

CABLE TELEVISION ORDINANCE

FOR

CITY OF ANNISTON, ALABAMA

ORDINANCE NO. 16-O-___

AN ORDINANCE GRANTING TO CABLE ONE, INC., FOR A PERIOD OF TEN (10) YEARS FROM AND AFTER THE PASSAGE, ACCEPTANCE AND EFFECTIVE DATE OF THIS ORDINANCE, THE NONEXCLUSIVE RIGHT, PRIVILEGE AND FRANCHISE TO CONSTRUCT, OPERATE AND MAINTAIN A CABLE TELEVISION SYSTEM IN, UPON, ALONG, ACROSS, ABOVE, OVER, AND UNDER STREETS, ALLEYS, EASEMENTS, OPEN AREAS, PUBLIC WAYS AND PUBLIC PLACES, NOW LAID OUT OR DEDICATED, AND ALL EXTENSIONS THEREOF AND ADDITIONS THERETO, IN THE CITY OF ANNISTON; PROVIDING TERMS AND CONDITIONS FOR THE OPERATION OF SUCH CABLE TELEVISION SYSTEM AND THE PAYMENT OF FEES THEREFORE.

WHEREAS, on October 8, 1991, the City Council of the City of Anniston passed and adopted Ordinance No. 91-O-31, as amended, granting to Anniston Newchannels, Corp. a non-exclusive franchise for a period of twenty-five years for the operation and maintenance of a cable system to be used for the sale and distribution of cable services within the city;

WHEREAS, on January 27, 1998, the City Council passed and adopted Ordinance No. 98-O-4 authorizing the transfer and assignment of the franchise to Cable One, Inc. to continue in effect until its expiration on October 8, 2016;

WHEREAS, prior to the adoption of this Ordinance, Cable One, Inc. submitted a proposal to the City of Anniston for the renewal of the franchise pursuant to the Cable Communication Policy Act of 1984, 47 U.S.C. § 546(h);

WHEREAS, the City of Anniston and Cable One, Inc. resolved through negotiation the issues pertaining to Cable One, Inc.'s proposal for renewal of its franchise, taking into consideration the needs and interests of the community, the legal, character, financial and technical qualification of Cable One, Inc., as well as the adequacy of the services it proposes and the adequacy and feasibility of its plans to provide the services;

WHEREAS, after affording the public adequate notice and opportunity for comment, including a public hearing before the Council during its September 6, 2016 meeting, the Council finds that the proposal negotiated between the City of Anniston and Cable One, Inc. is due to be granted in accordance with the terms and conditions set forth herein;

NOW THEREFORE, BE IT ORDAINED by the Council for the City of Anniston, Alabama as follows:

SECTION 1. DEFINITIONS

For purposes of this Ordinance the following terms, phrases, words, abbreviations and their derivations shall have the same meaning given herein.

A. Cable Service shall mean (a) the one-way transmission to subscribers of (i) video programming, or (ii) other programming service, and (b) subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

B. Cable Television System or System shall mean the Company's facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service which includes video programming and which is provided to multiple subscribers within the City.

C. City shall mean the City of Anniston, Alabama, and all territory within its governmental authority.

D. City Council shall mean the present governing body of the City, or any successor to the legislative powers of the present government body.

E. Company shall mean Cable One, Inc., a Delaware Corporation.

F. Federal Communications Commission or FCC shall mean the agency as presently constituted by the U.S. Congress or any successor agency authorized by the Congress to regulate cable television systems.

G. Gross Revenues shall mean all revenue derived by the Company, its parents, affiliates or subsidiaries from the operation of the cable system to provide cable services and shall include, without limitation, pay cable fees, installation and reconnection fees, franchise fees collected from subscribers, leased channel access fees, converter rentals, fees for cable modem service (unless in accordance with applicable law such service is not subject to local franchise fees), nonsubscriber revenue, including advertising, revenue (less normal agency commissions) and home shopping channel commissions, all cable service lease payments from the cable system; payments or other consideration received by the grantee from programmers for carriage of programming on the cable system and accounted for as revenue under GAAP; any charges based on sale or lease of fiber or system capacity that does not constitute the provision of telecommunications service.

H. Person shall mean any person, firm, partnership, association, corporation, company, or organization of any kind.

I. Street shall mean the surface of and the space above and below any public street, road, highway, freeway, lane, path, public way, or place, alley, court, boulevard, parkway, drive, or other easement now or hereafter held by the City for the purpose of public travel and shall include other easements or rights of way as shall be now held or hereafter by the City which shall, within their proper use and meaning, entitle the City and the Company to the use thereof for the purposes of installing or transmitting cable television system transmission over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments, and other property as may be ordinarily necessary and pertinent to a cable television system.

SECTION 2. GRANT OF AUTHORITY

The City hereby grants to Cable One, Inc., a nonexclusive right, privilege, and franchise to construct, operate, maintain and remove a cable television system in, upon, across, above over and under, streets, alleys, easements, open areas, public ways, and public places now

laid out or dedicated in the City and upon annexation of any territory to the City, this Franchise shall extend to the territory so annexed. The City will not grant a franchise to another company to construct and operate a cable television system if such franchise or amendment contains material terms that, when taken in their entirety, are more favorable or less burdensome than the material terms set forth in this Ordinance.

SECTION 3. DURATION OF FRANCHISE

(a) Term. The Franchise shall take effect on the effective date of this Ordinance and shall continue in force for a period of ten (10) years, subject to the conditions and restrictions herein provided.

SECTION 4. RENEWAL PROCEDURES

This Franchise may be renewed by the City upon application of the Company pursuant to any procedures established by this Franchise, and in accordance with the Cable Acts of 1984 and 1992, and/or any future relevant laws.

SECTION 5. TRANSFER OF OWNERSHIP OR CONTROL

(a) Assignment or Transfer. This Franchise shall not be assigned or transferred without the prior approval of the City Council of the City of Anniston which shall not be withheld unreasonably. The purchaser, assignee, or transferee must demonstrate to the satisfaction of the City Council of the City of Anniston, its financial and technical ability to operate and maintain the System.

(b) Notice. The Franchisee under this document shall give the City of Anniston written notice of any proposed purchaser, assignee, or transferee of this Franchise and should the City fail to call a meeting of the City Council to consider and act upon such proposed sale, assignment or transfer within 120 days following receipt of written notice of such proposed sale, transfer, on assignment, the City shall be deemed to have consented to the proposed sale, transfer, or assignment.

SECTION 6. FRANCHISE PAYMENT

(a) Franchise Fee. For the use of the streets and other facilities of the City in the operation of the cable television system, the Company shall pay the City on or before April 1st of each year a franchise fee in an amount equal to five percent (5%) of the annual gross revenues received by the Company during the previous calendar year.

(b) Inspection. The City shall have the right to inspect the Company's income records, and the right to audit and to recompute any amounts determined to be payable under this Ordinance.

(c) License Taxes; Taxes, fees, or Assessments of General Applicability. The

Company's payment of the franchise fee required herein shall be in addition to and not in lieu of any license taxes or taxes, fees or assessments of general applicability that may be lawfully charged, levied or assessed by the City.

SECTION 7. BOOKS AND RECORDS

(a) Books and Records. The Company shall keep a full and accurate set of books showing the amount of gross revenues received by the Company from the area governed by the City, based upon which the franchise payments to be made hereunder are computed.

(b) Installation Map. The Company shall at all time maintain a complete working map showing the exact location of all the equipment of the cable television system installed or in use in streets and other public places in the City, and such map shall be accessible at normal business hours to the City for all proper purposes.

(c) Examination of Books and Records. At all reasonable times, the Company shall permit the City, or its duly authorized representatives, to examine all public books and records of the Company concerning operations of its cable television system in the area governed by the City, and to examine any and all maps and any other records kept or maintained by the Company which deal with the operations and affairs of the Company with respect to this Franchise.

SECTION 8. LIABILITY INSURANCE AND INDEMNIFICATION

Public Liability Insurance.

(a) At all times during the existence of the Franchise granted hereunder, the Company shall, at its own cost and expense, maintain in full force and effect a general comprehensive liability insurance policy, protecting the City against liability for loss or damage for personal injury, death, and property damage, occasioned by the negligence or default of the Company under the Franchise, with maximum liability limits of One Million Dollars (\$1,000,000.00) for personal injury or death and One Million Dollars (\$1,000,000.00) for damage to property.

(b) The policy or policies of insurance mentioned in the foregoing paragraph shall name the City, its officers and agents, as an additional insured and shall contain a provision that a written notice of cancellation or reduction in coverage of said policy shall be delivered to the City thirty (30) days in advance of the effective date thereof.

SECTION 9. CONDITIONS OF STREET OCCUPANCY

(a) Location of Poles and Fixtures. The Company shall not place poles or other fixtures where the same will interfere with any gas, electric, or telephone fixtures, water hydrant, mains or public sewer lines, and all such poles or other fixtures placed in any street shall be placed

in the right-of-way between the roadway and the property as directed by the City.

(b) Restoration. The Company shall, upon completion of any work requiring the opening of any street or public place, restore the same, including the paving and its foundations, to as good condition as formerly, and in a manner and quality approved by the City, and shall exercise reasonable care to maintain the same thereafter in good condition. Said work shall be performed with due diligence, and if the Company shall fail to perform and complete the work within a reasonable time, to remove all dirt and rubbish and to put the street or public place in good condition, the City shall have the right to put the street or public place in good condition at the expense of the Company; and the Company shall upon demand, pay to the City the cost of such work done for or performed by the City.

(c) Relocation of Facilities. Whenever the City shall grade, regrade, or change the line of any street or public place or construct or reconstruct any sewer or water system therein and shall, with due regard to reasonable working conditions, order the Company to relocate or protect its wires, conduits, cables, and other property located in said street or public place, the Company shall relocate or protect its facilities at its own expense. The City shall give the Company reasonable notice of plans to grade, regrade, or change the line of any street or public place or to construct or reconstruct any sewer or water system therein.

(d) Protection of Facilities. Nothing contained in this section shall relieve any person, or corporations, from liability arising out of the failure to exercise reasonable care to avoid injuring the Company's facilities while performing any work connected with grading, regrading, or changing the line of any street or public place or with the construction or reconstruction of any sewer or water system.

(e) Notice of Improvements. The City shall give the Company reasonable written notice of plans for street improvements where paving or resurfacing of a permanent nature is involved that would affect the Company's facilities, which notice shall contain the nature and character of the improvements, the streets upon which the improvements are to be made, the extent of the improvements and the time when the City is going to start the work. The notice shall be given to the Company a sufficient length of time, considering reasonable working conditions, in advance of the actual commencement of the work to permit the Company to make any addition, alterations, or repairs to its facilities deemed necessary.

(f) Facilities Not Hazardous to Public. All wires, conduits, cables, and other property and facilities shall be so located, constructed, installed, and maintained as not to endanger or unnecessarily interfere with the usual and customary trade, traffic, and travel upon the streets and public places of the City. The Company shall keep and maintain all of its property in good condition, order, and repair, so that the same shall not menace or endanger the life or property of any person. The Company shall keep accurate maps and records of all its facilities and furnish copies of such maps and records as requested by the City. Adherence to the City requirements for placement of Company wires, conduits, cables and other property and facilities shall be deemed proof of compliance with this section.

(g) Moving of Buildings. The Company shall, on the request of any person holding a building moving permit, 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 Company shall have the authority to require such payment in advance.

SECTION 10. MAINTENANCE AND REPAIRS.

(a) Maintenance of System. The Company shall erect and maintain all parts of the system in good condition throughout the entire franchise period.

(b) Interruption of Service. Whenever it is necessary to shut-off or interrupt service for the purpose of making repairs, adjustments, or installations, the Company shall use its best efforts to do so during periods of minimum use of the system by subscribers. Unless such interruption is unforeseen and immediately necessary, the Company shall give subscribers reasonable notice of any planned interruption of service. All costs incurred in repairing and correcting an interruption of service shall be borne by the Company; provided, however, that nothing herein shall prevent the Company from recovering the costs incurred from persons responsible for occurrences or acts which result in damage to the cable television system.

(c) Complaints. Any service complaints from subscribers shall be investigated within twenty-four (24) hours of receipt of such complaint. Any service complaint shall be resolved within seventy-two (72) hours. The Company shall keep a maintenance service log which will indicate the nature of each service complaint, the date and time it was received, the disposition of said complaint and the time and date thereof. This log shall be maintained for two (2) years and shall be made available for periodic inspection by City.

SECTION 11. SERVICE.

(a) Construction. Company has fully constructed an operational cable system currently serving the City.

(b) Availability. Where technically and economically reasonable, Cable television service shall be available to all areas within the corporate limits of the City which have a minimum of forty (40) dwelling units per street mile.

(c) Extensions. All applicants desiring cable antenna service at a location greater than 300 feet from the nearest distribution line shall pay to the Company its actual costs of labor and materials for said installation.

(d) Additional Territory. In the event additional adjacent territory is incorporated within the City's limits, by annexation or otherwise, the Company's rights and duties under this Ordinance shall be deemed to include such additional territory.

(e) Technical Standards. The Company shall comply with all applicable

technical standards of the FCC as published in subpart K of 47 C.F.R. § 76, as amended.

SECTION 12. COMPLIANCE WITH APPLICABLE LAWS.

The Company shall at all times comply with all laws, ordinances and regulations of the federal, state and City governments or any administrative agencies thereof. If any federal or state law or regulation shall be in conflict with the terms of this Franchise, or any ordinance of the City, then as soon as possible following knowledge thereof, the Company shall notify the City of the point of conflict.

SECTION 13. BREACH AND TERMINATION.

(a) Breach. In addition to all other rights and powers retained by the City under this Franchise or otherwise, the City reserves the right to terminate the Franchise and all rights and privileges of the Company hereunder in the event of a substantial breach of its terms and conditions. A substantial breach by Company shall include, the following:

- (1) Violation of any material provision of the Franchise or any material rule, order, regulation or determination which the City is authorized to make under the terms of this Franchise.
- (2) Attempt to evade any material provision of the Franchise or attempts to practice any fraud or deceit upon the City or its subscribers or customers;
- (3) Material misrepresentation of fact in the application for or negotiation of the Franchise.

(b) Excuse for Breach. The foregoing shall not constitute a substantial breach if the violation occurs, but it is without fault of the Company or occurs as a result of circumstances beyond its control.

SECTION 14. RULES AND REGULATIONS.

(a) In addition to the inherent powers of the City to regulate and control this Franchise, and those powers expressly reserved by the City herein, the right and power is hereby reserved by the City to promulgate such additional regulations as it shall find necessary in the exercise of its lawful powers and in furtherance of the terms and conditions of this Franchise.

(b) The City may also adopt such regulations at the request of the Company upon application.

SECTION 15. FAILURE OF CITY TO ENFORCE THIS FRANCHISE, NO WAIVER OF THE TERMS THEREOF.

The Company shall not be excused from complying with any of the terms and conditions of this Franchise by any failure of the City upon any one or more occasions to insist upon or to seek compliance with any such terms or conditions.

SECTION 16. SEVERABILITY.

If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held illegal, invalid, or unconstitutional by any court of competent jurisdiction or the FCC, such decision shall not affect the validity of the remaining portions. The invalidity of any such portion of this Ordinance shall not abate, reduce, or otherwise affect any consideration or other obligation required by the City of the Company under the Franchise granted.

SECTION 17. ACCEPTANCE BY THE COMPANY.

The Franchise granted pursuant to this Ordinance shall not take effect until such time that the Company executes and delivers to the City a duly authorized, written acknowledgement and acceptance of the terms and conditions set forth herein, in their entirety and without exception.

SECTION 18. CHOICE OF LAW; FORUM SELECTION.

The Franchise granted pursuant to this Ordinance shall be governed by and construed in accordance with the laws of the State of Alabama, regardless of the laws that might otherwise govern under applicable principles of the conflicts of law thereof. The parties hereto hereby consent to the jurisdiction of the state and federal courts sitting in Anniston, Alabama, for the adjudication of any dispute arising with respect to this Ordinance.

SECTION 19. NOTICE.

All notices called for in this Franchise shall be written notice and will be considered as being completed notice when mailed by registered mail or certified mail return receipt requested and addressed to the party to be notified as shown below:

To City:	City of Anniston P.O. Box 2168 Anniston, AL 36202
To Company:	Cable One, Inc. 210 E Earll Drive Phoenix, Arizona 85012

PASSED and ADOPTED by this _____ day of _____, 2016.

CITY COUNCIL OF THE CITY OF
ANNISTON, ALABAMA

Vaughn M. Stewart II, Mayor

Jay W. Jenkins, Council Member

David E. Reddick, Council Member

Seyram Selase, Council Member

Millie Harris, Council Member

ATTEST:

Alan B. Atkinson, City Clerk

ACKNOWLEDGEMENT AND ACCEPTANCE

This Ordinance and the terms and conditions of the franchise granted herein is hereby acknowledged and accepted by Cable One, Inc., on this _____ day of _____, 2016.

CABLE ONE, INC.

By: _____
Vice President

ATTEST:

By: _____
Its: _____