

ORDINANCE No. 89-04

PROPOSED FRANCHISE ORDINANCE NO. 89-04 GRANTING A NON-EXCLUSIVE FRANCHISE TO AMERICABLE INTERNATIONAL, INC., A FLORIDA CORPORATION, ITS SUCCESSORS AND ASSIGNS, TO ERECT AND MAINTAIN A CABLE TELEVISION SERVICE TO THE PUBLIC IN THE UNINCORPORATED AREAS OF HOLMES COUNTY, PROVIDING FOR INSPECTION, FEES, STANDARDS, RULES AND REGULATIONS; AND PROVIDING FOR AN EFFECTIVE DATE.

An Ordinance of the County of Holmes, State of Florida, hereinafter referred to as "County", granting a franchise to Americable International, Inc., a Florida Corporation ("Americable"), its successors and assigns, to erect and maintain a cable television service to the public in all of the unincorporated areas of Holmes County, said franchise to be nonexclusive; providing for inspection, fees, standards, rules and regulations; and providing for an effective date.

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

1. Purpose

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

352

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

2. Grant of Authority

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

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

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

This franchise is not intended to preclude the establishment of broadcast television stations as the same is required to be licensed by the Federal Communications Commission ("FCC") and it is understood and agreed that this franchise shall not prevent the transmission and distribution of audio and television impulses by any other person, firm or corporation, providing said transmission and distribution is original and emanates from the broadcast television station originating the broadcast.

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

3. Service Provided

In providing service to unincorporated areas of the County, Americable shall reasonably and equitably extend energized trunk cable to areas within the County with a density of not less than twenty-five (25) homes per mile from the existing service. Consistent with the franchise, Americable hereby promises that a

354

CATV System will be made available to customers upon request, but in any case, Americable shall not be required to furnish service before ninety (90) days after the customer completes construction of a house upon his property situated in the franchise area. If such request comes from a resident in an area that does not meet the aforementioned density level, Americable shall provide service to such resident but may require compensation from the resident for the cost, including labor, of such extension of service from the then existing plant. Americable shall not deny access to cable service to any group of potential residential cable subscribers because of the income of the residents of the local area in which such groups resides. Additional time to complete construction may be granted by the Commission for good cause shown upon request of Americable. Construction will be deemed to have commenced hereunder upon the ordering of equipment necessary for construction to occur.

It is understood that temporary cessation of service at any time caused by an act of God, fires, strikes, casualties, accidents, power failures, necessary maintenance work, breakdowns, damage to machinery or lines, civil or military authority, or by riot or other cause beyond the control of Americable shall not constitute a breach of the provisions hereof, or impose liability upon Americable to the County or to its inhabitants or subscribers therein.

4. Compliance With Laws, Regulations and Ordinances

Having conducted a public proceeding concerning Americable's application for the franchise herein granted, which proceeding afforded all interested parties an opportunity to participate in and comment upon the legal, financial, technical, and other qualifications of Americable and the adequacy and feasibility of its arrangements for the construction of a CATV System in the County, the Commission hereby finds that Americable possesses all necessary qualifications and that its construction arrangements are adequate and feasible. Pursuant to such findings, the Commission, to the extent it is legally able to do so, hereby grants Americable a non-exclusive franchise for all unincorporated areas of the County to construct, erect, operate, modify and maintain in, upon, along, across, above, over and under highways, streets, alleys, sidewalks public ways and public places now laid out or dedicated and all extensions thereof, and additions thereto, in the County, all poles, wires, cable underground conduits, manholes and other television conductors and fixtures necessary for the maintenance and operation of a CATV System for the purpose of distributing to the public television and radio signals, other electronic impulses in order to furnish television and radio programs and various communications and other electronic services. The right so granted includes the right to use and occupy said streets, alleys, public ways and public places and all manner of easements for the

356

purpose herein set forth, to the extent the Commission is legally able to do so. Provided, however, permanent buildings and towers or poles, higher than 25 feet may not be constructed upon or in public places and county property except upon separate written permit from the Commission.

5. County Held Harmless Due to Negligence of the Company

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

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

6. Conditions on Street Occupancy and System Construction

(A) Use. The maintenance and operation of Americable television transmission and distribution system in the streets, alleys and other public places, and in the course of any new construction or addition to its facilities, shall be done so as to cause minimum interference with the rights or reasonable

convenience of the general public and shall be done in a reasonably safe manner.

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

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

7. Service Standards

Americable's CATV System shall be installed and maintained so as to provide pictures on subscribers' receivers consistent with the picture quality standards set forth in Section 76.605(a)(1)-(10) rules and regulations of the FCC, 47 C.F.R. § 76.605(a)(1)-(10) (1987). Workmanlike standards shall be maintained in the installation of feeder lines leading from the trunk lines to the service outlets, with all holes in walls through which cables or wires must pass being carefully closed and sealed so as to minimize the danger of water, bug and rodent

358

invasion of the interior rooms. Americable shall operate the system so that there will be no unreasonable interference with broadcast television reception, broadcast radio reception, telephone communications or other installations which are now or may hereafter be installed and in use in the County.

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

8. Rate Increases

The rates Americable charges its subscribers for the provision of cable service and other service, including, but not limited to, ancillary charges relating thereto, are not established hereunder and shall not be regulated.

9. Payment to County

Americable shall pay to the County three percent of basic cable service revenues, sometimes known as "Basic Subscriber Revenues", received from subscribers in unincorporated areas of the County. Americable shall furnish the County with an annual report showing Americable's annual "Basic Subscriber Revenues" from subscribers in unincorporated areas of the County during the preceding year and such other information as the County may

reasonably require with respect to properties and expenses related to Americable's services in connection with said fee.

10. Franchise Obligations

The failure on the part of Americable to substantially comply with any of the material provisions of the franchise ordinance shall be grounds for the County to initiate a show-cause hearing in which Americable must present evidence to the County at its next regularly scheduled meeting as to why the franchise County should not be forfeited. Such forfeiture of the franchise area shall not take effect if the reasonableness or propriety thereof is protested by Americable until a court of competent jurisdiction, with right of appeal by either party, shall have found that Americable has failed to comply in a substantial respect as aforesaid with any provision of this ordinance. Americable shall have six (6) months after the final determination of the question to make good the defaults before forfeiture shall result with the right in the County at its discretion to grant such additional time to Americable for compliance as necessities in the case may require.

11. Constitutional Validity

If any section, subsection, 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 deemed a separate, distinct, and independent

360

provision and such holding shall not affect the validity of the remaining portions hereof. Provided however, that the remaining portion or resolution when read together will constitute a feasible, reasonable, workable plan to perform the services contemplated.

12. Abandonment of Easement

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

13. Change In Form Of Government

Any change in the form of government of the areas described herein as authorized by the State of Florida shall not affect the validity of this franchise. Any municipal corporation succeeding

the County shall, without the consent of the County, succeed to all rights and obligations of the County provided in this Franchise.

14. Contents of Franchise Agreement

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

15. Ordinances

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

16. Transfer or Sale of Franchise

Americable may sell, assign or lease the franchise, in whole or in part, including all rights and obligations herein, after obtaining written permission of the County, which permission shall not unreasonably be withheld. Withholding of such permission shall be given to Americable in writing, setting forth in detail the reasons therefore, within thirty (30) days from the date of request for such permission to sell assign or lease either or both franchises.

17. Renewal of Franchise

Upon the expiration of this agreement Americable may renew the franchise for a like period from the date of expiration. The County shall review the grantee's qualifications and performance during the life of the franchise, and the adequacy of this franchise, in the context of a full public proceeding, affording due process, and shall renew the Franchise upon satisfactory

362

findings thereof, consistent with Section 626 of the Cable Communications Policy Act of 1984, 47 U.S.C. § 546 as in effect upon the adoption of this Ordinance.

18. County Jurisdiction

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

19. Effectiveness

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

Passed by the County Commission of the County of Holmes, State of Florida, this June 5, 1989.

BOARD OF COUNTY COMMISSIONERS
OF HOLMES COUNTY, FLORIDA



By: H. R. W.
Chairman

Attest: Elizabeth A. Arnold