

ORDINANCE NO. 260

AN ORDINANCE GRANTING A RENEWAL FRANCHISE AGREEMENT TO ESSEX 1982-1 OPERATING PARTNERSHIP, SUCCESSOR TO HAVANA CABLE TELEVISION, INC., HEREINAFTER REFERRED TO AS COMPANY, TO CONSTRUCT, OPERATE AND MAINTAIN A CABLE TELEVISION SYSTEM IN THE TOWN OF HAVANA, FLORIDA; PROVIDING FOR DEFINITIONS; PROVIDING FOR A NON-EXCLUSIVE GRANT TO SUCH COMPANY; PROVIDING FOR THE MANNER OF CONSTRUCTION OF POLES AND OTHER CABLE INSTALLATIONS; GRANTING THE COMPANY THE RIGHT TO USE THE TOWN'S POLES UPON PAYMENT OF A STATED POLE RENTAL; OBLIGATING THE COMPANY TO EXTEND SERVICE TO CERTAIN DESIGNATED AREAS; PROVIDING FOR SAFETY STANDARDS FOR THE CONSTRUCTION, INSTALLATION, MAINTENANCE AND REPAIR OF THE COMPANY'S SYSTEM; PROHIBITING PREFERENTIAL RATES AND CHARGES; PROVIDING FOR FREE BASIC SERVICE TO THE TOWN; PROVIDING FOR CURRENT RATES AND INSTALLATION CHARGES; PROVIDING FOR INDEMNIFICATION OF THE TOWN AND INSURANCE COVERAGE BY THE COMPANY; PROVIDING FOR AN ANNUAL FRANCHISE FEE TO THE TOWN OF THREE (3%) PER CENT OF THE COMPANY'S GROSS REVENUES FOR BASIC SERVICE TOGETHER WITH A LATE CHARGE FOR LATE PAYMENT OF SAME; MAKING PROVISION FOR SERVICE REPAIRS AND FOR HANDLING OF COMPLAINTS; RESERVING TO THE TOWN THE RIGHT TO CORRECT UNSAFE CONDITIONS; PROVIDING FOR A FRANCHISE TERM OF FIVE (5) YEARS WITH AN OPTION TO EXTEND THE TERM OF THE FRANCHISE FOR AN ADDITIONAL FIVE (5) YEARS; PROHIBITING ASSIGNMENT WITHOUT THE TOWN'S CONSENT; PROVIDING FOR SEVERABILITY; CONSENTING TO AN INCREASE IN RATES FOR BASIC SERVICE UPON THE COMPLETION OF THE REBUILDING OF THE SYSTEM BY THE COMPANY; RESERVING THE RIGHT OF THE TOWN TO REGULATE RATES SHOULD THAT BE PERMITTED BY LAW AND RESERVING TO THE TOWN THE RIGHT TO EXERCISE ANY OTHER AUTHORITY VESTED IN LOCAL GOVERNMENTS BY NEW FEDERAL LEGISLATION; PROVIDING FOR FORFEITURE UPON DEFAULT; PROVIDING FOR OWNERSHIP DISCLOSURE; PROVIDING FOR A CONSTRUCTION BOND DURING THE UPGRADE OF THE SYSTEM; MAKING THE FRANCHISE SUBJECT TO THE TOWN'S CHARTER AND ANY AMENDMENTS LAWFULLY MADE THERETO; PROVIDING FOR EFFECTIVE DATE.

BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF HAVANA:

That a renewal franchise agreement is hereby granted by the Town of Havana to Essex 1982-1 Operating Partnership upon the following terms and conditions, to-wit:

THIS AGREEMENT, dated 23rd day of February, 1993,  
by and between the TOWN OF HAVANA, hereinafter called the  
"Town" and ESSEX 1982-1 OPERATING PARTNERSHIP, hereinafter  
referred to as the "Company".

W I T N E S S E T H

WHEREAS the Town is willing to enter into an agreement  
granting to the Company a renewal of its franchise to  
construct, operate and maintain a broadband telecommunications  
distribution system (the "System"), for television, radio and  
other data signals within the incorporated areas of the Town of  
Havana and the Company is desirous of continuing to construct,  
own and operate the System in a first class condition at all  
times.

NOW THEREFORE, for and in consideration of the sum of  
\$1.00 to each of the parties in hand paid, the receipt of which  
is hereby acknowledged, it is mutually agreed as follows:

SECTION 1: Definitions: For the purposes of this  
franchise, the following terms, phrases, words, abbreviations  
and their derivations shall have the meanings given herein.  
The work "shall" is always mandatory and not merely directory.

(a) "Basic Service". The minimum service transmitted  
to all subscribers.

(b) "Broadcast". Over-the-air transmission by a radio

or television station.

(c) "Cable Act". The Cable Communications Policy Act of 1984.

(d) "Cablecast". Programming (exclusive of broadcast signals) transmitted over the cable system.

(e) "CSL Insurance". CSL insurance shall refer to the combined single limit of an insurance policy.

(f) "Company". Essex 1982-1 Operating Partnership.

(g) "FCC". The Federal Communications Commission.

(h) "Headend". The electronic center through which broadcast and cablecast signals are electronically translated or modified for distribution over the cable system.

(i) "Local Agent". An employee of the Company who is assigned to investigate and resolve complaints regarding the cable system in the Town of Havana, and who resides within twenty (20) miles of the Town of Havana.

(j) "Pay Cable". Optional additional program services, provided to subscribers at a monthly charge in addition to the charge for basic service.

(k) "Person." Any person, firm, partnership, association, corporation, company or other entity of any kind.

(l) "Subscriber". Any person lawfully receiving service from the cable system.

(m) "System". A facility, consisting of a set of closed transmission paths and associated signal generation, reception and control equipment that is designed to provide cable service (as defined in the Cable Act) which includes video programming and which is provided to multiple subscribers

within the franchise area.

(n) Other Definitions. Any term defined in FCC rules an/or regulations as of the effective date of this franchise, but not included in the foregoing definitions, shall be incorporated herein by reference as if set forth in full, and shall be defined as appears in such rules and/or regulations.

SECTION 2: The Town hereby grants to the Company the non-exclusive right and authority to install, maintain and operate a System for analog and digital television, audio, video, radio and other data signals in, upon, along, across, above public ways and public places now laid out or dedicated and all extensions thereof, and additions thereto, in the Town, and to erect and install poles, wires, cables, underground conduits, manholes, and other conductors and fixtures necessary for the maintenance and operation in the Town of a System for the purpose of distributing television and radio signals, and other electronic impulses in order to furnish television and radio programs, and various communications and other electronic services to the public. 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 purposes herein set forth.

SECTION 3: All poles, cables, wires, antennas, conduits or appurtenances shall be constructed and erected in a workmanlike manner. The Town shall not be held liable for any disturbances of the Company's installations resulting from the altering, repairing or installations of streets, sewer, water, gas, and electrical installations, except to the extent of the

willful misconduct or negligent acts or omissions of the Town. The Company shall, at its own expense, move or relocate any of its facilities at the time of request of the Town, whenever and wherever said facilities are found by the Town to interfere with the Town's streets, street grade, sewer, water, gas, or electrical installations or any proposed changes thereof, or extensions thereto.

This agreement shall not be construed to deprive the Town of any rights or privileges which it now has or may hereafter have, or to regulate the use and control of its streets.

SECTION 4: The Town grants the Company the right to attach its facilities or equipment to any and all poles owned, operated or maintained by the Town. Except for individual service drops, the Company shall not erect any pole, install any underground lines or conduits, run any line, make any attachment, nor shall any construction of any kind be commenced without the proper notification of the Town Manager. The Town shall have and maintain the right to inspect the construction, operation and maintenance of the system by the Company. Such attachments shall, at all times, be placed and maintained in accordance with the National Electric Safety Code, the National Electric Code and in full compliance with standards set forth by the FCC and any and all Town directions relating to the placement of equipment on its poles which are applicable to all pole users, including the Town. Company shall pay the Town Four Dollars (\$4.00) for each pole it attaches to per year within ninety (90) days after the end of each calendar year.

In the event Company attaches to a pole for less than an entire year, such fee shall be prorated on a monthly basis. The Company will provide the Town a yearly audit of the number of poles it attaches to at the same time the yearly pole rental is due. Upon request, the Town will be provided with a system wide map showing the location of all poles utilized by the Company. In the event the Company exercises its option to extend the term pursuant to Section 12, the Town may increase the annual pole attachment fee to equal the fees charged to other similarly situated pole users or, if none exist, to reflect the increases in the Town's expenses to own and maintain such poles.

SECTION 5: It shall be the obligation of the Company to serve all residents of the designated area of the Town except to the extent that the density of homes, adverse terrain, or other factors, render providing service impractical, technically non-feasible, or economically noncompensatory. For purpose of determining compliance with the provisions of this section, and to provide for a reasonable and nondiscriminatory policy governing extensions of service within the designated areas of the Town, the Company shall extend service to new subscribers, at the normal installation charge and monthly rate for customers of that classification where the number of homes to be passed by such new extension is at least twenty-five (25) homes per mile, and where such extension is contiguous to the then existing cable plant.

SECTION 6: All construction work of the Company including installation, shall conform to the National Electric Safety

Code, the statutes of the State of Florida and all ordinances of the Town. The Company shall provide the Town Manager with a map designating the location of System facilities, and said map shall be available for public examination. All maintenance or repairs shall be made in a positive manner when it is possible, temporary repairs shall be only for a short term.

The Company shall use only new cables with as many protective devices as may be necessary to insure the best possible service and with the least possible interference. The Company shall, at its own cost and expense, move its lines, cables, wires, tower and other appurtenances to other locations when the Town may require such removal for the safety of said Town or where their location might interfere with Town operations. In those areas where telephone and electrical service lines are underground or where the Company is unable to make arrangements for the use of existing utility poles, or placement of Company's poles would be unfeasible, the Company shall place its cables and service lines underground. In the event the Company, after written notice, fails or refuses to act, the Town shall have the power to remove or abate the same at the expense of the Company, all without compensation or liability for damages from the Town to the Company, except to the extent such loss arises from the willful misconduct or gross negligence of the Town.

All installations made by the Company shall be made in good, substantial and safe conditions. The surface of any street, alley or other public places disturbed by the Company in constructing, erecting, maintaining, operating, or repairing

its system shall be restored immediately by the Company after completion of the work, to as good a condition as before the commencement of the work, and such surface shall be maintained at the cost of the Company to the satisfaction of the Town for a period of one (1) year from the date such surface of said street, alley or public place is broken or excavated for such construction or maintenance work, after which time responsibility for the normal maintenance of such surface shall become the duty of the Town. However, Company is not authorized to, and shall not, cut the paved surface of any existing right-of-way for the purpose of installation, repair or maintenance of its system without approval of the Town Manager; it being understood that when it is necessary for the Company to cross road rights-of-way it shall "jack under" the paved road or install its cables overhead wherever possible.

SECTION 7: The Company shall not, as to rates, charges, services, facilities, regulations for installation of equipment and regular subscriber services, make or grant any preference or advantage to any person, or subject any person to any prejudice or disadvantage, provided that nothing in this agreement shall be deemed to prohibit the establishment of a graduated scale of charges and classified rate schedules to which any subscriber coming within such classification would be entitled.

The Company will furnish a free connection to basic cable service to one television set within each Town office building, all public schools, colleges and universities in serviceable areas of this franchise agreement.



The rates currently offered by the Company are attached here as Exhibit A. Subject to Section 16 hereinbelow, all rates are subject to change by the Company.

SECTION 8: The Company shall indemnify and save the Town and Town Council harmless from any and all liability, damage or expense from accident, or damage, either to itself or to persons or property of other, which may occur by reason of Company's activities in accordance with this agreement except to the extent such loss or damage arises from the willful misconduct or negligence of the Town. For this purpose and prior to commencing construction of any kind, the Company shall have in full force and effect and thereafter with the Town Clerk, a good and sufficient policy of insurance with limits of \$2,000,000 aggregate, \$1,000,000 combined bodily injury and property damage each occurrence, for premises and operation exposure, \$1,000,000 CSL for bodily injury and property damages each occurrence for products and completed operations, \$1,000,000 CSL for advertising and personal injury liability. Such policy limits shall include coverage by excess or umbrella liability coverage. The Company shall name the Town of Havana as additional insured.

The Company shall maintain in full force and effect during the life of any franchise, public liability insurance in a solvent insurance company authorized to do business in the State of Florida.

Proof of such insurance coverage shall be provided to the Town prior to the initial effective date of this agreement and for each subsequent year thereafter at the time of and

together with the annual franchise payment as hereinabove provided in Section 9, so as to assure the Town of continual insurance coverage during the full term of this franchise or any extension thereof.

SECTION 9: The Company shall pay the Town three percent (3%) of the Company's gross revenues received by it for basic cable television services provided to all subscribers located within the Town. For the purposes of this Section, the term "gross revenues received by it for basic cable television services" shall mean those gross revenues of the Company attributable to the basic cable service paid by subscribers within the Town, provided, however, that revenue resulting from additional outlets, premium programs, pay-per-view or other special programming, services, installation and relocation charges, or from the sale or lease of tangible personal property shall not be deemed to be "gross revenues received by it for basic cable television services." Such payment shall be made annually within ninety (90) days after the end of each calendar year, or such other time as may be required by State statute.

At the time of each payment due hereunder, the Company shall provide the Town an annual statement from the Company as to the amount of the Gross Annual Basic Subscriber Receipts received during the proceeding year. Such statement shall be attested to by the chief financial officer of the Company. The Town, through its officers, agents, or employees, shall have access to the books and records of the Company, regarding the Company's operations within the Town of Havana, upon reasonable

written notice for the purpose of determining the amount of said Gross Annual Basic Subscriber Receipts and the amount due to and received by the Town by virtue of the provisions hereof.

The Town may impose a late charge of one and one-half percent (1 1/2%) per month or the maximum rate permitted by law, whichever is less, for each month that the required franchise payment is delinquent subsequent to the due date thereof.

SECTION 10: The Company shall maintain a local agent. The Company shall also provide a local telephone number which will be advertised in the white pages of the telephone book and which will be answered twenty-four (24) hours a day. The Company shall also provide at least one full time qualified repair technician, who will be based in or near Havana and who will be qualified to make any and all necessary repairs when service is interrupted. This is in addition to any installers on staff.

The Company will respond to complaints of System outages within twenty-four (24) hours and will endeavor to restore service as promptly as possible. Planned service outages for system maintenance and repair shall be preceded by notice to affected subscribers. The Company will maintain a list of service complaints received, by category of complaint. A summary of this list shall be available for inspection by the Town Manager. Nothing herein shall require the release of "personally identifiable information" about any subscriber by the Company to the Town.

SECTION 11: The Town reserves the general right to see that the System of the Company is constructed and maintained in

a safe condition. If the Town, at any time, finds that an unsafe condition does exist, it may order the Company to make the necessary repairs forthwith.

The Town may test any system component upon reasonable notice to the Company. No test shall occur in the absence of a qualified Company employee.

SECTION 12: Term of Franchise - The franchise and rights herein granted shall take effect upon the execution of this franchise, and shall continue in force and effect for a term of five (5) years after the expiration of the current franchise held by the Company; the Company shall have an option to extend the term of this franchise for an additional period of five (5) years by providing notice to the Town, in writing, at least one (1) year prior to the expiration of the Term and at that time it must be brought before the Council for renewal. If either party desires to terminate this franchise it shall do so by giving the other party sixty (60) days written notice prior to any renewal date.

Should the facilities of the Company cease to be used or if this franchise is forfeited to the Town by reason of the failure of the Company to abide by the terms hereof, the Company shall, at its own cost and expense, remove all construction and installations hereby authorized from Town property and Town streets and shall place all portions that may have been disturbed in as good a condition for public use as the abutting portions thereof.

SECTION 13: Any assignment, sale or other transfer of the right, title and interest of Company in this franchise shall

require the prior written consent of the Town, which consent shall not be unreasonably withheld. Company shall give the Town at least forty-five days notice of any such proposed assignment, sale or other transfer of this agreement. If Company does not receive written notice of the Town's objections to such assignment, sale or other transfer within the forty-five (45) day period, the Town's consent shall be deemed to have been given.

SECTION 14: If any section, sentence, clause or phrase of this agreement should be held to be invalid or illegal, the invalidity or illegality thereof shall not effect the validity or legality of any other section, sentence, clause or phrase of this agreement.

SECTION 15: Company agrees to re-build this System to provided 550 megahertz capacity or approximately sixty (60) channels. The System re-build will take approximately eighteen (18) months and will cost approximately \$550,000.00. The Town consents to an increase in the rate for basic service from Fourteen Dollars and Seventy Cents (\$14.70) to Eighteen Dollars and Seventy Cents (\$18.70), effective upon the completion of the re-build of the System. Company agrees to update the Town on a quarterly basis as to the progress of the rebuild of the System.

SECTION 16: Subject to Section 15 above, should the Town be permitted to regulate rates for the provisions of cable television service or other services, the Town Council may, at its sole discretion, institute such rate regulation as it may lawfully deem appropriate. In addition, the Town may exercise

any other authority vested in local government by the Cable Television Consumer Protection and Competition Act of 1992.

SECTION 17: Forfeiture. Although Section 12 of this agreement provides for a franchise term of five (5) years, nevertheless, should the Company at any time become in default under the terms of this agreement by failing to make the annual franchise payments submitting annually the proper financial information as required by Section 9, or failing to make the pole rental payments required by Section 4, or failing to provide the services as required by Section 5, or failing to provide proof of insurance as provided by Section 8 or failing to complete the rebuild of the System after approximately eighteen (18) months, or failing to meet or comply with any of the other essential terms and conditions of this agreement, and such default continue for a period of ninety (90) days after written notice thereof is received by the Company, then and in that event the Town shall schedule a public hearing no sooner than twenty-one (21) days after written notice to the Company. The Company shall be provided reasonable opportunity to be heard at such public hearing. Within thirty (30) days after said public hearing, the Town shall determine whether or not the Company is in default of any of the above described provisions as set forth in such notice. The Town shall submit written findings of fact supporting such determination. In the event the Town after such hearing determines that the Company is in default of any such provision of this License, the Town shall have the right to cancel this franchise agreement upon written notice to the Company hereunder and the franchise shall

thereupon be immediately forfeited and shall be held null, void and of no effect.

SECTION 18: Disclosure: Prior to execution of this agreement, the Company shall disclose to the Town the identity of all general partners holding a ten percent (10%) or greater interest in the Company. Should there be a change in the General Partnership, the Company shall provide the Town with written notification.

SECTION 19: The Company shall obtain and maintain a construction bond in the amount of Twenty-Five Thousand Dollars (\$25,000.00) to guarantee the timely completion of the upgrade referred to in Section 15 hereof.

SECTION 20: This franchise is subject to the provisions of the Town's Charter and any amendments lawfully made thereto which are generally applicable to all citizens of the Town.

SECTION 21: This ordinance shall take effect upon its passage and approval as provided by law.

INTRODUCED in open session of the Town Council of the Town of Havana, Florida, on this 26th day of January, A.D. 1993.

ADOPTED AND PASSED in open session of the Town Council of  
the Town of Havana, Florida, on this 23rd day of February, A.D.  
1993.

TOWN OF HAVANA, FLORIDA

By: T.J. Davis  
T.J. Davis - Its Mayor

ATTEST:

Anne T. Bert  
Anne T. Bert - Town Clerk

ESSEX 1982-1 OPERATING PARTNERSHIP

By: Patricia A. Falese  
Patricia A. Falese,  
Vice President Cable Operations  
Cablevision System Corporation  
As Agent For:  
Essex 1982-1 Operating Partnership

MG278



EXHIBIT A

CURRENT RATES FOR HAVANA

Basic Cable (17 Channels) - \$14.70  
Proposed Basic with Renewal - \$18.70  
Proposed Basic Broadcast Basic Tier - \$15.00

Additional Outlet - \$5.00  
Remote Converter - \$2.95  
1st Premium - \$10.45  
2nd Premium - \$9.45  
3rd Premium - \$9.45

Install Charges:

Unwired new install - \$39.95  
Prewired install - \$24.95  
Reconnect - \$24.95  
Non-pay reconnect - \$24.95  
Unwired additional outlet - \$15.00  
Relocate Outlet - \$15.00  
Upgrade to new services (Premium) - \$10.00  
Change Premiums - \$10.00