

6-3-99

ORDINANCE NUMBER 1-99

AN ORDINANCE BY THE CITY COUNCIL OF THE CITY OF HAHIRA TO PROVIDE FOR THE GRANTING OF ONE OR MORE NONEXCLUSIVE FRANCHISES FOR CABLE SERVICES AND OTHER TELECOMMUNICATIONS SERVICES WITHIN THE MUNICIPAL BOUNDARIES OF THE CITY OF HAHIRA AND TO PROVIDE FOR THE PROCESS UNDER WHICH SAID GRANTING OF FRANCHISES SHALL TAKE PLACE

THE COUNCIL OF THE CITY OF HAHIRA HEREBY ORDAINS THAT:

WHEREAS, the Mayor and City Council have determined that it is in the best interests of and consistent with the convenience and necessity of the City to grant franchises to companies desiring to provide Cable Services and other Telecommunications Services within the territorial boundaries of the City and on the terms and conditions herein, and as may be further described in each Franchise Agreement;

WHEREAS, the City has the authority to regulate the occupation and use of the Streets (as hereinafter defined); and

WHEREAS, the City has determined that the grant of franchises to use and occupy the Streets for the provision of Cable Services and other Telecommunications Services (as hereinafter defined) would promote the health, safety and welfare of the public, stimulate commerce and otherwise serve the public interest; and

WHEREAS, the City desires to structure and implement a fair and orderly process for the grant of franchises (and renewals of such franchises) to occupy and use the Streets to provide Cable Services and other Telecommunications Services in the City, including the negotiation of franchise provisions to protect the public interest; and

WHEREAS, the City intends to exercise, to the fullest extent permitted by applicable law, its authority with respect to the regulation of the occupation and use of the Streets in connection with the provision of all Telecommunications Services,

NOW, THEREFORE BE IT RESOLVED THAT:
SECTION I

The Code of Ordinances of the City of Hahira is hereby amended by creating a new Chapter 18, Articles 1-3, entitled "Cable Services and other Telecommunications Services Franchising," and shall hereafter read as follows:

Article 1
DEFINITIONS

Section 1.1 Definitions

For purposes of this Ordinance, the following terms, phrases, words and their derivations shall have the meanings set forth in this Section, unless the context clearly indicates that another meaning is intended. When not inconsistent with the context, words used in the present tense include the future, words used in the plural number include the singular number and words used in the singular number include the plural number.

1.1.01 "Cable Services" means "cable services" as defined in the Communications Act of 1934, as amended by the Cable Communications Policy Act of 1984 and the Cable Television Consumer Protection and Competition Act of 1992, and as may be further amended from time to time (the "Cable Act"). In the event that "cable services" is no longer defined in the Cable Act or the definition in the Cable Act otherwise becomes inapplicable, "Cable Services" shall mean "cable services" as defined in the Cable Act immediately prior to such term no longer being defined in the Cable Act or such definition otherwise becoming inapplicable.

1.1.02 "Cable System" means any "Cable System" as defined in the Cable Act.

1.1.03 "City" means the City of Hahira.

1.1.04 "City Council" means the City Council of the City and its designee or any successor thereto.

1.1.05 "Franchise" means an initial authorization, or renewal thereof, issued by the City, whether such authorization is designated as a franchise, permit, license, resolution, contract, certificate, agreement or otherwise, which authorizes the occupation and use of the Streets to provide Telecommunications Services.

1.1.06 "Grantee" means the legal entity to which is granted the right, authority and responsibility to construct, install, operate and maintain a system of equipment as necessary to furnish, supply and distribute cable or telecommunications services or both, to inhabitants within the franchise area.

1.1.07 "may" is permissive.

1.1.08 "Ordinance" means this Ordinance and all modifications and amendments thereto.

1.1.09 "Person" means any individual or any association, firm, partnership, joint venture, corporation or other legally recognized entity, whether for profit or not for profit, but shall not mean the City.

1.1.10 "shall" is mandatory, not merely directive.

1.1.11 "Streets" means the surface of, as well as the spaces above and below, any and all streets, alleyways, avenues, highways, boulevards, driveways, bridges, tunnels, parks, parkways, public grounds or waters, and other public rights-of-way within or belonging to the City.

1.1.12 "Telecommunications Services" means the receipt and/or distribution, through any means, including, without limitation, coaxial cable, optical fiber, or satellite or microwave transmission, of one or more audio, voice or data signals. Telecommunications Services includes both Cable Services and noncable telecommunications services.

Article 2

GRANTING AUTHORITY AND FRANCHISING PROCEDURE

Section 2.1 Granting Authority

2.1.01 No Person shall provide Cable Services or operate a Cable System without a Franchise granted in accordance with the provisions of this Ordinance and no Person shall use or occupy the Streets to provide any Telecommunications service other than Cable Services without a franchise granted in accordance with the provisions of this Ordinance.

2.1.02 The City Council may grant one or more Franchises in accordance with this Ordinance, provided that the City Council reserves the right to modify any provision of this Ordinance by amendment hereof.

2.1.03 The grant of any Franchise shall be made by adoption of a separate ordinance by the City Council and shall be on such terms and conditions as may be specified in said separate ordinance and/or a franchise agreement between the City and the franchisee.

2.1.04 Any Franchise granted shall be nonexclusive. The City specifically reserves the right to grant, at any time, such additional Franchises as it deems appropriate and or itself engage in the provision of telecommunications services.

2.1.05 A Franchise may be granted for all or any defined portion of the City and for all or less than all Telecommunications Services, and for Telecommunications Services for all or less than all purposes.

2.1.06 The grant of Franchises by the City shall be subject to the provisions of applicable law, such as the provisions in the Communications Act of 1934, as amended, governing cable television franchises and renewals thereof.

Section 2.2 Franchise Applications

2.2.01 Applications for Franchises shall be submitted in such form and be issued on such terms and conditions as the City Council may determine, subject to applicable law.

2.2.02 Any Application for a Franchise shall contain and/or require the following information with respect to the proposed Franchise and such other information as the City Council shall deem necessary or appropriate:

(i) applicant's name, address, telephone number, and federal employer identification number or social security number; copy of applicant's corporate charter or partnership agreement as applicable; and any trade names (and registrations) used by applicant;

(ii) a detailed statement of the corporation or business entity organization of the applicant, including but not limited to the following, and to whatever extent required by the City:

(a) the names and the residence and business addresses of all officers and directors of the applicant;

(b) the names, residence, and business addresses of all persons and entities having any share of the ownership of the applicant and the respective ownership share of each person or entity;

(c) the names and address of any parent or subsidiary of the applicant, namely, any other business entity owning or controlling applicant in whole or in part or owned or controlled in whole or in part by the applicant, and a statement describing the nature of any such parent or subsidiary business entity, including but not limited to telecommunications or cable systems owned or controlled by the applicant, its parent, and subsidiary, and the areas served thereby;

(d) a detailed and complete financial statement of the applicant, certified by an independent certified public accountant, for the fiscal year immediately preceding the date of the application hereunder, or a letter or other acceptable evidence in writing from a recognized lending institution or

funding source, addressed to both the applicant and the Council, setting forth the basis for a study performed by such lending institution or funding source, and a clear statement of its intent as a lending institution or funding source to provide whatever capital shall be required by the applicant to construct and operate the proposed telecommunications or cable system in the City, or a statement from an independent certified public accountant certifying that the applicant has available sufficient free, net, and uncommitted cash resources to construct and operate the proposed cable or telecommunications system in the City;

(e) a detailed financial plan (pro forma) describing for each year of the franchise, projected number of subscribers, rates, all revenues, operating expenses, capital expenditures, depreciation schedules, income statements, and a sources and uses of funds statement; and

(f) a statement identifying, by place and date, any other cable system or Telecommunication franchise(s) awarded to the applicant, its parent or subsidiary; the status of said franchise(s) with respect to completion thereof; the total cost of completion of such franchised cable or Telecommunication system(s); and the amount of applicant's and its parent's or subsidiary's resources committed to the completion thereof;

(iii) a detailed description of the proposed plan of operation of the applicant which shall include, but not be limited to, the following:

(a) a description of the Cable Services and any other Telecommunications Services proposed to be provided;

(b) a detailed map indicating all areas proposed to be served, and a proposed time schedule for the installation of all equipment necessary to become operational throughout the entire area to be serviced;

(c) a statement or schedule setting forth all proposed classifications or rates and charges to be made against subscribers and all rates and charges as to each of said classifications, including installation charges, cable service charges, and any other Telecommunications service charges;

(d) a detailed, informative, and referenced statement describing the actual equipment and operational standards proposed by the applicant;

(e) a copy of the form of any agreement, undertaking, or other instrument proposed to be entered into between the applicant and any subscriber to Cable or telecommunications Services; and

(f) a detailed statement setting forth in its entirety any and all agreements and undertakings, whether formal or informal, written, oral, or implied, existing or proposed to exist between the applicant and any person, firm,

or corporation which materially relate or pertain to or depend upon the application and the granting of the franchise;

(iv) a copy of any agreement covering the franchise area, if existing between the applicant and any utility providing for the use of any facilities of the utility, including but not limited to, poles, lines, or conduits; and

(v) any other details, statements, supplementary information, or references pertinent to the subject matter of such application which shall be required or requested by the Council, or by any other provision of law.

Section 2.2.03 Non-refundable Application Fees for New Franchises

No application for a new franchise shall be considered without payment by the applicant of application fees as provided in this Section. If a franchise is granted, application fees will not be deemed a credit towards any other fees or sums due by the Grantee. If an application is denied, the application fee will not be refunded.

(a) Purpose of Application Fees. The application fees provided by this section will serve to cover the direct and indirect costs incurred by the City in processing the application, evaluating the applicant, and granting a franchise, and shall include, but not be limited to, administrative, engineering, publication, legal, and consultant's expenses.

(b) Application Fee. The applicant will be expected to pay the reasonable costs of the City in evaluating the application. Notwithstanding any other requirement of this ordinance, each applicant must furnish with its proposal a non-refundable application fee in the amount of Five Hundred Dollars (\$500.00) by certified check or cashier's check made payable to the City of Hahira.

Section 2.3 Responsibilities of Applicants

It shall be the responsibility of each applicant for a Franchise to comply with all applicable laws, ordinances, resolutions, rules, regulations and other directives of the City and any federal, state or local governmental authority having jurisdiction.

Section 2.4 Public Availability of Applications

To the extent determined by the City Council, applications for Franchises, including any additions, modifications or amendments thereto, shall be available for public inspection at a designated City office during normal business hours.

Section 2.5 Evaluation Criteria

In making any determination hereunder as to any application for a Franchise, the City Council may consider such factors as it deems appropriate and in the public interest, including, without limitation:

(i) the adequacy of the proposed compensation to be paid to the City, including the value of any facilities and Telecommunications Services offered by the applicant to the City; the adequacy of the proposed compensation to be paid to the City, including the value of any facilities and Telecommunications Services offered by the applicant to the City; the adequacy of the proposed compensation to be paid to the City, including the value of any facilities and Telecommunications Services offered by the applicant to the City; the adequacy of the proposed compensation to be paid to the City, including the value of any facilities and Telecommunications Services offered by the applicant to the City; the adequacy of the proposed compensation to be paid to the City, including the value of any facilities and Telecommunications Services offered by the applicant to the City;

(ii) the legal, financial, technical and other appropriate qualifications of the applicant; the legal, financial, technical and other appropriate qualifications of the applicant; the legal, financial, technical and other appropriate qualifications of the applicant; the legal, financial, technical and other appropriate qualifications of the applicant; the legal, financial, technical and other appropriate qualifications of the applicant;

(iii) the ability of the applicant to maintain the property of the City in good condition throughout the term of the Franchise; the ability of the applicant to maintain the property of the City in good condition throughout the term of the Franchise; the ability of the applicant to maintain the property of the City in good condition throughout the term of the Franchise; the ability of the applicant to maintain the property of the City in good condition throughout the term of the Franchise; the ability of the applicant to maintain the property of the City in good condition throughout the term of the Franchise;

(iv) the value and efficiency to the City and its residents of the Cable Services and other Telecommunications Services to be provided, including the type of Telecommunications Services to be provided, as well as alternatives to those Services and services that may be precluded by the grant of the Franchise; the value and efficiency to the City and its residents of the Cable Services and other Telecommunications Services to be provided, including the type of

Telecommunications Services to be provided, as well as alternatives to those Services and services that may be precluded by the grant of the Franchise; the value and efficiency to the City and its residents of the Cable Services and other Telecommunications Services to be provided, including the type of Telecommunications Services to be provided, as well as alternatives to those Services and services that may be precluded by the grant of the Franchise; the value and efficiency to the City and its residents of the Cable Services and other Telecommunications Services to be provided, including the type of Telecommunications Services to be provided, as well as alternatives to those Services and services that may be precluded by the grant of the Franchise; the value and efficiency to the City and its residents of the Cable Services and other Telecommunications Services to be provided, including the type of Telecommunications Services to be provided, as well as alternatives to those Services and services that may be precluded by the grant of the Franchise; the value and efficiency to the City and its residents of the Cable Services and other Telecommunications Services to be provided, including the type of Telecommunications Services to be provided, as well as alternatives to those Services and services that may be precluded by the grant of the Franchise;

(v) the willingness and ability of the applicant to meet construction and physical requirements and to abide by all purpose and policy conditions, limitations and requirements with respect to the Franchise; and the willingness and ability of the applicant to meet construction and physical requirements and to abide by all purpose and policy conditions, limitations and requirements with respect to the Franchise; and the willingness and ability of the applicant to meet construction and physical requirements and to abide by all purpose and policy conditions, limitations and requirements with respect to the Franchise; and the willingness and ability of the applicant to meet construction and physical requirements and to abide by all purpose and policy conditions, limitations and requirements with respect to the Franchise; and the willingness and ability of the applicant to meet construction and physical requirements and to abide by all purpose and policy conditions, limitations and requirements with respect to the Franchise; and the willingness and ability of the applicant to meet construction and physical requirements and to abide by all purpose and policy conditions, limitations and requirements with respect to the Franchise; and

(vi) any other public interest factors or considerations deemed pertinent by the City for safeguarding the interests of the City and the public. any other public interest factors or considerations deemed pertinent by the City for safeguarding the interests of the City and the public. any other public interest factors or considerations deemed pertinent by the City for safeguarding the interests of the City and the public. any other public interest factors or considerations deemed pertinent by the City for safeguarding the interests of the City and the public. any other public interest factors or considerations deemed pertinent by the City for safeguarding the interests of the City and the public. any other public interest factors or considerations deemed pertinent by the City for safeguarding the interests of the City and the public.

Section 2.6 Procedure for Consideration of and Action on Applications

2.6.01 The City may make such investigations and take or authorize the taking of such other steps as the City Council deems necessary or appropriate to consider and act on applications for Franchises and determine whether a Franchise should be granted to an applicant, and may require the applicant to furnish additional information and data for this purpose. In considering applications, the City Council may seek advice from other city officials or bodies, from such other advisory bodies as it may establish or determine appropriate, or from the public, and may request the preparation of one or more reports to be submitted to the City Council, which may include recommendations with respect to such applications.

2.6.02 If the City Council, after considering such information as it determines to be appropriate, elects to further consider one or more applications, the City Council shall set one or more public hearings for consideration of the application(s), fixing and setting forth a day, hour and place certain when and where any Persons having any interest therein or objections thereto may file written comments and appear before the City Council and be heard, and providing notice of such public hearing(s) in accordance with applicable law.

2.6.03 The City Council may authorize negotiations between City officials and applicants to determine whether the City and such applicants are able to reach agreement on the terms of the proposed Franchise.

2.6.04 Upon completion of the steps deemed appropriate by the City Council, the City Council may grant the Franchise, and may specify the conditions under which the Franchise is granted. Alternatively, the City may reject any and all applications from whatever source and whenever received except that a franchising authority may not grant an exclusive franchise and may not unreasonably refuse to award an additional competitive franchise. The City also reserves the right to waive any or all requirements when it determines that the best interests of the City may be served thereby and may, if it so desires, request new or additional proposals.

Section 2.7 Terms and Conditions of Franchise

2.7.01 The terms and conditions applicable to any Franchise granted pursuant to this Ordinance shall be set forth in the separate ordinance granting the Franchise or in a separate written agreement. Such separate ordinance or written agreement, among other things, shall address the following subjects:

- (i) the term of the Franchise;
- (ii) the Franchise area and the Cable Services and other Telecommunications Services and purposes of such other

Telecommunications Services, if any, which are the subject of the Franchise;

(iii) the compensation to be paid to the City, which may include the payment of fees or the provision of facilities or services, or both;

(iv) the circumstances upon which the Franchise may be terminated or cancelled;

(v) the mechanisms, such as performance bonds, security funds or letters of credit, to be put in place to ensure the performance of the Franchisee's obligations under the Franchise;

(vi) the City's right to inspect the facilities and records of the Franchisee;

(vii) insurance and indemnification requirements applicable to the Franchisee;

(viii) the obligation of the Franchisee to maintain complete and accurate books of account and records, and the City's inspection rights with respect thereto;

(ix) provisions to ensure quality workmanship and construction methods;

(x) provisions to ensure that the Franchisee will comply with all applicable City, state and federal laws, regulations, rules and policies, including, without limitation, those related to employment, purchasing and investigations;

(xi) provisions to ensure adequate oversight and regulation of the Franchisee by the City;

(xii) provisions to restrict the assignment or other transfer of the Franchise without the prior written consent of the City;

(xiii) remedies available to the City to protect the City's interest in the event of the Franchisee's failure to comply with terms and conditions of the Franchise;

(xiv) provisions to ensure that the Franchisee will obtain all necessary licenses and permits from, and comply with, all laws, regulations, rules and policies of any governmental body having jurisdiction over the franchisee, including the Federal Communications Commission;

(xv) provisions to ensure that the Franchisee will protect the property of the City and the delivery of public services from damage or interruption of operations resulting from the construction, operation, maintenance, repair or removal of improvements related to the Franchise;

(xvi) provisions designed to minimize the extent to which the public use of the Streets of the City are disrupted in connection with the construction of improvements relating to the Franchise; and

(xvii) such other provisions as the City determines are necessary or appropriate in furtherance of the public interest.

Article 3 GENERAL PROVISIONS

Section 3.1 Severability

If any section, subsection, sentence, clause, phrase or other portion of this Ordinance is, for any reason, declared invalid, in whole or in part, by any court, agency, commission, legislative body or other authority of competent jurisdiction, such portion shall be deemed a separate, distinct and independent portion. Such declaration shall not affect the validity of the remaining portions hereof, which other portions shall continue in full force and effect.

Section 3.2 Delegation

Consistent with applicable law, the City Council shall have the right to delegate and redelegate, and to revoke any such delegation or redelegation, from time to time, any of its rights or obligations under this Ordinance to any body, organization or official. Any such delegation, redelegation or revocation, no matter how often made, shall not be deemed an amendment to this Ordinance or to require the consent of any applicant for a Franchise or Franchisee. The City Council may also establish and appoint one or more advisory boards, with such duration and such number of members as the City Council shall determine, to advise it on such of the matters which are the subject of this Ordinance.

SECTION II

This Ordinance shall not be retroactively applied to franchises for Cable Services and other Telecommunications Services existing on the effective date of this Ordinance.

SECTION III

All ordinances or parts of ordinances in conflict with the provisions of this Ordinance are hereby repealed.

SECTION IV

This Ordinance shall become effective Thirty (30) days after its passage, approval and publication in the manner prescribed by law.

PASSED AND APPROVED this ____ day of _____,
199__.

Mayor, City of Hahira

Attest:

City Clerk

Approved as to Legal Form:

Attorney, City of Hahira