums actually paid by subscribers living in the City to Grantee for Cable Television Service. This does not include leased channel revenues, advertising revenues or any other secondary income derived from the System. Sales taxes or other taxes or fees which are collected from subscribers for remittance to a governmental agency are excluded from the term "Gross Subscriber Revenues".
- (f) "FCC" means the Federal Communications Commission.

SECTION 3. TERM AND GENERAL PROVISIONS OF ORDINANCE

The City hereby grants to Cable One, Inc. a non-exclusive franchise, for a period of fifteen (15) years from the effective date hereof, to construct, operate and maintain throughout the City, in, upon, along, across, above, over and under the streets, alleys, easements, public ways and public places as now laid out or dedicated, and all extensions thereto, a system of wires, poles, cables, underground conduits, ducts, trenches, conductors, amplifying equipment, manholes, fittings, and any and all other fixtures, appliances and appurtenances necessary for the construction, operation and maintenance in the City of a Cable Television System for the purpose of distribution of Cable Television and related services to the residents of the City.

SECTION 4. FRANCHISE NON-EXCLUSIVE

Neither the granting of this Franchise, nor any of the provisions contained herein, shall be construed to prevent the City from granting another Franchise to any person or corporation other than the Grantee; provided, however, that any such additional franchise shall not authorize an additional grantee to operate within the territory of the Grantee on terms or conditions more favorable or less burdensome to such new grantee than those applied to the Grantee.

SECTION 5. COMPLIANCE WITH APPLICABLE LAWS

The Grantee shall at all times during the life of this Franchise be subject to all lawful exercise of the police powers of City and to such reasonable regulations as state or federal laws shall hereafter provide.

SECTION 6. FRANCHISE TERRITORY

This Ordinance shall apply to the present territorial limits of the City and to any area henceforth added thereto during the term of this Franchise. The Grantee shall be required to construct its System in all areas of the City which meet a standard density of forty (40) homes per additional plant mile. Nothing herein contained is intended to preclude the Grantee from extending its cables and equipment to other areas of the City.

SECTION 7. LIABILITY AND INDEMNIFICATION

The Grantee shall save the City harmless from all losses sustained by the City on account of any suit, judgment, claim or demand whatsoever against the City resulting from negligence or misconduct on the part of the Grantee in the construction, operation or maintenance of its Cable Television System in the City.

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 yields Grantee the larger amount of time.

The Grantee shall maintain throughout the period of this Franchise property damage and personal injury insurance with a company qualified to do business in the State of Mississippi. The amounts of insurance to be carried shall, at minimum, be as follows:

- Bodily injury or death: \$300,000 each person, \$500,000 each occurrence.
- Property damage: \$50,000 each occurrence, \$100,000 aggregate.
- All other types of liability: \$300,000.

SECTION 8. SERVICE STANDARDS AND REQUIREMENT

- (a) The Grantee shall apply for all licenses, certificates and permits necessary for the construction and operation of the Cable Television System herein described within ninety (90) days of the Grantee's acceptance of this Franchise.
- (b) The Grantee shall provide and maintain its service in accordance with the accepted standards of the industry so as to provide its subscribers with a high level of quality and reliability.
- (c) Whenever it shall be necessary to interrupt service for the purpose of making repairs,

adjustments or installations, the Grantee shall do so at such times as will cause the least amount of inconvenience to its subscribers. If reasonably practical, the Grantee shall give prior notice of such interruption to its subscribers.

- (d) In the event of any interruption of service, the Grantee shall proceed with due diligence to restore service as quickly as possible under the circumstances.

SECTION 9. SAFETY REQUIREMENTS

All construction practices shall be in accordance with all applicable sections of the Occupational Safety and Health Action Act of 1970 and any amendments thereto as well as all other State and Federal codes where applicable.

All installation of electronic equipment shall be of a permanent nature, durable and installed in accordance with the National Electrical Code.

All of the Grantee's plant and equipment, including, but not limited to any antenna site, headend and distribution system, towers, house connections, structures, poles, wire, cable, coaxial cable, fixtures and appurtenances shall be installed, located, erected, constructed, reconstructed, replaced, removed, repaired, maintained and operated in accordance with good engineering practices, and such work performed so as not to endanger or interfere with improvements the City may deem proper to make, or to interfere in any manner with the rights of any property owner, or to unnecessarily hinder or obstruct pedestrian or vehicular traffic on City property.

The Grantee shall at all times employ ordinary care and shall install and maintain in use commonly accepted methods and devices preventing failures and accidents which are likely to cause damage, injury or nuisance to the public. Suitable barricades, flags, lights, flares, or other devices shall be used at such times and places as are reasonably required for the safety of all members of the public.

SECTION 10. CONDITIONS OF STREET OCCUPANCY

All transmission and distribution structures, lines and equipment erected by the Grantee within the City shall be located so as to cause minimum interference with the proper use of streets, alleys, and other public ways and places, and to cause minimum interference with the rights and reasonable convenience of property owners whose land may adjoin any of the said streets, alleys, or other public ways and places.

In case of disturbance to any street, sidewalk, alley, public way or paved area caused by the Grantee's construction or operations, the Grantee, shall, at its own cost and expense, replace and restore such street, sidewalk, alley, public way or paved area to a condition as good as its condition before the work causing such disturbance was performed.

SECTION 11. BUILDING MOVEMENT

The Grantee shall, at the request of any person holding a building permit issued by the City, temporarily raise or lower its wires to permit the moving of buildings. The expense of such temporary removal, raising or lowering of wires, shall be paid by the person requesting the same, and the Grantee shall have the authority to require such payment in advance. The Grantee shall be given not less than seventy-two (72) hours advance notice to arrange for such temporary wire change.

SECTION 12. JOINT USE OF PUBLIC UTILITIES FACILITIES

It is the policy of the City to minimize the number of utility poles, support structures and conduits within the City to promote the safety, health, convenience and general welfare of the City and its inhabitants.

In the exercise of this Franchise, the Grantee may, with the consent of the owner, use the poles, conduit and other equipment of public utilities doing business in the City.

SECTION 13. PROHIBITION AGAINST PREFERENTIAL OR DISCRIMINATORY PRACTICES

The Grantee shall not, as to rates, charges, service, or service facilities make or grant any undue preference or advantage within a given class of subscribers in the City.

SECTION 14. REMOVAL OF FACILITIES UPON REQUEST

Upon termination of service to any subscriber, the Grantee shall promptly remove all of its facilities and equipment from the premises upon such subscriber's request.

SECTION 15. TRANSFER OR ASSIGNMENT

The Grantee shall not transfer this Franchise to another person or entity other than a subsidiary, affiliate or parent of Grantee without the prior written approval of the City. Such approval shall not be unreasonably withheld.

SECTION 16. FRANCHISE FEE

In consideration of the terms of this Franchise and Grantee's right to use the public streets and rights-

of-way, Grantee agrees to pay the City a sum equal to five (5%) percent of Gross Subscriber Revenues twice (2) a year as a franchise fee. Such payment shall be made within ninety (90) days after the end of each six (6) month period. Such payment shall be accompanied by a revenue letter certified as correct by an officer of the Grantee or his designee.

SECTION 17. REVOCATION

The City reserves the right to revoke this Franchise in the event of a substantial uncorrected breach of its terms and conditions. A substantial breach by the Grantee shall include, but not be limited to the following:

1. Willful violation of any material provisions of this Franchise.
2. Failure to restore system wide service after seventy-two (72) consecutive hours of interrupted service, except for good cause or when approval for such interruption is obtained from the City.

The foregoing shall not constitute a material breach if the violation occurs for good cause. Good cause may include, but shall not be limited to, delays or interruptions arising from necessary utility delay or changes, rearrangements, power outages, the fulfillment of governmental or regulatory restrictions or requirements, national emergency, uncontrollable material shortages, inability to obtain necessary easements, earthquake, work stoppages and unauthorized strikes, the elements, acts of God or other causes beyond Grantee's control.

In the event of such breach, the City shall provide written notice to the Grantee of such breach. If the Grantee fails within sixty (60) days after receipt of such notice to correct or commence to correct said breach, or submit reasonable justification for such failure, then the City shall have the right, after a full and complete hearing affording due process, to revoke any or all rights and privileges granted herein.

SECTION 18. RATES

The Grantee shall have the right to establish different classifications of service for residential and commercial users and to adopt charges and rate schedules applicable to subscribers within each classification.

The Grantee has the right to increase its subscriber rates during the term of the Franchise.

SECTION 19. ILLEGAL CONNECTION, TAMPERING

The Grantee shall have the right at all times to take such legal action as it deems necessary to

preserve the security of its Cable Television System and to assure only authorized use thereof by its subscribers or other persons.

It shall be illegal and unlawful for any person to connect to the Cable Television System provided for in this Franchise without approval of the Grantee and regular payment made for such services. Such illegal act shall constitute a misdemeanor and be punishable by a fine not to exceed \$500.00 for each offense.

It shall be illegal and unlawful for any person to willfully or maliciously use or damage, or cause to be damaged, any wire, cable, conduit, apparatus or equipment of the Grantee. Such illegal act shall constitute a misdemeanor and be punishable by a fine not to exceed \$500.00 for each offense.

SECTION 22. NO SALES OR REPAIRS

The Grantee shall not engage in the business of selling, renting or repairing television receivers.

SECTION 23. PERFORMANCE BY GRANTEE

In the event the Grantee fails to commence construction within two years from the effective date of this Franchise, then this Franchise shall be null and void.

SECTION 24. NOTICES

All notices desired or required to be given under this Ordinance shall be in writing and sent by certified mail, return receipt requested, or express delivery service, to the appropriate party at its address set forth below, or at such other address as may be given by notice hereunder, or by delivering it to such party in person at such address.

If to Cable One:

Cable One, Inc.
5100 Macphelah Street
PO Box 1818
Pascagoula, MS 39568-1818
Attn: Manager

with a copy to:

Cable One, Inc.
1314 N. Third Street
3rd Floor
Phoenix, AZ 85004

Attn: Vice President/General Counsel

If to City:

City of Gautier
3330 Hwy 90
Gautier, MS 39553
Attn: City Manager

SECTION 24. FORCE MAJEURE

Whenever this Ordinance sets forth any time for any act to be performed by the Grantee, such time shall be deemed of the essence and the Grantee's failure to perform within the time allotted shall, in all cases, be sufficient grounds for the City to invoke the remedies available under the terms and conditions of this Ordinance.

Whenever a period of time is provided for in this Ordinance for either the City or the Grantee to do or perform any act or obligation, neither party shall be liable for any delays or inability to perform due to war, riot, insurrection, rebellion, strike, lockout, unavoidable casualty or damage to personnel, materials or equipment, fire, flood, storm, earthquake, tornado, orders of a court of competent jurisdiction, any act of God, or any cause beyond the control of said party. And, in any event, said time period shall be extended for the amount of time said party is so delayed. An act or omission shall not be deemed to be beyond a Grantee's control if committed, omitted, or caused by a corporation or other business entity which holds a controlling interest in the Grantee, whether held directly or indirectly.

SECTION 25. SEVERABILITY

In the event that any provision of this Franchise is held to be invalid or null and void by any regulatory agency or court of competent jurisdiction, said provision shall be deemed to be a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof.

SECTION 26. ACCEPTANCE BY GRANTEE

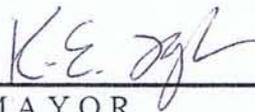
This Franchise shall become effective immediately upon written acceptance of the said franchise by the Grantee. In the event the Grantee does not accept the Franchise within forty-five (45) days of the passage of this Ordinance, then this Ordinance shall become null and void.

Motion was made by Hansford, seconded by Savage, and the following vote was recorded:

AYES: Ken Taylor
Billy Sanders
James T. Savage
Don Hansford

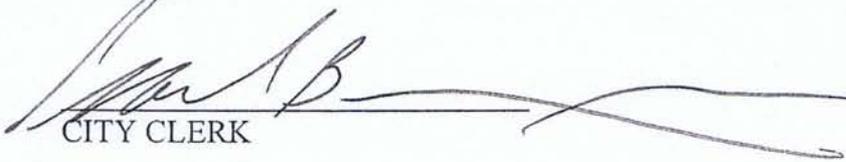
NAYS: NONE

ABSENT: Johnny Jones
Hurley Ray Guillotte



MAYOR

ATTEST:



CITY CLERK

PASSED AND ADOPTED at the January 15, 2002, Meeting of the Mayor and Council of
the City of Gautier, Mississippi.