ORDINANCE NO. 84-4

AN ORDINANCE GRANTING A FRANCHISE TO RALPH BOUTWELL AND CHARLES RHETT OWENS D/B/A FREEPORT CABLEVISION COMPANY INC. HIS SUCCESSORS AND ASSIGNS TO BUILD, CONSTRUCT, OPERATE AND MAINTAIN A CABLE TELEVISION SYSTEM FOR TELEVISION SIGNAL DISTRIBUTION IN CERTAIN AREAS OF WALTON COUNTY, FLORIDA, AND SETTING FORTH CONDITIONS ACCOMPANYING THE GRANTING OF THIS FRANCHISE.

BE IT ORDAINED by the Board of Commissioners of Walton County, Florida, as follows:

SECTION 1. PREAMBLE. This ordinance was passed after a full, open, and public hearing upon notice and opportunity of all interested parties to be heard and upon careful consideration of the holders' qualifications, including his legal, character, financial and technical qualifications and the adequacy of the service to be provided, and feasibility of its construction arrangements.

SECTION 2. DEFINITIONS. For the purpose of this ordinance, and when not inconsistent with the context, words used herein in the present tense include the future; words in plural include the singular, and words in singular include the plural. The captions supplied herein for each section are for convenience only. Said captions have no force of law, are not part of the section, and are not to be used in construing the language of the section. The following terms and phrases, as used herein, shall be given the meaning set forth below:

(a) "County" shall mean the County of Walton, in the State of Florida.

(b) "Board of Commissioners" shall mean the governing body of the County of Walton, State of Florida.

(c) "Grantee" or "Holder" shall mean Ralph Boutwell and Charles Rhett Owens D/B/A FREEPORT CABLEVISION COMPANY, INC.

(d) "Federal Communications Commissions" or "FCC" is the present federal agency of that name as constituted by the Communications Act of 1934, or any successor agency created by the United States Congress.

(e) "Person" shall mean any individual, person, firm, partnership, association, corporation, company, or organization of any kind.

(f) "Franchise Area" shall mean that unincorporated area within the boundaries of Walton County, Florida, as defined under Section 4 hereof.

(g) "Property of the Holder" shall mean all property owned, installed or used by the Holder or Grantee in the conduct of a CATV business in the County.

(h) "CATV" shall mean a cable television system as hereinafter defined.

(i) "Cable Television System" shall mean a system composed of, without limitation, antennae, cables, wires, lines, towers, wave guides, or any other conductors, converters, equipment or facilities, designed, constructed or wired for the purpose of producing, receiving, amplifying, and distributing by coaxial cable, audio and/or radio, television, electronic or electrical signals to and from persons, subscribers, and locations in the Franchise Area.

(j) "Cable Television Service" shall mean either or both "Basic CATC Service" or "Expanded CATV Service" as hereinafter defined.

(k) "Basic CATV Service" shall mean the distribution of broadcast television and radio signals.

(l) "Expanded CATV Service" shall mean any communications service in addition to Basic CATV Service provided by the Holder either directly or as a carrier for the subsidiaries, affiliates of any other person engaged in communications or any other person engaged in communications service, including, but not by way of limitation, pay TV, burglar alarm service, data or other electronic transmission services, facsimile reproduction services, meter reading services, home shopping services or other services beneficial to the subscriber.

(m) "Subscriber" shall mean any person or entity that has contracted to receive Basic CATV Service.

(n) "Designee" and "Designee of the Board of Commissioners" shall mean the duly elected Chairman of the Board of Commissioners and any person designated by the Chairman in writing.

(o) "Standard Connection" shall mean the providing of cable television service to a subscriber by means of an overhead service line of no more than 200 feet in length from the Holder's nearest distribution cable and shall otherwise be in accordance with the Holder's operating rules and regulations.

(p) "Multiple use subscriber" shall mean a subscriber who has more than one outlet for and uses

Cable Television Service for the benefit and enjoyment of persons other than the subscriber and the subscriber's employees and includes, but is not limited to, whole condominium complexes, hotels motels, boarding houses, apartments, nursing homes, hospitals and schools.

(q) "Gross subscriber revenues" shall include any and all compensation or receipts derived by Grantee from basic monthly service charge receipts in connection with the carriage of broadcast signals and Federal Communications Commission mandated non-broadcast services within the City, but shall not include installation or service charges or any refunds or credits made to subscribers or any taxes imposed on the services furnished by Grantee. Nor shall it include revenue from "ancillary" or "auxiliary" services, which include,but are not limited to, advertising, leased channels, pay TV, and programming supplied on a per program or per channel charge basis, if any.

(r) "Regular subscriber services" shall include the carriage of broadcast services, and FCC mandated non-broadcast services, but shall not include "ancillary" or "auxiliary" services, which include, but are not limited to advertising, leased channels, and programming supplied on a per program or per channel charge basis, if any.

SECTION 3. GRANT OF AUTHORITY. There is hereby granted by the County to the Grantee the right, privilege, authority and franchise within the franchise area to construct, erect, operate and maintain in, upon, along, across, above, over or under the streets, alleys, easements, public ways and public places now laid out or dedicated and all extensions thereof and additions thereto in the County, all poles, wires, cables, underground conduits, manholes and other conductors and fixtures necessary for the maintenance and operation in the County of a cable television system for the transmission of television signals and all other signals permitted by the FCC, either separately or upon or in conjunction with any public utility maintaining the same in the County with all of the necessary and desirable appliances and appurtenances pertaining thereto. Without limiting the generality of the foregoing, this franchise and grant shall and does hereby include the right in, over, under and upon the streets, sidewalks, alleys, easements, and public grounds and places in the County to install, erect, operate, maintain or in any way acquire the use of, as by leasing or licensing, all lines and equipment necessary to a cable television system and the right to make connections to subscribers and the right to repair, replace, enlarge, and extend said lines, equipment and connections. When practical, the holder or grantee shall make use of existing telephone or power poles

in conformity with such arrangements as may be had with the telephone and power companies in the County. The rights herein granted for the purposes herein set forth shall be non-exclusive.

SECTION 4. FRANCHISE AREA. As used in this ordinance, the term "Franchise Area" shall mean and include, and the rights hereby granted by the County on the holder shall be applicable to the following portions of the unincorporated areas of Walton County, Florida, to-wit: All the area in Walton County bounded by the Northern boundary of Township 1 North and on the West by the Eastern and Southern boundary of Eglin Air Force Base including the areas to the South to Choctawhatchee Bay and Intracoastal Canal and to the East by Washington and Bay County lines.

SECTION 5. POLICE POWER. Grantee shall at all times during the term of this franchise be subject to all lawful exercise of the police power of the County. The right is hereby reserved to the County to adopt, in addition to the provisions herein contained and any other existing applicable ordinances, such additional applicable ordinances as it shall find necessary in the exercise of its police power; provided that such additional ordinances shall be reasonable, shall not conflict with or alter in any manner the rights granted herein, and shall not conflict with the laws of the State of Florida, the laws of the United States of America, or the rules, regulations or policies of the FCC.

SECTION 6. INDEMNIFICATION. The Grantee shall indemnify and hold the County harmless at all times during the term of this grant and against all claims for injury or damages to persons or property both real and personal caused by the construction, erection, operation or maintenance of any structures, equipment, appliances or products authorized or used pursuant to authority of this ordinance.

The Grantee shall, at all times during the existence of this permit or franchise, carry and require their contractors to carry:

(a) Insurance in such form as shall be approved by the County to protect the County and themselves from and against any and all claims or injury or damages to persons or property, both real and personal, caused by the construction, erection, operation, or maintenance of any structure, equipment, or appliance, and the amount of such insurance against liability due to damage to property shall not be less than One Hundred Thousand and 00/100 Dollars ($100,000.00), as to any one person, and Three Hundred Thousand and 00/100 Dollars ($300,000.00) as to any one accident, and against liability due to injury or death of persons One Hundred Thousand and 00/100 Dollars ($100,000.00), as to any one person and Three Hundred Thousand and 00/100 Dollars ($300,000.00), as to any one accident.

(b) Workmen's compensation insurance in compliance with the laws of the State of Florida.

The Grantee, their successors and assigns, do hereby agree to indemnify and hold harmless the County of Walton, Florida, from any and all liability, claim, damage or judgment growing out of any injury to any person or property as a result of the violation or failure on the part of the

Grantee, their successors and assigns, to observe their property duty or because of negligence in whole or in part arising out of the construction, repair, extension, maintenance or operation of their distribution, lines, amplifiers or equipment of any kind or character used in connection with this permit or franchise.

SECTION 7. COMPLAINT PROCEDURE. Grantee shall maintain a telephone listing in the County for the purpose of receiving inquiries and complaints from its customers and the general public. Grantee shall investigate all complaints within five (5) days of their receipt and shall in good faith attempt to resolve them swiftly and equitably.

SECTION 8. CONSTRUCTION AND MAINTENANCE.

(a) All structures, lines, and equipment erected by Grantee within the County shall be so located as to cause minimum interference with the proper use of streets, alleys, easements and other public ways and places and to cause minimum interference with the rights or reasonable convenience of property owners, and Grantee shall comply with all reasonable, proper and lawful ordinances of the County now or hereafter in force. Existing poles, posts, conduits and other such structures of the County, of any electric power system, telephone company or other public utility located in the County shall be used by the Grantee to the extent practicable in order to minimize interference with travel and avoid unnecessary duplication of facilities, and when and where practicable enter into mutually satisfactory rental agreements upon reasonable terms and rates with said owners. The County shall actively assist the Grantee to the fullest extent necessary in obtaining reasonable joint pole or conduit use agreements from the owners of existing poles or conduits. To the extent that existing poles, posts, conduits and other such structures are not available, or are not available under reasonable terms and conditions, Grantee shall have the right to use the County owned right-of-way for the erection and maintenance of its own poles as may be necessary for the proper construction and maintenance of the cable television system.

(b) In the maintenance and operation of cable television system in the streets, alleys and other public places, and in the course of any new construction or addition to its facilities within the franchise area, the Grantee shall proceed so as to cause the least possible inconvenience to the general public; any opening or obstruction in the streets or other public places made by the holder in the course of its operations shall be made only after having obtained prior permission from the Board of Commissioners or their designee to do so, and shall be guarded

and protected at all times by the placement of adequate barriers, fences, or boardings, the bounds of which during period of dusk and darkness, shall be clearly designated by appropriate warning lights.

(c) In case of any disturbances by Grantee of pavement, sidewalk, driveway or other surfacing, Grantee shall, at its own cost and expense and in a manner approved by the County Engineer and Electrical Superintendent, replace and restore all paving, sidewalk, driveway or surface so disturbed in as good condition as before said work commenced. That restoration shall be completed within seventy-two (72) hours, weather permitting, and if not completed within that period, the County may give twenty-four (24) hour notice of its intent to complete the restoration and if the County is required to complete the restoration, the Grantee shall pay to the County the costs of said restoration.

(d) In the event that at any time during the period of this franchise, the County shall lawfully elect to alter or change any street, alley, easement or other public way requiring the relocation of Grantee's facilities, then in such event, Grantee, upon reasonable notice by the County shall remove, relay and relocate the same at its own expense; provided, however, that where public funds are available for such relocation pursuant to law, Grantee shall not be required to pay the cost thereof.

(e) Grantee shall, on the request of any person holding a building moving permit issued by the County, temporarily raise or lower its lines to permit the moving of the building. The expense of such temporary removal shall be paid by the person requesting the same, and Grantee shall have the authority to require such payment in advance.

(f) Grantee shall have the authority to trim trees upon and overhanging streets, alleys, easements, sidewalks, and public places of the County so as to prevent the branches of such trees from coming into contact with Grantee's facilities, and the same shall be done at no cost or expense to the County.

(g) All poles, lines, structures and other facilities of Grantee, in, on, over and under the streets, sidewalks, alleys, easements and public grounds or places of the County shall be kept by Grantee at all times in a safe and substantial condition.

(h) Should any construction be necessary for Grantee to provide the

cable television service authorized by this franchise, construction shall commence within one (1) year after the effective date of this ordinance, or, if FCC certification is required prior to implementation of the cable television service authorized by this franchise, within one (1) year after the effective date of the grant by the FCC of the necessary certification.

SECTION 9. SERVICE POLICIES. The holder shall extend energized trunk cable throughout the franchise area that is financially and technically feasible, and will maintain such energized trunk cable throughout the term of the franchise so as to provide basic CATV service to all residents thereof, subscribing to such service. The holder is desirous of extending its cable television system throughout various other areas of the County as may be deemed financially and technically feasible to the holder and proper to the Board of Commissioners of the County. This franchise ordinance may be amended to add additional areas of Walton County to the definition of the "Franchise Area" by the Amendment hereto; provided however, the holder and the County expressly reserve the right to enter into separate and distinct franchise ordinances for each additional area of the unincorporated area of the County in which the holder desires to extend its cable television system.

SECTION 10. MINIMUM CHANNELS. The cable system to be erected, operated and maintained pursuant to the authority granted herein shall have a capacity of not less than twenty-one (21) channel reception. Eight (8) viewing channels shall be furnished as a minimum and installation and maintenance of equipment shall be such that standard color signals shall be transmitted. All basic and movie services offered by the holder to the residents of the County shall be offered to the subscribers in the franchise area.

SECTION 11. FCC RULES APPLICABLE. This franchise is governed by and subject to all applicable rules, regulations and policies of the Federal Communications Commission, specifically including Part 76, and by the laws of the State of Florida. Should there by any modifications of the provisions of Section 76.31 of the Rules and Regulations of the Federal Communications Commission which must be incorporated into this franchise, the County and Grantee agree that such incorporation shall be accomplished within one (1) month after the effective date of the FCC's adoption of the modification or upon renewal of this franchise, whichever occurs first.

SECTION 12. FRANCHISE TERM. This franchise and the rights granted herein shall take effect and be in full force from and after acceptance as hereinafter provided, and after proper publication as required by law, and the same shall continue in full force and effect for a period of fifteen (15) years thereafter; provided, however, that should FCC certification be necessary prior to implementation of the cable television service contemplated under this franchise, then the term shall begin upon the effective date of the grant by the FCC of the necessary certification.

SECTION 13. RENEWAL PROCEDURE. Grantee shall have the option to request renewal of this franchise for an additional period not to exceed fifteen (15) years. Should Grantee desire to exercise this option, it shall notify the County, in writing, not less than three (3) months prior to expiration of this franchise. Upon exercise of this option by Grantee, the County shall conduct a full, open and public renewal proceeding upon prior notice and opportunity of all interested parties to be heard. The renewal proceeding shall be held for the purpose of considering Grantee's performance under this franchise in order to determine whether to renew this franchise. Renewal shall not be unreasonably denied

and shall be granted unless Grantee is found to be unqualified to continue operation of this cable television system. If this franchise is renewed by the Court, all of the terms and provisions contained herein shall be controlling during the renewal period, except to the extent that said terms and provisions are modified by the County, or unless this franchise is superseded by a new franchise. Should the County, for any reason, be unable to complete the renewal proceeding prior to expiration of this franchise, Grantee shall have the right to continue operation of this cable television system pursuant to the terms of this franchise until such time as the renewal proceeding is concluded. Should the County deny renewal of this franchise, such denial shall be accompanied by a written statement setting forth reasons for the denial. Grantee shall have the right to request review of any such denial by any Court of competent jurisdiction. Furthermore, in the event that the County denies renewal, Grantee shall be afforded a period of six (6) months following denial within which to sell, transfer, or convey television system to a qualified purchaser at fair market value. During this six (6) month period, which shall run from the effective date of the final order or decision denying renewal, including any appeal, Grantee shall have the right to operate this cable television system pursuant to the terms of this franchise.

SECTION 14. RATES. The rates and charges for television and radio signals distributed hereunder shall be $25.00 connection fee and $12.00 per month basic, initially.

The rates and charges for the services provided hereunder shall be fair, reasonable and non-discriminatory. The County Commission must approve any change in the rates and charges. The holder shall not be denied an increase in its rates if it can demonstrate to the County satisfaction that the holder cannot make a fair return on its investment without a rate increase. The provisions hereinabove set forth with regard to rates shall apply to rates and charges imposed by the Grantee in the franchise area only.

SECTION 15. FORFEITURE. If Grantee should violate any of the terms, conditions or provisions of this franchise or if Grantee should fail to comply with any reasonable provisions of any ordinance of the County regulating the use by Grantee of the streets, alleys, easements, or public ways of the County, and should Grantee further continue to violate or fail to comply with the same for a period of thirty (30) days after Grantee shall have been notified in writing by the County to cease and desist from any such violation or failure to comply so specified, then Grantee may be deemed to have forfeited and annulled and shall thereby forfeit and annul all the rights and privileges granted by this franchise; provided that such forfeiture shall be declared only by written decision of the County Commission after an appropriate public proceeding before the County Commission affording Grantee due process and full opportunity to be heard and to respond to any such notice of violation or failure to comply; and provided further that the County Commission may, in its discretion and upon a finding of violation or failure to comply, impose a lessor penalty than forfeiture of this franchise or excuse the violation or failure to comply upon a showing by Grantee of mitigating circumstances. Grantee shall have the right to appeal any finding of violation or failure to comply and any resultant penalty to any court of competent jurisdiction. In the event that forfeiture is imposed upon Grantee, it shall be afforded a period of six (6) months within which to sell, transfer or convey this cable television system to a qualified purchaser, at fair market value. During this six (6) month period, which shall run from the effective date of the final order or decision imposing forfeiture, including appeal, Grantee shall have the right to operate this cable television system pursuant to the provisions of this franchise.

SECTION 16. SURRENDER RIGHT. Grantee may surrender this franchise at any time upon filing with the Clerk of the County a written notice of its intention to do so at least three (3) months before the surrender date. On the surrender date specified in the notice, all of the rights and privileges and all of the obligations, duties and facilities of Grantee in connection with this franchise shall terminate, and the Grantee shall have the right to remove any and all of its inventory, equipment, or other property used in connection with the franchise granted hereunder.

SECTION 17. TRANSFERS. All of the rights and privileges and all of the obligations and liabilities created by this franchise shall pass to and be binding upon the successors of the County and the successors and assigns of the Grantee; and the same shall not be assigned or transferred without the written approval of the County Commission, which approval shall not be unreasonably withheld; provided, however, that this section shall not prevent the assignment of the franchise by Grantee as security for debts without such approval; and provided further that transfers or assignments of this franchise between any parent and subsidiary corporation or between entities of which at least fifty percent (50%) of the beneficial ownership is held by the same person, persons, or entities shall be permitted without the prior approval of the County Commission.

SECTION 18. FRANCHISE FEE. In consideration of the terms of this franchise, Grantee agrees to pay the County a sum of money equal to three percent (3%) of Grantee's gross monthly service charges for basic television cable service per year derived from regular subscriber services in the County. Grantee shall pay such annual sum within sixty (60) days after the last day of December of each year. All other license fees or taxes, except ad valorem taxes, levied upon Grantee by the County shall be credited against the payment required herein.

The County, by its Board of Commissioners or such other officers or representatives of the Board of Commissioners as the Board may designate, shall at all times have access to the books, records, papers, files and property of the County relating only to the holder's cable television system operations in the franchise area; provided, that the County shall give the Grantee forty-eight (48) hours written notice in advance of its intention to exercise the right or review of said documents and/or property, which notice shall contain a description of the documents and/or property to be reviewed.

SECTION 19. RECEIVER SALES PROHIBITED. As a condition of this franchise, Grantee agrees that it shall not engage in the business of sales or repair of television receivers owned by its subscribers; nor shall it be responsible for the operating condition of said receivers; provided, however, that this paragraph shall not apply to converters, decoders, home interactive terminals and other such devices as may be used in furnishing any programming or service via Grantee's cable television system.

SECTION 20. PREWIRING CONDOMINIUMS FOR CABLE SERVICE. In the event that it becomes necessary or desirable, and feasible, to install coaxial cable or other cable in condominiums which are under construction, and prior to the furnishing of actual cable service to such condominiums, the Grantee shall notify in writing the general contractor or builder of such condominiums of the necessity and desirability of prewiring the same with cable prior to the completion of construction. The general contractor or builder shall then have thirty (30) days from the date of notification by the Grantee within which to obtain local labor or employees and to install said cable. In the event that said cable is not installed within thirty (30) days of written notification by the Grantee, whether due to expense or any other reason, the Grantee shall then have the absolute right and

privilege to install said cable or to make such arrangements as are necessary to install the same.

SECTION 21. ACCEPTANCE. This ordinance shall become effective when accepted by Grantee and shall then be and become a valid and binding contract between the County and Grantee after proper publication as recorded by law; provided that Grantee shall, within ninety (90) days after the final passage of this ordinance, file with the Clerk of the County a written acceptance of this ordinance and the franchise herein granted.

SECTION 22. UNLAWFUL ACTS.

(a) It shall be unlawful for any person to make unauthorized connection whether physically, electrically, acoustically, inductively or otherwise, with any part of Grantee's cable television system for the purpose of enabling himself or others to receive any television signals, radio signals, pictures, programs, sounds or any other information or intelligence transmitted over Grantee's cable system without payment to Grantee or its lessee.

(b) It shall be unlawful for any person, without the consent of the owner, to willfully tamper with, remove or injure any cable, wires, or other equipment used for the distribution of television signals, radio signals, pictures, programs, sounds, or any other information or intelligence transmitted over Grantee's cable system.

(c) It shall be unlawful for any person to construct, install or maintain within any public street or within any privately owned area within the County which has not yet become a public street on any preliminary subdivision plat approved by the Court, any equipment or facilities for distributing any television signals or radio signals through a cable television system, unless a franchise authorizing such use of street of property or area has first been obtained, and unless such franchise is in full force and effect.

(d) It shall be a misdemeanor punishable by a fine of not more than Five Hundred and 00/100 Dollars ($500.00), or by imprisonment of a term not to exceed six (6) months, or both, for any person to violate any of the provisions of this section. Each such person shall be guilty of a separate offense for each and every day or portion thereof during which any violation of this section of this ordinance is committed, continued or permitted by any such person, and such person shall be punished accordingly.

SECTION 23. PUBLICATION COSTS. The Grantee shall assume the costs of publication of this franchise as such publication is required by law.

SECTION 24. SEVERABILITY. If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any Federal or State Court or administrative or governmental agency of competent jurisdiction, specifically including the Federal Communications Commission, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions hereof.

SECTION 25. EFFECTIVE DATE. This ordinance shall become effective upon its passage, acceptance by the Grantee and publication as provided by law.

PASSED, ADOPTED AND APPROVED ON THIS 14th DAY OF February, 1984.

Attest:

Catherine King
Catherine King, Clerk

COUNTY COMMISSIONERS OF WALTON COUNTY, FLORIDA

Sam Pridgen
BY: Sam Pridgen, Chairman

Bob Anderson
Bob Anderson, Vice Chairman

W. F. Tiller
Associate Commissioner

Approved as to Legality:

County Attorney

Bernard Owens
Associate Commissioner

W. L. "Billy" McLeans
Associate Commissioner