

ORDINANCE No. 89-03

1 PROPOSED FRANCHISE ORDINANCE NO. 3 GRANTING AN EX-
2 CLUSIVE FRANCHISE TO AMERICABLE INTERNATIONAL, INC., A
3 FLORIDA CORPORATION, ITS SUCCESSORS AND ASSIGNS, TO
4 ERECT AND MAINTAIN A CABLE TELEVISION SERVICE TO THE
5 PUBLIC IN THE UNINCORPORATED AREAS OF HOLMES COUNTY;
6 PROVIDING FOR INSPECTION, FEES, STANDARDS, RULES AND
7 REGULATIONS; AND PROVIDING FOR AN EFFECTIVE DATE.

8
9 An Ordinance of the County of Holmes, State of Florida,
10 hereinafter referred to as "County", granting to Americable
11 International, Inc., a Florida corporation, its successors and
12 assigns, hereinafter referred to as "Americable", an exclusive
13 franchise to erect and maintain a cable television system to
14 provide cable television service to the public, hereinafter
15 referred to as "CATV System", throughout the entire unincor-
16 porated area of the County of Holmes, State of Florida, and
17 providing for inspection, fees, standards, rules and regulations;
18 and an effective date.

19 Be it ordained by the Board of County Commissioners of
20 Holmes County, Florida, subject to written acceptance by
21 Americable within thirty (30) days after the passage, approval
22 and publication of this ordinance.

23 1. Purpose

24 The purpose of this Ordinance is to grant to Americable an
25 exclusive franchise to erect and maintain a cable television
26 system. "Cable television system" or "CATV System" shall mean a
27 facility consisting of a closed set of transmission paths and
28 associated signal generating reception and central equipment that

1 is designed to provide cable service which includes video
2 programming and which is provided to multiple subscribers in a
3 community, more particularly defined in Section 601(6) of the
4 Cable Communications Policy Act of 1984, 47 U.S.C. § 521(6) as
5 now in effect.

6 2. Grant of Authority

7 The County does hereby grant unto Americable the exclusive
8 right, privilege and franchise for a period of thirty (30) years
9 from and after the effective date of this agreement, to erect,
10 maintain and operate a CATV System and any and every type of
11 transmission and distribution facilities now in existence or
12 hereafter developed for the relay of television signals video
13 programming and frequency modulated radio signals, by any means
14 whatsoever, including, but not limited to, visual and audio
15 impulses and energies and additions thereto in, under, over,
16 along, across and upon the streets, lanes, alleys, public or
17 utility easements, bridges, highways and other public places as
18 now exist or may come into existence in the future, in all
19 unincorporated areas of Holmes County. Americable shall have
20 the right in the operation of said system to make attachments to
21 County owned property.

22 Americable shall have the right to enter into agreements for
23 the attachment onto and the use of facilities owned and operated
24 by public utilities operating within the County. Such agree-
25 ments shall not in any manner be construed as limiting the right

1 of Americable to attach onto or use such facilities as are owned
2 and operated by Americable.

3 This franchise is not intended to preclude the establish-
4 ment of a local television station and it is understood and
5 agreed that this franchise shall not prevent the transmission and
6 distribution of audio and television impulses by any other
7 person, firm or corporation, providing said transmission and
8 distribution is original and emanates from the television station
9 originating the broadcast.

10 Wherever used in this agreement the words "audio" and
11 "television" shall mean a "CATV System", as defined hereunder,
12 for simultaneous transmission of audio signals and transient
13 visual images or the separate transmission of either of them by
14 means of electrical or other impulses. Nothing in this agreement
15 shall limit the right of Americable to transmit any kinds of
16 signal and frequency now in existence or which may come into
17 existence and which is capable of being lawfully transmitted and
18 distributed by those facilities owned and operated by Americable.

19 3. Guaranteed Service For Franchise Area

20 During the term of this franchise, or any extension thereof,
21 the County will not engage nor grant any franchise for others to
22 engage directly or indirectly in the business of a CATV System in
23 competition with Americable, its successors or assigns, in the
24 franchise area.

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1 4. Service Provided

2 In providing service to unincorporated areas of the County,
3 Americable shall, in its discretion, give priority to construc-
4 tion along the routes in the unincorporated areas of the County
5 that best suit the interconnection of incorporated areas within
6 the County to which Americable is or may become authorized to
7 serve. Americable shall thereafter reasonably and equitably
8 extend energized trunk cable to areas within the County with a
9 density of not less than forty (40) homes per mile from the
10 existing service. Subject to the foregoing, Americable hereby
11 promises that a CATV System will be made available to customers
12 upon request, but in any case, Americable shall not be required
13 to furnish service before ninety (90) days after the customer
14 completes construction of a house upon his property situated in
15 the franchise area. If such request comes from a resident in an
16 area that does not meet the aforementioned density level,
17 Americable shall provide service to such resident but may require
18 compensation from the resident for the cost, including labor, of
19 such extension of service from the then existing plant.
20 Americable shall not deny access to cable service to any group of
21 potential residential cable subscribers because of the income of
22 the residents of the local area in which such groups resides.
23 Additional time to complete construction may be granted by the
24 Commission for good cause shown upon request of Americable.
25 Failure to accomplish construction and offer service as aforesaid
26 shall be grounds for cancellation of this franchise with respect

1 to any then unserved unincorporated areas of the County for which
2 Americable has not commenced construction. Construction will be
3 deemed to have commenced hereunder upon the ordering of equipment
4 necessary for construction to occur.

5 It is understood that temporary cessation of service at any
6 time caused by an act of God, fires, strikes, casualties, acci-
7 dents, power failures, necessary maintenance work, breakdowns,
8 damage to machinery or lines, civil or military authority, or by
9 riot or other cause beyond the control of Americable shall not
10 constitute a breach of the provisions hereof, or impose liability
11 upon americable to the County or to its inhabitants or sub-
12 scribers therein.

13 5. Compliance With Laws, Regulations and Ordinances

14 Having conducted a public proceeding concerning Americable's
15 application for the franchise herein granted, which proceeding
16 afforded all interested parties an opportunity to participate in
17 and comment upon the legal, financial technical, and other
18 qualifications of Americable and the adequacy and feasibility of
19 its arrangements for the construction of a CATV System in the
20 County, the Commission hereby finds that Americable possesses all
21 necessary qualifications and that its construction arrangements
22 are adequate and feasible. Pursuant to such findings, the
23 Commission, to the extent it is legally able to do so, hereby
24 grants Americable an exclusive franchise, right and privilege to
25 construct, erect, operate, modify and maintain in, upon, along,
26 across, above, over and under highways, streets, alleys, side-

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1 walks public ways and public places now laid out or dedicated and
2 all extensions thereof, and additions thereto, in the County, all
3 poles, wires, cable underground conduits, manholes and other
4 television conductors and fixtures necessary for the maintenance
5 and operation of a CATV System for the purpose of distributing to
6 the public television and radio signals, other electronic
7 impulses in order to furnish television and radio programs and
8 various communications and other electronic services. The right
9 so granted includes the right to use and occupy said streets,
10 alleys, public ways and public places and all manner of easements
11 for the purpose herein set forth, to the extent the Commission is
12 legally able to do so. Provided, however, permanent buildings
13 and towers or poles, higher than 25 feet may not be constructed
14 upon or in public places and county property except upon separate
15 written permit from the Commission.

16 6. County Held Harmless Due to Negligence of the Company

17 It is expressly understood and agreed between Americable and
18 the County that Americable shall save the County harmless from
19 all loss sustained by the County on account of any suit, judg-
20 ment, claim or demand whatsoever resulting from negligence on the
21 part of Americable, in construction, operation or maintenance of
22 facilities pursuant to this agreement in the County. The County
23 shall notify Americable representatives in writing within fifteen
24 (15) days after the presentation of any claim or demand, either
25 by suit or otherwise, made against the County on account of any
26 claimed negligence as aforesaid on the part of Americable.

1 It is not intended by this Section that Americable will hold
2 the County harmless for those claims for injury or damages which
3 arise solely from action or negligence, or unlawful exercise of
4 authority by the County.

5 7. Conditions on Street Occupancy and System Construction

6 (A) Use. The maintenance and operation of Americable
7 television transmission and distribution system in the streets,
8 alleys and other public places, and in the course of any new
9 construction or addition to its facilities, shall be done so as
10 to cause minimum interference with the rights or reasonable
11 convenience of the general public and shall be done in a reasona-
12 bly safe manner.

13 (B) Disturbance of Surfaces. In the case of any distur-
14 bance of pavement, sidewalk, driveway or other surfacing,
15 Americable shall replace and restore all such surfaces so
16 disturbed as soon as possible and in as good condition as before
17 said work was commenced, subject to the rules and regulations of
18 any authorities having jurisdiction.

19 (C) Placement of Fixtures. Americable shall not place any
20 fixtures or equipment where the same will unreasonably interfere
21 with the gas, electric, telephone or wire lines, fixtures and
22 equipment, and the location by Americable of its lines and
23 equipment shall be in such manner as to not unreasonably inter-
24 fere with the usual travel on said streets, alleys, and public
25 ways and the use of the same by gas, electric, telephone and
26 water lines and equipment.

1 8. Service Standards

2 Americable's CATV System shall be installed and maintained
3 so as to provide pictures on subscribers' receivers consistent
4 with the picture quality standards set forth in Section
5 76.605(a)(1)-(10) rules and regulations of the Federal Communica-
6 tion Commission, 47 C.F.R. § 76.605(a)(1)-(10) (1987). Workman-
7 like standards shall be maintained in the installation of feeder
8 lines leading from the trunk lines to the service outlets, with
9 all holes in walls through which cables or wires must pass being
10 carefully closed and sealed so as to minimize the danger of
11 water, bug and rodent invasion of the interior rooms. Americable
12 shall operate the system so that there will be no unreasonable
13 interference with television reception, radio reception,
14 telephone communications or other installations which are now or
15 may hereafter be installed and in use in the County.

16 Installation and house drop hardware shall be uniform
17 throughout the franchise area, except that Americable shall be
18 free to change its hardware and installation procedure as the
19 state of the art progresses. Americable shall have the right to
20 prescribe reasonable service rules and regulations for the
21 conduct of its business consistent with the provisions of this
22 agreement.

23 9. Rates Increases

24 The rates Americable charges its subscribers for the
25 provision of cable service and other service, including, but not

1 limited to, ancillary charges relating thereto, are not es-
2 tablished hereunder and shall not be regulated.

3 10. Payment to County

4 Amerciable shall pay to the County three percent of basic
5 cable service revenues, sometimes known as "Basic Subscriber
6 Revenues", received from subscribers in unincorporated areas of
7 the County. Americable shall furnish the County with an annual
8 report showing Americable's annual "Basic Subscriber Revenues"
9 from subscribers in unincorporated areas of the County during the
10 proceeding year and such other information as the County may
11 reasonably require with respect to properties and expenses
12 related to Americable's services in connection with said fee.

13 11. Franchise Obligations

14 The failure on the part of Americable to substantially
15 comply with any of the material provisions of this ordinance
16 shall be grounds for forfeiture of this franchise, but such
17 forfeiture shall not take affect if the reasonableness or
18 propriety thereof is protested by Americable until a court of
19 competent jurisdiction, with right of appeal by either party,
20 shall have found that Americable has failed to comply in a
21 substantial respect as aforesaid with any provision of this
22 ordinance and Americable shall have six (6) months after the
23 final determination of the question to make good the defaults
24 before forfeiture shall result with the right in the County at
25 its discretion to grant such additional time to Americable for
26 compliance as necessities in the case may require.

1 12. Constitutional Validity

2 If any section, subsection, sentence, clause, phrase, or
3 portion of this ordinance is for any reason held invalid or
4 unconstitutional by any court of competent jurisdiction, such
5 portion shall be deemed a separate, distinct, and independent
6 provision and such holding shall not affect the validity of the
7 remaining portions hereof. Provided however, that the remaining
8 portion or resolution when read together will constitute a
9 feasible, reasonable, workable plan to perform the services
10 contemplated.

11 13. Abandonment of Easement

12 In the event any such public place under or upon which
13 Americable shall have located its facilities shall be closed,
14 abandoned, vacated or discontinued the County may terminate such
15 easement or license of Americable hereto, provided, however, in
16 the event of this termination of easement, the person or persons,
17 firm or corporation requesting such termination shall pay to
18 Americable, in advance, its cost of removal and relocation of the
19 removed facilities in order to continue its service as there-
20 tofore existing, or the County shall retain an easement on all
21 sides of the facilities not less than ten (10) feet in width from
22 the center line of such facilities, for the benefit of Americable
23 and its facilities.

24 14. Change In Form Of Government

25 Any change in the form of government of the areas described
26 herein as authorized by the State of Florida shall not affect the

1 validity of this franchise. Any municipal corporation succeeding
2 the County shall, without the consent of the County, succeed to
3 all rights and obligations of the County provided in this
4 Franchise.

5 15. Contents of Franchise Agreement

6 This agreement constitutes the entire agreement between the
7 parties, and no other representations or oral agreements of any
8 nature exist between the parties.

9 16. Ordinances

10 All ordinances and parts of ordinances in conflict herewith
11 be and the same is hereby repealed.

12 17. Transfer or Sale of Franchise

13 Americable may sell, assign or lease this franchise,
14 including all rights and obligations herein, after obtaining
15 written permission of the County, which permission shall not
16 unreasonably be withheld. Withholding of such permission shall
17 be given to Americable in writing, setting forth in detail the
18 reasons therefore, within thirty (30) days from the date of
19 request for such permission to sell assign or lease the fran-
20 chise.

21 18. Renewal of Franchise

22 Upon the expiration of this franchise Americable may renew
23 this franchise for a like period from the date of expiration.
24 The city shall review the grantees' qualifications and perfor-
25 mance during the life of the Franchise, and the adequacy of this
26 Franchise, in the context of a full public proceeding, affording

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1 due process, and shall renew the Franchise upon satisfactory
2 findings thereof, consistent with Section 626 of the Cable
3 Communications Policy Act of 1984, 47 U.S.C. § 546 as in effect
4 upon the adoption of this Ordinance.

5 19. County Jurisdiction

6 The said right, privilege and franchise are granted under
7 and pursuant to the provisions of the laws of the State of
8 Florida which relate to the granting of rights, privileges and
9 franchises by counties.

10 20. Effectiveness

11 This ordinance shall take effect immediately upon receipt of
12 official acknowledgement by the Office of the Secretary of State,
13 to the Clerk of the Board of County Commissioners, that same has
14 been filed.

15 Passed by the County Commission of the County of Holmes,
16 State of Florida, this _____, 1989.

17 BOARD OF COUNTY COMMISSIONERS
18 OF HOLMES COUNTY, FLORIDA

19 By: _____
20 Chairman

21 Attest: _____