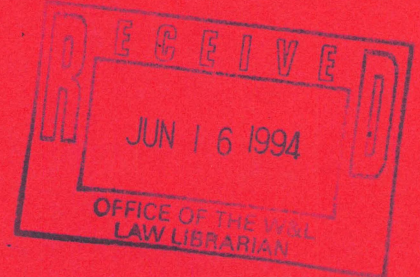
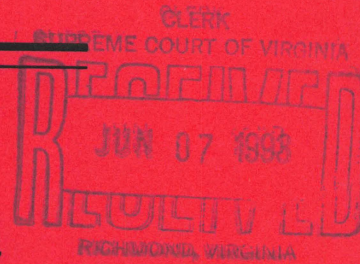


247 Va 64

IN THE
Supreme Court of Virginia

AT RICHMOND

RECORD NO. 930062



COX CABLE HAMPTON ROADS, INC.,

Appellant,

v.

CITY OF NORFOLK, VIRGINIA,

Appellee.

JOINT APPENDIX

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VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF NORFOLK

COX CABLE HAMPTON ROADS, INC.,
Complainant,

v.

CITY OF NORFOLK, VIRGINIA,

Serve:

Philip R. Trapani, Esquire
City Attorney
City of Norfolk
City Hall Building
Norfolk, Virginia 23510

Respondent.

Chancery No. 90-851

L90-3155

**BILL OF COMPLAINT
AND MOTION FOR TEMPORARY INJUNCTION**

Cox Cable Hampton Roads, Inc. ("Cox Cable"), by counsel, moves the Court to enjoin the City of Norfolk ("the City") and provide other relief for the reasons described below:

1. Complainant Cox Cable is a Delaware corporation authorized to do business in Virginia, with its principal place of business at 5200 Cleveland Street, Virginia Beach, Virginia 23462.

2. Cox Cable brings this action for injunctive, declaratory and other relief with respect to Ordinance No. 36026 ("the Ordinance"), approved by Norfolk City Council on May 22, 1990. The Ordinance amended and reordained subsection (E) of Section 24-213 of the Norfolk City Code so as to include cable television service within the definition of the term "utility service". The Ordinance also amended and reordained subsection

(A) of Section 24-214 of the Norfolk City Code so as to establish a utility tax upon cable television service amounting to "seven (7) percent of the total bill, but excluding any charge made for a remote control tuning device." A copy of the Ordinance as adopted is attached hereto as Exhibit "A".

3. Cox Cable and the City are parties to a franchise agreement for the provision of cable television service to residents of the City for a period of fifteen years, beginning August 29, 1989. Norfolk City Council approved the franchise agreement by enacting Ordinance No. 35,664 on July 25, 1989. A copy of the franchise agreement is attached hereto as Exhibit "B" ("the Franchise Agreement").

STANDING OF COX CABLE TO BRING SUIT

4. Cox Cable is a proper party to seek an injunction against the enforcement of the Ordinance because its property rights and liberty interests are directly affected by the Ordinance, which requires Cox Cable to determine, collect and pay over to the City the tax imposed by the Ordinance. See Bacchus Imports, Ltd. v. Dias, 468 U.S. 263, 267 (1984) (liquor wholesaler has standing to challenge constitutionality of excise tax even though ultimate tax burden borne by consumer of product).

5. Cox Cable is a proper party to seek a declaratory judgment pursuant to Va. Code § 8.01-184 because the issues addressed in this Bill of Complaint with respect to the Ordinance represent an actual controversy between Cox Cable and the City in which the rights of Cox Cable are directly affected.

6. Cox Cable is a "person aggrieved" by the Ordinance within the meaning of Va. Code § 8.1-3984, due to the responsibilities imposed upon Cox Cable to determine, collect and pay over to the City the utility tax imposed by the Ordinance.

COUNT I

ABSENCE OF LEGISLATIVE AUTHORITY FOR UTILITY TAX ON CABLE

7. Paragraphs 1 - 6 are hereby incorporated and realleged.

8. Section 2(b) of the Norfolk City Charter allows the City to tax consumers of "public utility services." Under Virginia law, however, cable television has never been defined as a "public utility" or a "public utility service." See Va. Code § 56-232 (definition of "public utility"; no reference to cable television). Therefore, the City Charter does not authorize the tax imposed by the Ordinance.

9. Aside from the City Charter, the only other colorable authority for the City's imposition of a tax upon the purchase of cable television service is Va. Code § 58.1-3812, which provides in pertinent part:

Any county, city or town may impose a tax on the consumers of the utility service or services provided by telegraph and telephone companies or other corporations coming within the provisions of Chapter 26 (§ 58.1-2600 et. seq.) (emphasis added).

10. The foregoing section does not apply to cable television service or to Cox Cable because (a) cable television has never been defined under Virginia law as a "utility service"; (b) cable television is not a service provided by a telegraph or

telephone company; (c) Cox Cable is not a "utility"; and (d) Cox Cable is not a "Public Service Corporation" as that term is used within Chapter 26 (§ 58.1-2600, et. seq.) of the Code of Virginia. See Norfolk County Water Co. v. Wood, 116 Va. 142, 81 S.E. 19 (1925) (private enterprise for profit held not a public service corporation).

11. Because the tax imposed by the Ordinance is not specifically authorized by enactment of the Virginia General Assembly, it is illegal and void. See Brooks Transportation Co. v. Lynchburg, 185 Va. 135, 37 S.E.2d 857 (1946); and Richmond v. Richmond & D.R. Co., 62 Va. (21 Gratt.) 604 (1872) (municipality can levy taxes only by virtue of authority delegated to it by the legislature); see also City of Richmond v. Confrere Club, 239 Va. 77, 389 S.E.2d 471 (1990) (applying "Dillon Rule", that municipal corporations possess and can exercise only those powers expressly granted by the General Assembly, those necessarily or fairly implied therefrom, and those that are essential and indispensable).

COUNT II

VIOLATION OF THE FRANCHISE AGREEMENT - ORDINANCE NO. 35,644

12. Paragraphs 1 - 11 are hereby incorporated and realleged.

13. The Franchise Agreement constitutes a binding contract between the City and Cox Cable for the provision of cable television service under the terms and conditions set forth therein. Specifically, Section 10.01, entitled "General Financial

Insurance Provisions" sets forth in detail Cox Cable's payment obligations to the City.

14. The City's imposition upon Cox Cable of the responsibility to determine, collect and pay over to the City the revenues from the tax imposed by the Ordinance, without additional consideration to Cox Cable -- particularly for the costs of compliance with the Ordinance -- constitutes a breach of the Franchise Agreement. As such, the Ordinance is void and unenforceable.

COUNT III

VIOLATION OF 42 U.S.C. § 1983
DEPRIVATION OF FIRST AMENDMENT RIGHTS

15. Paragraphs 1 - 14 are hereby incorporated and realleged.

16. This Court has jurisdiction to order relief for deprivations of rights under the United States Constitution carried out "under color of any statute, ordinance, regulation . . . of any State. . . ." 42 U.S.C. § 1983. See Martinez v. California, 444 U.S. 277, n.7 (1980) (federal and state courts have concurrent jurisdiction over actions brought under 42 U.S.C. § 1983).

17. The Ordinance was enacted by Norfolk City Council under color of state law, either by virtue of the City Charter or other enactment of the Virginia General Assembly.

18. The business of cable television, like that of newspapers and magazines, is to provide subscribers with a mixture of news, information and entertainment. Like newspapers, cable

television companies such as Cox Cable use a portion of their available capacity to reprint (or retransmit) the communications of others, while at the same time providing some original programming. Thus, cable television is a medium entitled to protection under the First Amendment to the United States Constitution. Los Angeles v. Preferred Communications, Inc., 476 U.S. 488, 494 (1986).

19. The Ordinance does not apply to other mass communicators such as broadcasters, newspapers, magazines, and other publications. Nor does it apply to satellite master antenna television ("SMATV") systems, which provide television programming to hotels and multiple dwelling units, or to other technologies for distributing television programming. Therefore, the Ordinance singles out cable television for a burden not imposed upon other communications media. In the absence of a compelling governmental interest, the Ordinance violates Cox Cable's right to freedom of speech as guaranteed by the first and fourteenth amendments to the United States Constitution and 42 U.S.C. § 1983. Minneapolis Star and Tribune Co. v. Commissioner of the Revenue, 460 U.S. 575 (1983); Arkansas Writers' Project, Inc. v. Ragland, 481 U.S. 221 (1987). The City's interest in raising revenue is not the type of interest that will justify a tax that discriminates against cable television. Minneapolis Star, 460 U.S. at 586.

20. Even if the tax is not considered discriminatory, it nonetheless is an attempt to license the press, also prohibited by the First Amendment. See Murdock v. Pennsylvania, 319 U.S. 105 (1943) (license tax on peddlers concerning distribution of printed

matter is unconstitutional); Lovell v. Griffin, 303 U.S. 444 (1938) (ordinance requiring license before distributing "circulars, handbooks . . . or literature" held unconstitutional); McConkey v. Fredericksburg, 179 Va. 556, 19 S.E.2d 682 (1942). The assessment of the utility tax upon a cable television system is a license because the payment of the tax is a condition precedent to conducting business in the City.

COUNT IV

VIOLATION OF 42 U.S.C. § 1983
DEPRIVATION OF EQUAL PROTECTION UNDER THE FOURTEENTH AMENDMENT

21. Paragraphs 1 - 20 are hereby incorporated and realleged.

22. On information and belief, SMATV systems serve a significant number of hotels in the City. Such systems employ a central dish antenna that receives television signals from a satellite in fixed orbit. Satellite dish antennas may be located at the building site, or signals may be received by microwave through small receiving antennas on top of the building. The signal is thereafter distributed by wire to individual viewers.

23. The utility tax imposed by the Ordinance applies to Cox Cable and its subscribers but not to SMATV operators or those receiving SMATV programming. However, the television programming provided by SMATV systems operating in the City is virtually identical to that provided by Cox Cable to its subscribers -- movies, sports, news, and entertainment.

24. There is no compelling governmental interest to support taxing of cable television services while exempting SMATV.

Thus, the Ordinance violates Cox Cable's right to equal protection of the law as guaranteed by the Fourteenth Amendment to the United States Constitution as applied to the states, Near v. Minnesota, 283 U.S. 697 (1931), and 42 U.S.C. § 1983. See Satellink of Chicago v. Chicago, 523 N.E.2d 13 (Ill. App. 1988) (amusement tax on SMATV which exempted cable television held violative of fourteenth amendment since services provided were essentially identical).

COUNT V

VIOLATION OF THE CABLE COMMUNICATIONS POLICY ACT OF 1984

25. Paragraphs 1 - 24 are hereby incorporated and realleged.

26. The Cable Communications Policy Act of 1984, 47 U.S.C. § 542, et. seq. ("the Cable Act"), controls the permissible level of franchise fees that may be imposed on cable operators such as the complainant Cox Cable. 47 U.S.C. § 542. See American Civil Liberties Union v. F.C.C., 823 F.2d 1554, 1559 (D. C. Cir.), cert. denied, 108 S. Ct. 1220 (1987).

27. The Cable Act prohibits the City from collecting a franchise fee from Cox Cable of more than 5% of gross revenues. 47 U.S.C. § 542(b). Pursuant to the Franchise Agreement, Cox Cable is presently obligated to pay to the City the maximum allowable franchise fee of 5% of gross revenues, exclusive of any utility tax. Ordinance No. 35,664, Section 10.01 (A).

28. Pursuant to the Cable Act, a "franchise fee" includes any tax imposed on a cable operator or subscriber. 47

U.S.C. § 542(g)(1). The term "franchise fee" does not apply to

"any tax, fee or assessment of general applicability (including such tax, fee or assessment imposed on both utilities and cable operators or their services, but not including a tax, fee, or assessment which is unduly discriminatory against cable operators or cable subscribers)."

 (emphasis added)

47 U.S.C. § 542(g)(1)(A).

29. The tax imposed by the Ordinance unduly discriminates against cable operators and subscribers and is therefore not excluded from the Cable Act's definition of a franchise fee. Undue discrimination is found in the following areas:

(a) As to the complainant Cox Cable, a cable operator.

1. The tax imposed by the Ordinance will cause many subscribers to disconnect or downgrade service rather than pay a sudden increase of 7% in cable rates. Many subscribers who disconnect or downgrade will do so permanently, even if the Ordinance is held to be invalid after it is imposed. This loss of subscribers will permanently deprive Cox Cable of revenues from monthly subscriber fees and advertising revenues which are based upon the number of subscribers on the system.

2. Unlike other services upon which the City imposes a utility tax (i.e., gas, electric and water service), only Cox Cable will suffer a loss of its customer base from the imposition of a utility tax.

3. The communications media with whom Cox Cable competes for revenue -- "SMATV" systems, broadcasters, newspapers, and similar media -- are not affected by this tax. Thus, Cox

Cable will suffer a competitive disadvantage by virtue of the Ordinance. Cable television is the only "First Amendment Speaker" affected by the Ordinance.

(b) As to cable subscribers:

(1) The tax will discriminate against citizens of Norfolk. Unlike sales taxes, hotel taxes, etc., only permanent residents of Norfolk will be paying the tax. Tourists, visitors and residents of surrounding municipalities who benefit from Cox Cable programming while in Norfolk will not be affected by the tax.

(2) The tax will discriminate against the elderly, shut-ins and low income residents of Norfolk who rely on cable television as their primary form of entertainment.

(3) The tax will impede the flow of information to the citizens of Norfolk. Due to increased costs, many citizens will lose access to, among other things, C-SPAN, CNN, and the government and educational access channels, resulting in a less informed, less knowledgeable citizenry. City residents whose primary sources of such information are newspapers, magazines, broadcast television, etc., are not required to pay a tax to receive information. Likewise, those who receive television programming in the City through SMATV systems are not required to pay a tax to receive such programming.

30. By reason of the foregoing, the Ordinance is preempted by the Cable Act pursuant to Article VI of the United States Constitution (Supremacy Clause) and is void pursuant to Va. Code § 15.1-23.1 (forbidding local regulation of cable television

inconsistent with state or federal law relating to cable television operations).

COUNT VI

ARTICLE 1, SEC. 12 OF THE VIRGINIA CONSTITUTION
(FREEDOM OF SPEECH AND PRESS)

31. Paragraphs 1 - 29 are hereby incorporated and realleged.

32. The Ordinance violates Article I, Section 12 of the Virginia Constitution. See Robert v. City of Norfolk, 188 Va. 413, 420, 49 S.E.2d 697 (1948) (Virginia Constitution's grant of freedom to "publish" held broader than that of United States Constitution).

COUNT VII

VIOLATION OF ARTICLE X, § 1 OF THE VIRGINIA CONSTITUTION
(DISCRIMINATORY TAXATION)

33. Paragraphs 1 - 31 are hereby incorporated and realleged.

34. Article X, § 1 of the Virginia Constitution requires that all taxes "shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax. . . ." Cable television and SMATV are within the "same class of subjects" within the meaning of Article X, § 1 of the Virginia Constitution. Because the utility tax imposed by the Ordinance applies to Cox Cable and its subscribers but not to SMATV operators or those receiving SMATV programming, the tax is illegal and void for lack of uniform application as required by the Virginia Constitution.

INJUNCTION ALLEGATIONS

35. Pending a final judgment in this matter, a temporary injunction is warranted for the following reasons:

(a) Likelihood of success on the merits. By virtue of the legal and factual allegations set forth herein, Cox Cable has demonstrated a substantial likelihood of success on the merits.

(b) Irreparable harm to Cox Cable. If enforcement of the Ordinance is not enjoined, Cox Cable will suffer irreparable harm as follows:

1. Loss of subscribers and advertiser revenue. The tax imposed by the Ordinance will cause many subscribers to disconnect or downgrade service rather than pay a sudden increase of 7% in cable rates. Many subscribers who disconnect will do so permanently, even if the Ordinance is held to be invalid after it is imposed. This loss of subscribers will permanently deprive the complainant of revenues from monthly subscriber fees and advertising revenues which are based upon the number of subscribers on the system. Even if disconnecting customers wish to re-subscribe after the Ordinance is invalidated, Cox Cable and/or cable subscribers will have incurred disconnection and reconnection costs that will never be recovered.

2. Loss of First Amendment rights. The deprivation of first amendment freedom through the loss of ability to communicate with subscribers through the provision of service is per se irreparable harm under First Amendment analysis. Elrod v. Burns, 427 U.S. 347 (1976).

3. Loss of goodwill. Implementing the tax will disrupt Cox Cable's internal operations. Many subscribers will believe the 7% price increase is an increase imposed by Cox Cable rather than a tax over which it has no control. Telephone calls from complaining subscribers will occupy customer service representatives who would otherwise be attending to service-related inquiries. The resulting subscriber confusion and inevitable complaints will cause a permanent loss of Cox Cable's goodwill, the value of which is immeasurable.

4. Compliance costs. Customer service representatives will need to be paid overtime to be retrained to deal with billing inquiries and complaints, and additional staff will need to be hired for this purpose. Moreover, with an effective date of July 1, 1990, the Ordinance will require Cox Cable to revamp its accounting and billing system to assess cable subscribers for the tax. Even if the tax is deemed to be illegal and void after July 1, 1990, the expense of complying with the Ordinance will never be recovered.

5. Inability to comply. Because Cox Cable uses a staggered billing system, whereby each week approximately one fourth of the subscriber base is billed, the tax would have to be prorated beginning with its effective date and ending with the conclusion of the subscriber's billing cycle. Because of the changes to Cox Cable's accounting and billing system that would be required to implement these changes, compliance with the July 1, 1990 effective date is not possible.

(c) Lack of harm to the City from injunction. A temporary injunction will not cause any irreparable harm to the City. Should a temporary injunction issue and the Ordinance is subsequently held to be valid, the tax imposed by the Ordinance could be assessed retroactive to July 1, 1990.

(d) Public interest. It is in the public interest that only those taxes that are legal and valid should be imposed on the citizens of Norfolk.

36. Absence of adequate remedy at law. A suit to enjoin the assessment or collection of a local tax may be maintained where the party has no adequate remedy at law. Va. Code § 58.1-3993. Where, as here, no assessment has yet been made, no remedy at law is available, and a suit for injunction is appropriate. Sussex County v. Jarratt, 129 Va. 672, 106 S.E. 384 (1921).

PRAYER FOR RELIEF

Wherefore, Cox Cable requests the following relief:

1. Injunctive relief. Cox Cable requests the Court to exercise its authority pursuant to Va. Code § 8.01-620 and/or 42 U.S.C. § 1983 to enjoin the City temporarily and permanently from enforcing the Ordinance.

2. Declaratory Relief. If for any reason it is determined that injunctive relief is unavailable or inappropriate, Cox Cable requests the Court to enter a declaratory judgment pursuant to Virginia Code § 8.01-184 that the Ordinance is illegal, void and of no effect.

3. Relief pursuant to Va. Code §§ 58.1-3984 and -3987.

Alternatively, Cox Cable requests relief pursuant to

(a) Va. Code § 58.1-3984 providing for relief from an erroneous assessment. See C & P Telephone Co. v. City of Newport News, 194 Va. 409, 417, 73 S.E.2d 394 (1952) (predecessor to § 58.1-3984 held applicable to "levies and assessments claimed to be unconstitutional, illegal and void"), and

(b) Va. Code § 58.1-3987 providing for exoneration from erroneous tax assessments.

4. Attorneys fees' and costs. Cox Cable requests an award of attorneys fees' pursuant to 42 U.S.C. § 1988, for violation of 42 U.S.C. § 1983 (violation of rights under the first and fourteenth amendments to the United States Constitution).

5. Other relief. Cox Cable requests such other and further relief as this cause may require. In the interests of justice, this cause should be determined prior to July 1, 1990.

COX CABLE HAMPTON ROADS, INC.

Date: June 1, 1990

By


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VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF NORFOLK

COX CABLE HAMPTON ROADS, INC.,)	
)	
Complainant,)	
)	
v.)	Chancery No. _____
)	
CITY OF NORFOLK, VIRGINIA,)	

AFFIDAVIT OF FRANKLIN R. BOWERS

STATE OF VIRGINIA

CITY OF NORFOLK, to wit:

This day personally appeared before me, a Notary Public in and for the State and jurisdiction aforesaid, FRANKLIN R. BOWERS, who, after being duly sworn, deposed and said the following:

1. I am Vice-President and General Manager of Cox Cable Hampton Roads, Inc., the Complainant in this action.

2. I have read thoroughly the Bill of Complaint and Motion for Temporary Injunction filed herewith and have personal knowledge of the factual allegations contained therein. To the best of my knowledge and belief, such allegations are true and accurate.

Franklin R. Bowers
FRANKLIN R. BOWERS

(SEAL)

Sworn to and subscribed before me this 1st day of

June, 1990

My commission expires: Nov. 30, 1993

Donna L. Hodge
Notary Public

Form and Correctness Approved:

Contents Approved:

Daniel R. Hagermeister
Office of the City Attorney

NORFOLK, VIRGINIA

By *H. Buchanan*
DEPT.

ORDINANCE No. 36,026**R-16D**

AN ORDINANCE TO AMEND AND REORDAIN SUBSECTION (E) OF SECTION 24-213 OF THE CODE OF THE CITY OF NORFOLK, VIRGINIA, 1979, SO AS TO INCLUDE CABLE TELEVISION SERVICE WITHIN THE DEFINITION OF THE PHRASE "UTILITY SERVICE" AND TO AMEND AND REORDAIN SUBSECTION (A) OF SECTION 24-214 OF THE CODE OF THE CITY OF NORFOLK, VIRGINIA, 1979, SO AS TO ESTABLISH THE TAX BASE AND TAX RATE FOR CABLE TELEVISION SERVICE.

- - -

BE IT ORDAINED by the Council of the City of Norfolk:

Section 1:- That Subsection (e) of Section 24-213 of the Code of the City of Norfolk, Virginia, 1979, is hereby amended and reordained so as to read as follows:

(e) Utility service. The phrase "utility service" shall include local exchange telephone service, electricity service, gas service, water service and cable television service furnished in the corporate limits of the city.

Section 2:- That Subsection (a) of Section 24-214 of the Code of the City of Norfolk, Virginia, 1979, is hereby amended and reordained so as to read as follows:

(a) For each and every fiscal year beginning July first and ending June thirtieth of each such year, unless otherwise changed by the council, there is hereby imposed and levied by the city upon each and every purchase of a utility service a tax in accordance with the following schedule:

(1) Water:

- a. Residential, five-eighths-inch meter only, twenty-five (25) percent of the first forty-five dollars (\$45.00).
- b. Commercial, all meters other than five-eighths-inch, twenty-five (25) percent of the first one hundred fifty dollars (\$150.00) and fifteen (15) percent of all over one hundred fifty dollars (\$150.00).

EXHIBIT 18A 18

- c. All of the above are exclusive of service charges made by the city.

(2) Gas and electricity:

- a. Residential gas, twenty-five (25) percent of the first six dollars (\$6.00).
- b. Nonresidential gas, twenty-five (25) percent of the first two thousand dollars (\$2,000.00).
- c. Residential electricity, twenty-five (25) percent of the first fifteen dollars (\$15.00).
- d. Nonresidential electricity, twenty-five (25) percent of the first fifty dollars (\$50.00) and twelve (12) percent of all over fifty dollars (\$50.00).
- e. Agribusiness electricity, twenty-five (25) percent of the first fifty dollars (\$50.00) and twelve (12) percent of all over fifty dollars (\$50.00), but in no event more than two hundred fifty dollars (\$250.00).
- f. All gas and electric service indicated is per single meter. All other gas and electric service in accordance with subsections (c) through (e), below.

(3) Telephone, local exchange service, twenty-five (25) percent of total (excluding charges for coin operated telephones).

(4) Cable television service, seven (7) percent of the total bill, but excluding any charge made for a remote control tuning device.

Section 3:- That this ordinance shall be in effect on and after July 1, 1990.

Adopted by Council May 22, 1990
Effective July 1, 1990

TRUE COPY
TESTE:

R. BRECKENRIDGE DAUGHTREY, CITY CLERK

BY: Shelia N. Nelder
DEPUTY CITY CLERK

Correctness Approved:

Philip R. Japen
Office of the City Attorney

NORFOLK
RETRANCH

Contents Approved: *CRH*

By *Richard B. Ammons*
DEPT. Development

NORFOLK, VIRGINIA

R-9

ORDINANCE No. 35,664

AN ORDINANCE GRANTING A FRANCHISE TO COX CABLE HAMPTON ROADS, INC. TO CONSTRUCT, OPERATE AND MAINTAIN A CABLE TELEVISION SYSTEM IN THE CITY OF NORFOLK; SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OF THE FRANCHISE; PROVIDING FOR REGULATION AND USE OF THE SYSTEM.

- - -

BE IT ORDAINED by the Council of the City of Norfolk:

Section 1:- Statement of Intent and Purpose.

1.01 Statement of Intent and Purpose. The City intends, by the adoption of this Franchise, to bring about the development and operation of a cable television system. The development and operation of a cable television system can contribute significantly to meeting the communications needs and desires of many individuals, associations and institutions.

1.02 Award Fee and Franchising Costs. Grantee shall reimburse the City for all reasonable costs, not to exceed \$25,000.00 including attorney's fees and publication fees, expended in the soliciting, processing and awarding of the Franchise. Payment shall be made by Grantee upon presentation of proper invoices substantiating the cost at the time of acceptance of this Franchise as set forth in Section 15.02 hereof.

Section 2:- Short Title. This ordinance shall be known and cited as the "City of Norfolk Cable Television Franchise Ordinance". Within this document it shall also be referred to as "this Franchise" or "the Franchise".

Section 3:- Definitions. For the purpose of this Franchise, the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future tense words in the plural number include the singular number and words in the singular number include the plural number. The words "shall" and "will" are mandatory and "may" is permissive. Words not defined shall be given their common and ordinary meaning.

3.01 "Basic Service" means any level of service which includes the retransmission of local television broadcast signals and the access channels required herein.

3.02 "Cable Mile" means a mile of cable bearing strand.

EXHIBIT 20

B 20

3.03 "Channel" means a frequency band of some width which is capable of carrying either a standard video signal, a number of audio, digital or other non-video signals, or some combination of such signals.

3.04 "Class IV Channel" means a signaling path provided by the System to transmit signals to any type from a subscriber terminal to another point in the System.

3.05 "City" means the City of Norfolk, a municipal corporation in the State of Virginia, its governing body, its delegations, officers, agents, employees and representatives.

3.06 "Commercial Entity" means any association, firm, corporation, partnership, or other legally recognized entity whether for profit or not for profit located in the City.

3.07 "Converter" means an electronic device which converts signals to a frequency not susceptible to interference within the television receiver of a subscriber and by an appropriate channel selector also permits a subscriber to view all Basic Service signals delivered at designated converter dial locations.

3.08 "Drop" means the cable that connects the subscriber terminal to the nearest feeder cable of the System.

3.09 "FCC" means the Federal Communications Commission or a designated representative.

3.10 "Grantee" means Cox Cable Hampton Roads, Inc., its agents, employees, lawful successors, transferees or assignees.

3.11 "Gross Revenues" means all earnings, receipts, fees, commissions, and income whatsoever received by Grantee arising from or growing out of the conduct of business from all sources of operation of the System within the City including, but not limited to, Basic Service monthly fees, Pay Television fees, installation and reconnection fees, leased channel fees, converter rentals, interest on subscriber deposits (unless returned to the subscriber), and local advertising revenues and interactive (non-video) services except that this term does not include any sales, excise or other taxes or fees collected by Grantee on behalf of any state, city, or other governmental unit, bad debt, refunds to subscribers and copyright fees.

3.12 "Installation" means the act of connecting the System from the feeder cable to the subscriber terminal so that cable service may be received by the subscriber.

3.13 "Pay Television" means the delivery over the System of per-channel or per-program audio-visual signals to subscribers for a fee or charge, in addition to the charge for Basic Service.

3.14 "Person" means any individual residing in the City.

3.15 "Public Property" means any real property owned by any governmental unit other than a Street.

3.16 "Street" means the surface of and the space above and below any street, road, highway, freeway, lane, path, way, alley, court, sidewalk, boulevard, parkway, drive or any easement or right-of-way now or hereafter held by the City which shall, within its proper use and meaning, in the sole opinion of the City, entitle Grantee to the use thereof for the purpose of installing or transmitting over poles, wires, cables, conductors, ducts conduits, vaults, manholes, amplifiers, appliances, attachments and other property as may be ordinarily necessary and pertinent to a System.

3.17 "Subscriber" means any Person or Commercial Entity who subscribes to a service provided by Grantee by means of the System.

3.18 "System" means a facility consisting of a set of closed transmission paths and associated signal generation, reception and control equipment that is designed to provide cable television services and interactive (non-video) services which includes video programming and which is provided to multiple subscribers within the City, but such term does not include (A) a facility that serves only to retransmit the television signals of one (1) or more television broadcast stations; (B) a facility that serves only subscribers in one (1) or more multiple unit dwellings under common ownership, control or management, unless such facility or facilities uses any public right-of-way; (C) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Cable Communications Policy Act of 1984, except that such facility shall be considered a System to the extent such facility is used in the transmission of video programming directly to subscribers; or (D) any facilities of any electric utility used solely for operating its electric utility systems.

3.19 "System Upgrade" Refer to Exhibit A.

3.20 "Outage" means at least five (5) subscribers served by any common active component experience a total interruption of cable service.

Section 4:- Grant of Authority and General Provisions.

4.01 Grant of Franchise. This Franchise is granted pursuant to the terms and conditions herein subject to all applicable provisions of local, state and federal laws, rules and regulations.

4.02 Criteria of Selection. The Grantee's technical ability, financial condition and legal qualifications and ability to meet the future cable-related community needs and interests, taking into account the cost of meeting such needs and interests, were considered and approved by the City in full public proceedings which afforded reasonable notice and a reasonable opportunity to be heard.

4.03 Authority for Use of Streets.

A. For the purpose of constructing, operating and maintaining a System in the City, Grantee may erect, install, construct, repair, replace, relocate, reconstruct, remove and retain in, on, over, under, upon, across and along the Streets within the City such lines, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, pedestals, attachments, and other property and equipment as are necessary and appurtenant to the operation of the System, provided that all applicable permits are applied for and granted, all fees paid and all other City codes and ordinances are otherwise complied with.

B. Prior to any significant construction or alteration of cable or strand, Grantee shall, in each case, file plans with the City and receive approval of such plans which approval shall not be unreasonably withheld.

C. Grantee shall construct and maintain the System so as not to interfere unreasonably with other uses of Streets. Grantee shall make use of existing poles and other facilities available to Grantee. Except in an emergency, Grantee shall use reasonable efforts to notify all residents affected by proposed work prior to commencement of that work.

D. Notwithstanding the above grant to use Streets, no Street shall be used by Grantee if the City, in its reasonable opinion, determines that such use is inconsistent with the terms, conditions or provisions by which such Street was created or dedicated, or presently used.

4.04 Franchise Term. This Franchise shall commence upon acceptance by Grantee as defined herein and shall expire fifteen (15) years thereafter unless renewed, revoked or terminated sooner as herein provided.

4.05 Area Covered. This Franchise is granted for the territorial boundary of the City which shall include any new territory which shall become part of the City. Grantee shall provide service upon the same terms and conditions to any Person within the City requesting service provided, however, if any annexed area is served by another cable operator at the time of annexation, Grantee shall not be obligated to provide service to that area.

4.06 Police Powers. Grantee's rights are subject to the police powers of the City to adopt and enforce ordinances necessary to the health, safety and welfare of the public. Grantee shall comply with all applicable general laws and ordinance enacted by the City pursuant to that power.

4.07 Use of Grantee Facilities. The City shall have the right to install and maintain, free of charge, upon Grantee's poles and within the underground pipes and conduits of Grantee, any wires and fixtures desired by the City to the extent that such installation and maintenance does not interfere with the existing current and future operations of Grantee. If Grantee gives the City sixty (60) days notice of any interference, the City will comply with Grantee's request to correct the interference.

4.08 Written Notice. All notices, reports or demands required to be given to the City and to the Grantee in writing under this Franchise shall be deemed to be given when delivered personally to the person designated below, or when seventy-two (72) hours have elapsed after it is deposited in the United States mail in a sealed envelope, with registered or certified mail postage prepaid thereon, or on the next addressed business day if sent by express mail or overnight air courier addressed to the party to which notice is being given, as follows:

If to City: City Manager
11th Floor, City Hall Building
Norfolk, VA 23501

If to Grantee: General Manager
Cox Cable Hampton Road, Inc.
5200 Cleveland Street
Virginia Beach, VA 23462.

Such addresses may be changed by either party upon notice to the other party as provided in this section.

4.09 Franchise Nonexclusive. The Franchise granted herein is non-exclusive. The City specifically reserves the right to grant, at any time, additional Franchises on similar terms and conditions for a System in accordance with state and federal law.

Section 5:- System Design Provisions.

5.01 Subscriber Network. Refer to Response to City of Norfolk, Virginia RFP Section III C, Items 2, 3 and 4.

5.02 Drops to Public Buildings. Refer to Response to City of Norfolk, Virginia RFP Section III C, Item 9.

5.03 Provision of Service. After service has been established by activating trunk and distribution cable for any area: Grantee shall provide service to any Person in that area within twenty-one (21) days from the date of request except under conditions beyond Grantee's reasonable control, at Grantee's then current installation fee; and Grantee will provide service to any Commercial Entity in that area upon terms negotiated between Grantee and the Commercial Entity.

5.04 Technical Standards. The technical standards set forth in Exhibit B shall be used to measure, monitor and otherwise evaluate System performance. Refer to Exhibit B and also Response to City of Norfolk, Virginia RFP Section III C, Item 7; (a-j).

5.05 Testing. The City may at any time require tests, full or partial repeat tests, different test procedures or tests involving a specific subscriber's drop. Request for such tests shall be made on the basis of complaints received, other evidence indicating an unresolved controversy or significant non-compliance with this ordinance. Such tests shall be limited to the particular matter in controversy. The City shall endeavor to so arrange its request for such tests so as to minimize hardship or inconvenience to Grantee or to the subscribers. The test shall be conducted by a qualified engineer selected jointly by the City and the Grantee. The costs of testing necessitated by complaints received or other evidence of unresolved controversy shall be paid by the City if Grantee is found not to be at fault and shall be paid by Grantee if Grantee is found to be at fault.

5.06 Emergency Requirements.

A. Refer to description in Response to City of Norfolk, Virginia RFP Section III C, Item 13.

B. In the case of emergency or disaster, Grantee shall, upon request of the City, make available its facilities to the City for emergency use at no cost to the City. The Grantee shall also make available to the City during the period of the emergency and without cost to the City such personnel as may be required to operate the facilities in order that the Mayor or his designated representative may communicate with the citizens of the City.

5.07 Current Testing Procedures. Refer to Response to City of Norfolk, Virginia RFP Section III C, Item 10.

Section 6:- Service Provisions.

6.01 Basic Service. Grantee shall provide broad categories of programming on Basic Service in addition to any access channel(s) required herein. Grantee shall maintain, a diverse mix, quality and level of Basic Service during the term of this Franchise. Attached as Exhibit (C) for informational purposes only is Grantee present channel line-up. Grantee reserves the right to add, delete or modify.

6.02 Pay Television Services. Initially Grantee will provide:

- o AMC
- o Viewer's Choice
- o Home Box Office
- o Cinemax
- o Showtime
- o The Disney Channel

Grantee reserves the right to make changes.

6.03 Public, Educational and Government Access.

A. Grantee shall make available to the City and provide to each of its subscribers who receive all, or any part of the total services offered on the System, reception on at least one specially designated noncommercial public access channel available for use by the general public on a first come, non-discriminatory basis; one specially designated access channel for use by local educational authorities; and one specially designated access channel available for local government use. The use of these channels shall be under the supervision and control of the City or Norfolk Public Schools. Notwithstanding anything to the contrary, Grantee shall be permitted to use any specially designated access channel for the provision of other services if such channel is not being used for the purposes designated. Subject to the discretion of the City, the City may develop rules and procedures under which the Grantee's permitted use of the public access channel shall cease.

B. Whenever the specially designated noncommercial public access channel, the specially designated education access channel and the specially designated local government access channel are all in uninterrupted video program use from 8:00 AM to 12:00 PM for six (6) weeks running, and there is demand for use of an additional channel for the same purpose, Grantee shall then have ninety (90) days in which to provide one (1) new specially designated access channel for the same purposes.

C. The City shall establish rules pertaining to the administration of the specially designated noncommercial public access channel, specially designated government channel and the specially designated educational channel.

D. Grantee shall establish and maintain a studio facility capable of producing live color programming and at least one-color origination van equipped with two (2) color cameras.

E. Upon request of the City, Grantee shall train a City employee for TV program origination or coordination at City expense limited to Grantee's cost.

F. In response to City's RFP requirement, Grantee will provide the City a one-time cash grant in the amount of \$2.50 per subscriber located within the Franchise area to be utilized by the City to provide equipment, personnel, or facilities to facilitate public, educational, and government access programming. The cash grant will be paid on or before December 31, 1989. The cash grant will be based upon the number of subscribers located within the Franchise area on September 22, 1989.

G. Grantee shall provide at no cost to the City production, technical and administrative consultation assistance to develop educational and government programming.

H. Grantee agrees to provide program origination at the remote locations noted in Response to City of Norfolk RFP Section III C Item 8. Upon designation by the City within sixty (60) days of the effective date of this Ordinance of a remote location which is an alternative to one of the listed locations, Grantee will provide the necessary engineering and construction to include that location for program origination in its System Upgrade at no cost to the City. If the designation is made after sixty (60) days after the effective date of this Ordinance, Grantee will provide the necessary engineering and construction to include that location for program origination and the City shall reimburse Grantee for Grantee's cost for such engineering and construction.

6.04 Local Origination. Grantee will continue to provide local origination programming as long as economically feasible commensurate with community needs.

6.05 Service to Public Buildings. Refer to Response to City of Norfolk, Virginia RFP Section III C, Item 9.

Section 7:- Construction Provisions.

7.01 Completion of Construction. Grantee shall give notice to the City at such time as Grantee has completed the System Upgrade. The notice shall include a certification from an officer of Grantee that the System Upgrade as set forth in Exhibit A has,

in all respects, been completed and that the System is in compliance with all local, state and national codes and standards.

7.02 Construction Standards.

A. All construction practices shall be in accordance with all applicable sections of the Occupational Safety and Health Administration as well as all state and local codes where applicable.

B. All installation of electronic equipment shall be of a permanent nature, durable and installed in accordance with the provisions of the National Electrical Safety Code (National Bureau of Standards) and National Electrical Code (National Bureau of Fire Underwriters) as amended.

C. Antenna supporting structures (towers) shall be designed for the proper loading as specified in the Electronics Industry Association's R.S 3-22A Specifications.

D. Antenna supporting structures (towers) shall be painted, lighted, erected and maintained in accordance with all applicable rules and regulations of the Federal Aviation Administration and all other applicable state or local codes and regulations.

E. All of Grantee's plant and equipment, including but not limited to the antenna site, headend and distribution system, towers, house connections, structures, poles, wire, cable coaxial cable, fixtures and appurtenances shall be installed, located, erected, constructed, reconstructed, replaced, removed, repaired, maintained and operated in accordance with good engineering practices, performed by experienced maintenance and construction personnel so as not to endanger or interfere with improvements the City may deem appropriate to make and also to preserve and protect plants and tree improvements in the tree belt and right-of-way or to interfere in any manner with the rights of any property owner, or to unnecessarily hinder or obstruct pedestrian or vehicular traffic.

F. Grantee shall at all times employ ordinary care and shall install and maintain in use commonly accepted methods and devices preventing failures and accidents which are likely to cause damage, injury or nuisance to the public.

7.03 Construction Codes and Permits.

A. Grantee shall obtain all necessary permits from the City before commencing any construction or extension of the System, including the opening or disturbance of any Street, or private or public property within the City. Grantee shall strictly adhere to all building and zoning codes currently or hereafter

applicable to construction, operation or maintenance of the System in the City and give due consideration at all times to the aesthetics of the property.

B. The City shall have the right to inspect all construction or installation work performed pursuant to the provisions of this Franchise and to make such tests as it shall find necessary to ensure compliance with the terms of the Franchise and applicable provisions of local, state and federal law.

7.04 Preservation and Repair of Streets and Property; Trees. Grantee shall comply with all ordinances of the City pertaining to trees and other vegetation. Any and all streets or public property or private property, which are disturbed or damaged during the construction, repair, replacement, relocation, operation, maintenance or reconstruction of the System shall be promptly repaired by Grantee, at its expense, to a condition as good as that prevailing prior to Grantee's work, as reasonably approved by the City. Any damage caused to the property of building owners or users or any other person as a result of any action or omission by Grantee shall be promptly and fully repaired by Grantee.

7.05 Use of Existing Poles. No poles, conduits, or other wire-holding structures shall be erected or installed by Grantee on City property without prior approval of the City with regard to the location, height, type and other pertinent aspects, such approval not to be unreasonably withheld. The City may require Grantee to provide written justification should the use of such poles and other wire-holding be solely for the purpose of supporting Grantee's cable and wires. The location of any pole, conduit or wire-holding structure of the Grantee on City property shall not be a vested right and such poles, conduits or other structures shall be removed or modified by Grantee at its own expense upon such reasonable request of the City.

7.06 Undergrounding of Cable.

A. Except as hereinafter provided, in all areas of the City where the cables, wires and other like facilities of a public utility or public utility district are placed underground, Grantee shall construct and install its cables, wires and other facilities underground. Amplifier boxes and pedestal mounted terminal boxes may be placed above ground if existing technology reasonably requires, but shall be of such size and design to conform with standard industry practices.

B. In any area of the City where there are certain cables, wires and other like facilities of a public utility or public utility district underground and at least one operable cable, wire or like facility of a public utility or public utility district suspended above the ground from poles, Grantee may

construct and install its cables, wires and other facilities from the same pole, provided should the remaining cables, wires and other like facilities of a public utility or public utility district be relocated underground, Grantee agrees to relocate its cables, wires and other like facilities underground.

C. Grantee shall place cable underground in newly platted areas in concert with other utilities unless this requirement is waived by City.

7.07 Reservation of Street Rights.

A. Nothing in this Franchise shall be construed to prevent the City from constructing, maintaining, repairing or relocating sewers; grading, paving, maintaining, repairing, relocating and/or altering any Street; constructing, laying down, repairing, maintaining or relocating any water mains; or constructing, maintaining, relocating, or repairing any sidewalk or other public work.

B. All such work shall be done, insofar as practicable in such manner as not to obstruct, injure or prevent the free use and operation of the poles, wires, conduits, conductors, pipes or appurtenances of Grantee.

C. If any such property of Grantee shall interfere with the construction or relocation, maintenance or repair of any Street or public improvement, whether it be construction, repair, maintenance, removal or relocation of sewer, public sidewalk, or water main, Street or any other public improvement, forty-five (45) days notice shall be given to Grantee by the City and all such poles, wires, conduits or other appliances and facilities shall be removed or replaced by Grantee in such manner as shall be directed by the City so that the same shall not interfere with the said public work of the City, as determined by the City, and such removal or replacement shall be at the shared expense of the Grantee and the City.

D. Nothing contained in this Franchise shall relieve any person from liability arising out of the failure to exercise reasonable care to avoid injuring Grantee's facilities while performing any work connected with grading, regarding, or changing the line of any Street or public place or with the construction or reconstruction of any sewer or water system.

7.08 Tree Ordinance. Grantee shall comply with all local ordinances pertaining to trees and vegetation.

7.09 Street Vacation or Abandonment. In the event any Street or portion thereof used by Grantee shall be vacated by the City or the use thereof discontinued by Grantee, during the term of this Franchise, Grantee shall not be obligated to remove its

facilities therefrom unless specifically requested by the City to do so, and on the removal thereof Grantee shall, at its own expense, restore, repair or reconstruct the Street area where such removal has occurred, and place the Street area where such removal has occurred, to a condition similar to that existing before such removal took place. In the event of failure, neglect or refusal of Grantee, after ninety (90) days notice by the City to remove the facilities or to repair, restore, reconstruct, improve or maintain such Street portion, the City may do such work or cause it to be done, and the cost thereof as found and declared by the City shall be paid by Grantee as directed by the City and collection may be made by any available remedy.

7.10 Movement of Facilities. In the event it is necessary temporarily to move or remove any of Grantee's wires, cables, poles, or other facilities placed pursuant to this Franchise, in order to lawfully move a large object, vehicle, building or other structure over the streets of the City, upon five (5) days notice by the City to Grantee, Grantee shall move the facilities, at the expense of the person requesting the removal, payment being made in advance. There shall be no charge to the City for such removal. Any service disruption provisions of this Franchise shall not apply in the event that the removal of Grantee's wires, cables, poles or other facilities results in temporary service disruptions.

Section 8:- Operation and Administration Provisions.

8.01 Financial Books and Records. The Grantee shall keep complete and accurate books of account and financial records of gross revenues attributable to its cable television operations in the City. The City and its agents and representatives shall have the right, upon two weeks written notice, to arrange for and conduct an inspection at any time during normal business hours, of all books and records pertaining to City's rights to administer this Franchise; any maps; plans; financial statements which the City or its agents and representatives determine are necessary to verify gross revenues; service complaint logs; performance test results; record of requests for service; and other like materials of Grantee which relate to customer service, construction related requirements and other items related to the City's administration of this franchise. Grantee shall prepare and furnish to the City such additional reports which are related to the City's rights to administer this franchise.

8.02 Annual Reports. Grantee shall file with the City, a copy of the following information, within ninety (90) days of the end of its fiscal year, including the year in which the Franchise becomes effective.

A. A summary of the previous year's activities in the development of the System, including, but not limited to, services begun or discontinued during the reported year.

B. Financial statements verifying total Gross Revenue and the total number of subscribers prepared in accordance with generally accepted accounting principles. In addition to the aforesaid year-end statements, the Grantee shall provide the City with a comfort letter from an independent certified public accountant verifying Gross Revenues.

C. A summary setting forth the results of an annual subscriber survey, if any.

D. A current copy of the subscriber service agreement.

E. A current list of names and addresses of each principal. For the purposes of this requirement the term "principal" means any person, firm, corporation, partnership or joint venture or other entity who or which owns or controls five percent (5%) or more of the voting stock (or any equivalent interest of a partnership or joint venture) of Grantee.

F. A summary of the complaints received during the reported year, by category, and a discussion of any unresolved complaint.

G. The results of any testing pursuant to Section 5.07 thereof. Such tests results shall be certified by an officer of Grantee.

8.03 Confidentiality. At the request of the Grantee, the City shall keep any information provided pursuant to Section 8 of this Franchise confidential.

Section 9:- Consumer Protection Provisions.

9.01 Basic Service Rate Changes.

A. Initial Rates. The initial rates and charges for Basic Service and Pay Television are set forth in Exhibit D. Grantee shall maintain on file with the City at all times a current schedule of all rates and changes.

B. Rate Increases. The City reserves the right to regulate rate increases for Basic Service to the extent not prohibited by federal or state law, subject to the following:

1. During any calendar year, Grantee may raise the rate for Basic Service by five percent (5%) or any amount equal to the prior years' increase in the Consumer Price Index for All

Urban Consumers (CPI-U) published by the United States Department of Labor, whichever is greater.

2. Should Grantee desire to raise the rate for Basic Service in excess of the amount allowed under 1, above, Grantee must apply to the City for approval by filing a proposed rate schedule with the City, which application shall include any justification(s) therefore. Within thirty (30) days of the filing of the rate schedule, the City shall schedule a public hearing on the requested rate increase, at which time all parties desiring to be heard, including Grantee, shall be afforded an opportunity to be heard. Within thirty (30) days of the public hearing, the City shall either approve the rate increase or notify Grantee in writing of its decision to deny the rate increase. The criteria for the City's decision shall be the establishment of rates which are "fair and reasonable" to both the Grantee and its subscribers, allowing for a reasonable rate of return for Grantee. Should the City fail to act on an application for a proposed rate increase within sixty (60) days of the filing of the application, the proposed rate increase may automatically go into effect.

9.02 Rate Changes. Prior to implementing any rate increase for Basic Service, Grantee shall give the following notice:

A. At least twenty-five (25) days advance written notice to the City; and

B. At least twenty-five (25) days advance written notice to subscribers of Basic Service.

9.03 Disconnection or Downgrading of Service.

A. Grantee may impose a charge reasonably related to the cost incurred for a downgrade of service.

B. If a subscriber requests disconnection from service prior to the effective date of an increase in rates, the subscriber shall not be charged the increased rate if Grantee fails to disconnect service prior to the effective date. Any subscriber who has paid in advance for the next billing period and who requests disconnection from service shall receive a prorated refund of any amounts paid in advance.

9.04 Subscriber Complaint Practices.

A. Grantee shall maintain an office within the City which shall be open during all usual business hours. Grantee shall have a publicly listed toll-free telephone number and be so operated as to receive subscriber complaints and requests on a twenty-four (24) hour-a-day, seven (7) days-a-week basis. A written log available for the City inspection shall be maintained

listing complaints and their dispositions, and will be maintained for a rolling period of six (6) months.

B. Grantee shall render efficient service, make repairs promptly and interrupt service only for good cause and for the shortest time possible, and insofar as possible, during periods of minimum use of the System. A written log available for City inspection shall be maintained for service interruptions, and will be maintained for a rolling period of six (6) months.

C. Grantee shall maintain adequate telephone lines and personnel to respond in a timely manner to schedule service calls and answer subscriber complaints or inquiries as required by this Section 9.04. The hours of the customer service department shall, at a minimum, be as set forth in Exhibit E.

D. Subscriber requests for maintenance or repairs Monday through Friday, shall be performed whenever possible by the end of the next day.

E. Any service call to a Subscriber's premises to perform any repair or maintenance work related to Grantee installed equipment necessary to receive service shall be performed at no charge except Grantee may charge according to its actual cost for time and materials for any service call which was necessitated by a negligent or wrongful act of the Subscriber.

F. If Grantee fails to correct a confirmed service problem within twenty-four (24) hours of notice to Grantee, Grantee shall if requested by the subscriber credit 1/30th of the monthly charge to the subscriber for each twenty-four (24) hours during which a subscriber is without service.

9.05 Subscriber Service Information. Grantee shall provide written subscriber service information to each subscriber during each calendar year. This information shall include the following:

A. The procedure for investigation and resolution of subscriber service complaints;

B. Programming services and rates for such services;

C. Billing practices as required by Section 9.06 hereof;

D. Service termination procedures;

E. Change in service procedures;

F. Converter policy;

G. Refund policy; and

H. The City office responsible for the administration of the Franchise with the address and telephone number of that office.

Grantee shall provide a copy of the subscriber service information to the City for review and comment.

9.06 Subscriber Billing Practices.

A. Grantee shall notify each of its subscribers, through the written service information, of its billing practices. The service information shall describe Grantee's billing practices including the following: frequency of billing, time periods upon which billing is based, advance billing practices, security deposit requirements, charges for late payment or returned checks, payments required necessary to avoid account delinquency, availability of credits for service outages, procedures to be followed to request service deletions including the notice period a subscriber must give to avoid liability for such services and procedures to be followed in the event of a billing dispute.

B. Prior to a material change in one of its billing practices, Grantee shall notify all affected subscribers in writing of the change and include a description of the changed practice.

C. The subscriber bill shall contain the following information presented in plain language and format:

1. Name and address of Grantee:

2. The period of time over which service is billed including prorated periods as a result of the establishment and termination of service;

3. The date on which services were rendered;

4. The rate or charge for each service or package of services.

5. The amount of the bill for the current billing period, separate from any balance;

6. Any applicable credits on the date which they were applied;

7. Grantee's telephone number; and

8. The date on which payment is due from the subscriber.

D. Grantee shall not impose a late charge on a subscriber unless a subscriber has received more than thirty (30) days of service for which the subscriber has not paid. Any charge for returned checks shall be reasonably related to the costs incurred by Grantee in processing such checks.

9.07 Rebate Policy. In the event a subscriber establishes or terminates service and receives less than a full month's service, Grantee shall prorate the monthly rate on the basis of the number of days in the period for which service was rendered to the number of days in the billing.

9.08 Annual Subscriber Survey.

A. Commencing in 1990, Grantee shall conduct an annual survey of subscribers. The survey shall be prepared and conducted in good faith so as to provide reasonably reliable measures of subscriber satisfaction with:

1. Signal quality;
2. Response to subscriber complaints;
3. Billing practices;
4. Programming services.

B. Grantee may satisfy the requirements of this Section 9.08 through a telephone survey conducted by an independent person in the business of regularly conducting telephone surveys.

C. As a part of each Annual Report, Grantee shall report in writing what steps Grantee is taking to continue to provide satisfactory subscriber service.

9.09 Interruption of Service.

A. Absent conditions beyond the reasonable control of the Grantee, Grantee shall at all times use its best efforts to maintain all parts of the System in good condition and repair through the term of this Franchise so as to provide service to all subscribers upon an uninterrupted basis.

B. Grantee shall promptly notify the City during City business hours of any significant Outage in the operation of the System. For the purpose of this Section 9.09 a "Significant Outage in the operation of the system" shall mean any Outage of a duration of at least four (4) hours to at least fifteen percent (15%) of the subscribers. Grantee shall keep an Outage log in which all Outages shall be regularly logged and will be maintained on a rolling six (6) month basis. The City shall have access to such log upon reasonable notice and at reasonable times.

C. Grantee shall exercise its best efforts to limit any interruption of service for the purpose of maintaining, repairing, or upgrading the System to periods of minimum use.

D. For purposes of computing the duration of an Outage, said period shall begin when Grantee has actual notice of said Outage, and shall cease when service has been restored.

9.10 Periodic Evaluation.

A. The City may require evaluation sessions during the term of this Franchise, provided, however, there shall not be more than one review session during any five (5) year period.

B. Topics which may be discussed at any evaluation session include, but are not limited to, application of new technologies, System performance, programming offered, access channels, facilities and support, municipal uses of cable, customer complaints, amendments to this Franchise, judicial rulings, FCC rulings, line extension policies and any other topics the City or Grantee deem relevant.

C. During an evaluation by the City, Grantee shall fully participate and cooperate with the City and shall provide without cost readily available information and documents as the City may reasonably request to perform the evaluation.

D. As a result of a periodic review or evaluation session, the City may request Grantee to modify the System or to provide additional services. Grantee will use its best efforts to implement the modifications requested by the City if Grantee, in its discretion, determines the modifications are technologically and economically feasible.

Section 10. General Financial and Insurance Provisions.

10.01 Payment to City.

A. Grantee shall pay to the City an annual amount equal to five percent (5%) of its annual Gross Revenues. The foregoing payment shall be compensation for use of Streets and other public property.

B. Payments due the City under this provision shall be computed at the end of each quarter year for that quarter. Payments shall be due and payable to the City on January 31, April 30, July 31 and October 31. Each payment shall be accompanied by a brief report showing the basis for the computation.

C. No acceptance of any payment shall be construed as an accord that the amount paid is in fact the correct amount, nor shall such acceptance of payment be construed as a release of

any claim the City may have for further or additional sums payable under the provisions of this Franchise. All amounts paid shall be subject to audit and recomputation by the City.

D. With each Annual Report required pursuant to Section 8.03 Grantee shall provide the City with a comfort letter as to the accuracy of the Gross Revenues for the preceding year from an independent certified public accountant. This letter shall be used to determine the exact amount of payments due the City and to correct any overpayments or underpayments by Grantee.

E. In the event any payment is not made on the due date, interest on the amount due shall accrue from such date at the current prime rate as determined by Chase Manhattan Bank, N.A. until paid.

10.02 Performance Bond.

A. At the time the Franchise is accepted, Grantee shall furnish and file with the City a performance and payment bond, or a performance and payment bond together with such other security as is approved by the City. The bond shall run to the City in the penal sum of Three Hundred Thousand Dollars (\$300,000.00). The bond shall be conditioned upon the completion of the System Upgrade in accordance with Section 7.01 of this Franchise.

B. The rights reserved by the City with respect to the bond are in addition to all other rights the City may have under the Franchise or any other law.

C. The bond shall be subject to the reasonable approval of the City and shall contain the following endorsement:

"It is hereby understood and agreed that this bond may not be cancelled without the consent of the City until sixty (60) days after receipt by the City by registered mail, return receipt requested mail, of a written notice of intent to cancel or not to renew."

10.03 Letter of Credit.

A. At the time this Franchise is accepted, Grantee shall provide to the City a Letter of Credit in the principal amount of Twenty Thousand Dollars (\$20,000.00).

B. The Letter of Credit shall serve as security for:

1. The faithful performance by Grantee of all the terms and conditions of the Franchise;

2. Any expenditure, damage or loss incurred by the City occasioned by Grantee's unexcused or uncured failure to comply with all rules, regulations, orders, permits and other directives of the City issued pursuant to this Franchise;

3. The payment by Grantee of all lawful liens and taxes, and all damages, claims, costs or expenses which the City has been compelled to pay or incur by reason of any act or default of Grantee, and all other payments due the City from Grantee pursuant to this Franchise; and

4. The loss of any payments required to be made by Grantee to the City which would have been received by the City but for Grantee's failure to perform its obligations pursuant to this Franchise, during the period of time between Grantee's unexcused or uncured failure to perform on the date in which the City takes over, or, authorized any other person to take over, the construction, operation or maintenance of the System necessitated by such failure.

C. Provision shall be made to permit the City to make draws against the Letter of Credit. Grantee shall not use the Letter of Credit for other purposes and shall not assign, pledge or otherwise use this Letter of Credit as security for any purpose.

D. Within five (5) days after notice to it that any amount has been drawn by the City against the Letter of Credit pursuant to this Section, Grantee shall restore such Letter of Credit to the required amount.

E. If Grantee fails to pay to the City any taxes due and unpaid; or fails to repay to the City any damages, costs or expenses which the City shall be compelled to pay by reason of any act or default of the Grantee in connection with this Franchise; or fails, after thirty (30) days notice of such failure by the City to comply with any provision of the Franchise which the City reasonably determines can be remedied by an expenditure of the security, the City may then seek to withdraw such funds from the Letter of Credit.

10.04 Penalties from Letter of Credit. The City and Grantee understand and agree that the failure to comply with any time and performance requirements set forth in this Franchise will result in damage to the City and that it is and will be impracticable to determine the actual amount of such damage in the event of delay or non-performance. Accordingly, as a result of any acts or omissions by Grantee pursuant to this Franchise, the City may draw from the Letter of Credit the following penalties:

A. For failure to complete the System Upgrade in accordance with Section 7.01 of this Franchise, unless the City approves the delay, the penalty shall be Two Hundred Dollars

(\$200.00) per day for each day, or part thereof, such failure occurs or continues, unless such failure is beyond the reasonable control of Grantee.

B. For failure to provide data, documents, reports or information to City pursuant to Section 8 of this Franchise, or to participate with the City during a System review pursuant to Section 9.10 of this Franchise, the penalty shall be One Hundred Dollars (\$100.00) per day.

C. For failure to test, analyze and report on the performance of the System following a reasonable request by the City pursuant to Section 5.07 of this Franchise, the penalty shall be One Hundred Dollars (\$100.00) per day.

D. Absent conditions beyond the reasonable control of Grantee, for failure of Grantee to comply with the construction, operation or maintenance standards set forth in Section 7 of this Franchise, the penalty shall be One Hundred Dollars (\$100.00) per day.

E. For failure to comply with all reasonable conditions of the City permits to disturb streets, fix streets, or other terms or conditions of the City, pursuant to Section 7 of this Franchise, the penalty shall be One Hundred Dollars (\$100.00) per day.

10.05 Procedure for Imposition of Penalties.

A. Whenever the City finds that Grantee has violated one (1) or more terms, conditions or provisions of this Franchise, for which relief is available against the Letter of Credit, a written notice shall be given to Grantee informing it of such violation or liability. The written notice shall describe in reasonable detail the specific violation so as to afford Grantee an opportunity to remedy the violation. Grantee shall have thirty (30) days subsequent to receipt of the notice in which to correct the violation before the City may resort to the Letter of Credit. Grantee may, within seven (7) days of receipt of notice, notify the City that there is a dispute as to whether a violation or failure has, in fact, occurred. Such notice by Grantee to the City shall specify with reasonable detail the matters disputed by Grantee and shall stay the running of the above-described time.

1. The City or its designee shall hear Grantee's dispute at a meeting called in a timely manner. Grantee shall be afforded notice of the meeting not less than seven (7) days prior to the meeting and afforded an opportunity to participate in and be heard at this meeting. The City or its designee shall supplement the decision with written findings of fact.

2. If after hearing the dispute the claim is upheld by the City, Grantee shall have seven (7) days from notice of such a determination within which to file an appeal de novo with an appropriate state or federal court or agency.

B. The time for Grantee to correct any violation or liability may be extended by the City if the necessary action to correct such violation or liability is of such a nature or character to require more than thirty (30) days within which to perform, provided Grantee commences the corrective action within the thirty (30) day period and thereafter uses reasonable diligence to correct the violation or liability.

C. The Letter of Credit provided pursuant to this Section shall become the property of the City in the event that the Franchise is revoked for cause. Grantee, however, shall be entitled to the return of the Letter of Credit as remains on file at the expiration of the term of the Franchise.

D. The rights reserved to the City with respect to the Letter of Credit are in addition to all other rights of the City whether reserved by this Franchise or authorized by law, and no action, proceeding or exercise of a right with respect to such Letter of Credit shall affect any other right the City may have.

10 36 Damages and Defense.

A. Grantee shall be responsible for, defend, indemnify and hold the City harmless for any damage or loss to any real or personal property of the City or any person, and for injury to or death of any person and any officer, employee or agent of the City arising out of or in connection with the construction, operation, maintenance, repair, or removal of, or any other action of Grantee with respect to, the System, any service or related activity, or the distribution of any service over the System.

B. The City, its officers, employees and agents shall not be liable for any loss or damage to any real or personal property of any person, or for any injury to or death of any person, arising out of or in connection with the construction, operation, maintenance, repair or removal of, or other action or event with respect to the System, except as may result from the acts of the City, its officers, employees and its agents.

C. Grantee shall be responsible for, defend, indemnify, and hold harmless the City, its officers, employees and agents, from and against all liability, special, incidental, consequential, punitive and all other damage, cost and expense (including reasonable attorneys' fees) arising out of or in connection with the construction, operation, maintenance, repair, or removal of the System.

D. In order for the City to assert its rights to be indemnified, defended, and held harmless, the City must:

1. Promptly notify Grantee of any claim or legal proceeding which gives rise to such right;

2. Afford Grantee the opportunity to participate in and fully control any compromise, settlement or other resolution or disposition of such claim or proceeding; unless, however, the City, reasonably determines that its interests cannot be represented in good faith by Grantee; and

3. Fully cooperate with the reasonable requests of Grantee, at Grantee's expense, in its participation in, and control, compromise, settlement or resolution or other disposition of such claim or proceeding subject to paragraph (2) above.

E. In the event the City reasonably determines that its interests cannot be represented in good faith by Grantee, Grantee shall pay all expenses incurred by the City in defending itself with regard to all damages and penalties mentioned in paragraph A above. These expenses shall include all out-of-pocket expenses, such as attorney's fees and costs.

10.07 Insurance.

A. As a part the indemnification provided by Section 10.06, but without limiting the foregoing, Grantee shall file with its acceptance of this Franchise, and at all times thereafter maintain in full force and effect as its sole expense, an acceptable policy or policies of liability insurance, including comprehensive general liability insurance, products/completed operations liability, personal injury liability, broad form property damage, contractual liability, automobile liability (owned, nonowned and hired automobiles) and workers compensation. The policy or policies shall name as additional insured except for workers compensation and for liabilities arising from this Franchise, the City, and in their capacity as such, their officers, agents and employees. Grantee will provide comprehensive liability coverage and automobile liability coverage with a combined single limit of not less than One Million Dollars (\$1,000,000.00), and an Excess Liability Policy with a combined single limit of not less than Two Million Dollars (\$2,000,000.00). The insurance policy or policies shall contain contractual liability insurance naming the Grantee, and shall insure against the types of liabilities covered by the indemnification and hold harmless provision of Section 10.06.

B. The policy or policies of insurance shall be maintained by Grantee in full force and effect during the entire term of the Franchise. Each certificate of insurance shall contain a statement on its face that the insurer will not cancel the policy

or fail to renew the policy, whether for nonpayment of premium, or otherwise, and whether at the request of the Grantee or for other reasons, except after thirty (30) calendar days advance written notice mailed by the insurer to the City and that such notice shall be transmitted postage prepaid, and return receipt.

10.08 City's Right to Revoke. In addition to all other rights which the City has pursuant to law or equity, the City reserves the right to revoke, terminate or cancel this Franchise, and all rights and privileges pertaining thereto, in the event that in the judgment of the City:

A. Grantee violates and fails to cure in the judgment of the City any material provision of this Franchise to the detriment of the City; or

B. Grantee attempts to evade any of the material provisions of this Franchise; or

C. Grantee practices any fraud or deceit upon the City or subscriber; or

D. Grantee becomes insolvent, unable or unwilling to pay its debts, or is adjudged a bankrupt; or

E. Grantee knowingly misrepresent a material fact in the application for or negotiation of, or renegotiation of, or renewal of, the Franchise, which is relied upon by the City.

10.09 Procedures for Revocation.

A. The City shall provide Grantee with a written notice of the cause for revocation and the intent to revoke and shall allow Grantee thirty (30) days subsequent to receipt of the notice in which to correct the violation or to provide adequate assurance of performance in compliance with the Franchise. The City shall provide Grantee with written findings of fact which are the basis of the revocation.

B. Grantee shall be provided the right to a public hearing affording due process before the City prior to revocation.

C. After the public hearing and upon determination by the City to revoke the Franchise, Grantee shall have a period of thirty (30) days, from the date of the City's determination, within which to file an appeal de novo with an appropriate state or federal court or agency.

D. During the appeal period, the Franchise shall remain in full force and effect.

Section 11:- Foreclosure, Receivership and Abandonment.

11.01 Foreclosure. Upon the foreclosure or other judicial sale of the System, Grantee shall notify the City of such fact and such notification shall be treated as a notification that a change in control of Grantee has taken place, and the provisions of this Franchise governing the consent to transfer or change in ownership shall apply without regard to how such transfer or change in ownership occurred.

11.02 Receivership. The City shall have the right to cancel this Franchise subject to any applicable provisions of Virginia law, including the Bankruptcy Act, one hundred twenty (120) days after the appointment of a receiver or trustee to take over and conduct the business of Grantee, whether in receivership, reorganization, bankruptcy or other action or proceeding, unless such receivership or trusteeship shall have been vacated prior to the expiration of said one hundred twenty (120) days, or unless:

A. Within one hundred twenty (120) days after his election or appointment, such receiver or trustee shall have fully complied with all the provisions of this Franchise and remedied all defaults thereunder; and,

B. Such receiver or trustee, within said one hundred twenty (120) days, shall have executed an agreement, duly approved by the Court having jurisdiction in the premises, whereby such receiver or trustee assumes and agrees to be bound by each and every provision of this Franchise.

11.03 Abandonment. Grantee may not abandon the System or any portion thereof without having first given three (3) months written notice to the City. Grantee may not abandon the System or any portion thereof without compensating the City for damages resulting from the abandonment. The City may recover from Grantee damages for the reasonable cost of removal of the System.

Section 12:- Removal, Transfer and Purchase.

12.01 Removal After Revocation or Expiration.

A. At the expiration of the term for which the Franchise is granted and non-renewal, or upon its revocation, as provided for, the City shall have the right to require Grantee to remove, at Grantee's expense, all or any portion of the System from all streets and public property within the City. In so removing the System, Grantee shall refill and compact at its own expense, any excavation that shall be made and shall leave all streets, public property and private property in as good a condition as that prevailing prior to Grantee's removal of the System, and without affecting, altering or disturbing in any way electric, telephone or utility, cables wires or attachments. The City shall have the

right to inspect and approve the condition of such streets and public property after removal. The insurance, and indemnity of the Franchise shall remain in full force and effect during the entire term of removal.

B. If Grantee has failed to commence removal of the System, or such part thereof as was designated, within thirty (30) days after written notice of the City's demand for removal is given, or if Grantee has failed to complete such removal within one (1) year after written notice of the City's demand for removal is given, the City shall have the right to exercise one of the following options:

1. Declare all right, title and interest to the System to be in the City or its delegator with all rights of ownership including, but not limited to, the right to operate the System or transfer the System to another for operation by it; or

2. Declare the System abandoned and cause the System, or such part thereof as the City shall designate, to be removed at no cost to the City. The cost of said removal shall be recoverable from the Letter of Credit, indemnity and penalty section provided for in the Franchise, or from Grantee directly.

12.02 General Purchase Provisions.

A. The City may, upon the payment of a fair valuation, purchase, take over and hold the property and plant of Grantee in whole or in part in the following circumstances:

1. If such purchase or taking over be at the expiration and non-renewal of the Franchise, such valuation shall be at fair market value determined on the basis of the System valued as a going concern, exclusive of the value attributed to the Franchise itself. Fair market value shall be determined by an independent appraisal made by a competent appraiser selected by the City.

2. If such purchase or taking over be at the revocation of the Franchise, such valuation shall be at an equitable price.

B. In no event shall any valuation upon the purchase at expiration and non-renewal or revocation be given to the Franchise.

12.03 Sale or Transfer of Franchise.

A. This Franchise or the System hereunder shall not be sold, assigned or transferred, either in whole or in part, or leased or sublet in any manner, nor shall title thereto, either legal or equitable, or any right, interest or property therein,

pass to or vest in any person without full compliance with the procedure set forth in this Section.

B. The provisions of this Section shall apply to the sale or transfer of all or a majority of Grantee's assets, merger (including any parent and its subsidiary corporation), consolidation, creation of an subsidiary corporation or sale or transfer of stock of Grantee or of its parent so as to create a new controlling interest in the System. The term "controlling interest" as used herein is not limited to majority stock ownership, but includes actual working control in whatever manner exercised.

1. The parties to the sale or transfer shall make a written request to the City for its approval of a sale or transfer.

2. The City shall reply to the parties in writing within forty-five (45) days of the request and shall indicate whether it will approve the requested sale or transfer or will advise of its determination that a public hearing is necessary due to potential adverse effect of the sale or transfer on Grantee's subscribers.

3. If public hearing is deemed necessary pursuant to (2) above, such hearing shall be conducted within twenty (20) days of such determination and written notice of any such hearing shall be given to the Grantee seven (7) days prior to the hearing. The notice shall contain the date, time and place of the hearing and shall briefly state the substance of the action to be considered by the City.

4. Within twenty (20) days after the public hearing, the City shall approve or deny in writing the sale or transfer request.

5. Grantee, upon transfer, shall within sixty (60) days thereafter file with the City a copy of the deed, agreement, mortgage, lease or other written instrument evidencing such sale, transfer or ownership or control or lease, certified and sworn to as correct by the Grantee.

C. In reviewing a request for sale or transfer pursuant to paragraph (A) above, the City may inquire into the technical, legal and financial qualifications of the prospective controlling party, and Grantee shall assist the City in so inquiring. The City may condition said transfer upon such terms and conditions as it deems reasonably appropriate. The City shall not unreasonably withhold its approval. In no event shall a transfer or assignment of ownership or control be approved without the transferee becoming a signator to this Franchise.

Section 13:- Rights of Individuals Protected.

13.01 Discriminatory Practices Prohibited. Grantee shall not deny service, deny access, or otherwise discriminate against subscribers or general citizens on the basis of race, color, religion, national origin, sex or age. Grantee shall comply at all times with all other applicable, federal, state and city laws, and all executive and administrative orders relating to nondiscrimination.

13.02 Subscriber Privacy. Grantee will comply with the provisions of 47 U.S.C. Section 551 as currently written and as may from time to time be subsequently amended.

Section 14:- Miscellaneous Provisions.

14.01 Franchise Renewal.

A. Renewal of this Franchise shall be governed by applicable local, state and federal law.

B. In absence of the applicable law, renewal of this Franchise shall be based on the terms and conditions set forth herein.

C. Grantee shall notify the City in writing of its desire to renew this Franchise during the six-month period which begins with the 36th month before the Franchise expiration.

D. Upon receiving such notification, the City shall, within a reasonable time, supply Grantee with a request for renewal which shall be completed by Grantee and returned to the City within 60 days.

E. Upon receipt of the Grantee's response to the request for renewal of the Franchise, the City shall, within a reasonable time, hold a public hearing in which the Grantee shall be afforded notice and an opportunity to be heard. The public hearing shall be recorded and a record prepared. The public hearing may be continued for a reasonable period of time to enable the City to fully evaluate Grantee's request for renewal.

F. Subsequent to the hearing, the City will either grant or deny renewal of the Franchise based on the following criteria:

1. The Grantee's compliance with the material terms of the existing Franchise;

2. The quality of the Grantee's current service, including signal quality, response to consumer complaints, and billing practices in light of community needs;

3. The Grantee's financial, legal and technical ability to provide the services, facilities, and equipment, as set forth in the request for renewal; and

4. The Grantee's ability to meet future cable-related community needs and interests, taking into account the cost of meeting such needs and interests. In evaluating the Grantee's ability to meet these needs and interests, consideration will be given to the following:

a. The technical excellence of the request for renewal, including system design, equipment quality and reliability, technical standards, performance tests and maintenance procedures.

b. The provision of a cable television system with sufficient capacity to provide flexibility to meet future needs and the Grantee's commitment to expand and upgrade services throughout the franchise term.

c. The depth of commitment to good consumer relations including adequacy of plans and procedures for responding to service problems and complaints on a timely basis.

d. The depth of commitment to local programming including support in the form of equipment, personnel and facilities.

e. The quality of diversity of proposed cable programming.

G. The City shall be allowed to utilize the services of legal, technical and financial consultants to assist in reviewing the Grantee's request for renewal. Grantee agrees to reimburse the City for the first \$30,000.00 of all reasonable costs incurred as a result of the renewal process, including all consulting costs. Costs above \$30,000.00 shall be shared equally by the Grantee and the City.

H. The City shall issue a written decision granting or denying the proposal for renewal based upon the record of the public hearing set forth above, and transmit a copy of such decision to Grantee.

I. Denial of the Grantee's request for renewal may be appealed by Grantee to a court of competent jurisdiction. The court shall grant appropriate relief if Grantee can demonstrate based on a preponderance of the evidence, based on the record of the proceeding conducted under Subsection E above that the adverse finding of the City was not based on the factors described in Section F.

14.02 Continuity of Service Mandatory. Upon expiration and non-renewal or the revocation, termination or cancellation of this Franchise, the City may require Grantee to continue to operate the System for an extended period of time, not to exceed six (6) months. Grantee shall, as trustee for its successor in interest, continue to operate the System under the terms and conditions of this Franchise. In the event Grantee does not so operate the System, the City may take such steps as it deems reasonably necessary to assure continued service to subscribers.

14.03 Work Performed by Others.

A. Grantee shall be responsible for, defend, indemnify and hold the City harmless for any claims or liability arising out of work performed by persons on behalf of Grantee pursuant to this Franchise.

B. All provisions of this Franchise shall apply to any subcontractor or others performing any work or services on behalf of Grantee pursuant to the provisions of this Franchise.

14.04 Compliance with Federal, State and Local Laws.

A. If any federal or state law or regulation shall require or permit Grantee to perform any service or act or shall prohibit Grantee from performing any service or act which may be in conflict with the terms of this Franchise, then as soon as possible following knowledge thereof, Grantee shall notify the City of the point of conflict believed to exist between such law or regulation.

B. If any term, condition or provision of this Franchise or the application thereof to any person or circumstance shall, to any extent, be held to be invalid or unenforceable, the remainder hereof and the application of such term, condition or provision to persons or circumstances other than those as to whom it shall be held invalid or unenforceable shall not be affected thereby, and this Franchise and all the terms, provisions and conditions hereof shall, in all other respects, continue to be effective and to be complied with. In the event that such law, rule or regulation is subsequently repealed, rescinded, amended or otherwise changed so that the provision which had been held invalid or modified is no longer in conflict with the law, rules and regulations then in effect, said provision shall thereupon return to full force and effect and shall thereafter be binding on Grantee and the City.

C. If any section, sentence, clause or phrase of this ordinance or any part thereof is for any reason found to be inconsistent with the rules and regulations of the FCC or invalid by a court of competent jurisdiction, such decision shall not

affect the validity of the remaining portions of this ordinance or any part thereof.

14.05 Nonenforcement by City. Grantee shall not be relieved of its obligation to comply with any of the provisions of this Franchise by reason of any failure or delay of the City to enforce prompt compliance. Any waiver by the City of a breach or violation of any provision of this Franchise shall not operate as or be construed to be a waiver of any subsequent breach or violation.

14.06 Administration of Franchise.

A. The City shall have continuing regulatory jurisdiction and supervision over the System and the Grantee's operation under the Franchise. The City may issue such reasonable rules and regulations concerning the construction, operation and maintenance of the System as are consistent with the provisions of the Franchise. The City reserves the right to delegate and redelegate from time to time any of its rights and obligations under this Franchise.

B. Grantee shall construct, operate and maintain the System subject to the supervision of all the authorities of the City who have jurisdiction in such matters and in strict compliance with all laws, ordinances, departmental rules and regulations consistent with the provisions of the Franchise affecting the System.

14.07 No Recourse Against the City. Grantee shall have no recourse whatsoever against the City or its officials, agents or employees for any loss, costs, expense, or damage arising out of any provision or requirement of this Franchise or because of the enforcement of the Franchise.

14.08 Rights Cumulative. All rights and remedies given to City and Grantee by this Franchise shall be in addition to and cumulative with any and all other rights or remedies, existing or implied, now or hereafter available to the City and Grantee at law or in equity, and such rights and remedies shall not be exclusive, but each and every right and remedy specifically given by this Franchise or otherwise existing or given may be exercised from time to time and as often and in such order as may be deemed expedient by the City and Grantee, and the exercise of one or more rights or remedies shall not be deemed a waiver of the right to exercise at the same time or thereafter any other right or remedy.

14.09 Ordinance and Attachments. The attachments to this Ordinance consisting of the Exhibits and Grantee's Response to City of Norfolk, Virginia, RFP are incorporated by reference. In the event of any inconsistency between this Ordinance and the attachments hereto, the Ordinance shall control.

14.10 Captions. The Section and paragraph captions in this Franchise are for convenience and reference purposes only and shall not affect in any way the meaning or interpretation of this Franchise.

14.11 Calculation of Time. Where the performance or doing of any act, duty, matter, payment or thing is required hereunder and the period of time or duration for the performance or doing thereof is prescribed and fixed herein, the time shall be computed so as to exclude the first and include the last day of the prescribed or fixed period or duration of time. When the last day of the period falls on Saturday, Sunday or legal holiday, that day shall be omitted from the computation.

Section 15:- Effective Date and Time of Acceptance.

15.01 Effective Date. This Franchise shall take effect from and after thirty (30) days from its adoption or upon acceptance by Grantee whichever is later.

15.02 Time of Acceptance and Exhibits.

A. Grantee shall accept this Franchise in form and substance acceptable to the City within thirty (30) days of the adoption of this ordinance unless the time for acceptance is extended by the City. Such acceptance by Grantee shall be deemed the grant of this Franchise for all purposes. In the event acceptance does not take place, this Franchise shall be null and void.

B. With its acceptance, Grantee also shall deliver to the City a certified resolution of Grantee evidencing its power and authority to accept the Franchise. Such documents shall also describe the officer or officers authorized to accept on behalf of Grantee.

C. With its acceptance, Grantee shall also pay costs and expenses incurred by the City in connection with the preparation of this Franchise not to exceed Twenty-five Thousand Dollars (\$25,000.00). The City shall provide an itemized statement to Grantee documenting such costs and expenses incurred by the City.

D. With its acceptance, Grantee shall submit to the City an opinion of counsel stating that, as of the effective date of this Franchise:

1. The Grantee is a corporation, duly organized, validly existing, and in good standing under the laws of the State of Delaware;

2. The Grantee has the requisite power and authority under applicable law and its bylaws and articles of incorporation, is authorized by resolutions of its Board of Directors, and has secured all consents which are required to be obtained as of the effective date of this Franchise, to enter into and legally bind the Grantee to this Franchise and to take all actions necessary to perform all of its obligations pursuant to this Franchise;

3. This Franchise is enforceable against the Grantee in accordance with the provisions hereof;

4. To the best of such counsel's knowledge, there is no action or proceeding pending or threatened against the Grantee or any affiliated person which questions the validity or prospective validity of this Franchise, or of any essential element upon which this Franchise depends, or of any actions to be taken by the Grantee or any affiliated person; and

5. Insofar as the legal capacity of the Grantee to carry out any obligation pursuant to this Franchise is concerned, the execution of, and performance pursuant to, this Franchise will not result in the breach or violation of any provision of the articles of incorporation or bylaws of the Grantee or of any statute, regulation, agreement, judgment, or decree to which it is subject.

E. Within thirty (30) days of its acceptance, Grantee shall also deliver any performance bond, Letter of Credit and insurance certificates required herein that have not previously been delivered.

Adopted by Council July 25, 1989
Effective August 25, 1989

TRUE COPY
TESTE:

R. BRECKENRIDGE DAUGHTREY, CITY CLERK

BY: Shelia N. Milder
DEPUTY CITY CLERK

EXHIBIT A - SYSTEM UPGRADE

Cox Cable Hampton Roads proposed to upgrade the existing 300 MHz cable plant to a new capacity of 400 MHz. The time schedule in which this will be done is described in Section C "Technical Qualification", Item 1, of the Response to City of Norfolk, Virginia Request for Proposal (RFP).

This upgrade will be accomplished using the existing cable plant with replacement of existing electronics and passives to a bandwidth of 400 MHz. Whenever possible, those replacements which would affect a large number of customers will be done in the late night/early morning hours. The replacements which will affect small areas or individuals will be generally done during daylight. In many cases, the upgrade will involve a drop cable replacement from our tap to the customer's home.

At the completion of the upgrade, customers will be notified of new services available to them.

EXHIBIT B - TECHNICAL STANDARDS

The newly upgraded cable system will be operated under the following technical standards:

Carrier to Noise:	41 dB
Cross Modulation:	50 dB w/synchronous modulation
Composite Triple Beat:	50 dB w/CW carrier or 59 dB for modulated carrier
Second Order Distortion:	Better than 57 dB
Hum:	2% or less (non-scrambled channels)
System Bandpass Response:	Trunk N/10 +1 not to exceed 4 dB. Feeder not to exceed 1 dB over trunk.
Difference between any two Adjacent Channels:	3 dB
Difference between any two Channels on the System:	Max 9 dB
Signal Level at T.V. Set:	0 dBmV Min

EXHIBIT C - CHANNEL LINE-UP

1	Pay Per View Preview Channel
2	AMERICA'S SHOPPING CHANNEL/CVN
3	WTKR - Local CBS Channel 3
*4	USA - All Entertainment Network
*5	WTTG - Washington, D.C. Channel 5
6	ESPN - Sports & Entertainment
*7	WTBS - Atlanta Superstation
*8	MTV - Music Television
*9	NICKELODEON - Children's Programming
*10	WAVY - Local NBC Channel 10
11	WCOX - Community Programming
12	CNN HEADLINE NEWS - 24 Hours
*13	WVEC - Local ABC Channel 13
14	CNN - 24 Hour News Network
*15	WHRO - Local PBS Channel 15
16	DISCOVERY - Nature - Science - History
*17	ARTS & ENTERTAINMENT NETWORK
*18	LIFETIME - The Lifestyle Channel
*19	WWOR - New York SuperStation
*20	WDCA - Washington, D.C. Channel 20
*21#	HBO - Movies & Specials - 24 Hours
22	C-SPAN - House of Representatives
*23	TNN - The Nashville Network
24	THE WEATHER CHANNEL - 24 Hours
*25#	THE DISNEY CHANNEL - Family Programming
*26	CBN - The CBN Family Channel
27	WYAH - Local Channel 27
28	EDUCATIONAL CHANNEL
29	GOVERNMENT CHANNEL
*30	FNN - Financial News Network/ MOVIE TIME
31	VTC-TV - Tidewater Educational Channel
*32#	SHOWTIME - Movies & Specials - 24 Hours
33	WTVZ - Local Channel 33
*34	AMC - American Movie Classics/THE TRAVEL CHANNEL
35	HOME TEAM SPORTS/MOVIE TIME
*36	BET - Black Entertainment Television
*37#	CINEMAX - Movies and Specials - 24 Hours
*99#	VIEWERS CHOICE - Pay Per View Movies & Specials

* Includes Stereo.

Optional Premium Channel.

Included for Informational Purposes Only.

EXHIBIT D - INITIAL RATES
(Effective 1/1/89)

Basic Rate:	\$ 16.95/mo*
Basic Additional Outlet:	3.50/mo
Pay TV	
HBO:	10.00/mo
Showtime:	10.00/mo
Cinemax:	10.00/mo
Disney:	10.00/mo
AMC:	5.00/mo
Pay TV on A/O:	5.00/mo
Package Prices:	
One-Pay Package:	30.95/mo
Two-Pay Package:	38.95/mo
Three-Pay Package:	46.95/mo
Four-Pay Package:	54.95/mo
Basic Remote:	2.00
Volume Control Remote:	4.00
Installation (Std. Drop):	40.00
Change of Service:	15.00
Reconnect:	25.00
Late Payment Fee:	5.00
Additional Outlet Installation:	25.00
VCR Connection:	15.00
Antenna Switch:	25.00
Converter/Service Deposit (up to)	50.00

* Includes Copyright Pass Through and Antenna Plus Package at \$5.50

Commercial and Bulk Rates Subject to Individual Negotiation.

EXHIBIT E - CUSTOMER SERVICE HOURS

Customer Service Phones:

8:30 a.m. - 5:00 p.m., Monday - Friday

Repair Service Phones:

Will be answered 24 hours a day, 7 days a week

Front Counter Office:

8:30 a.m. - 5:00 p.m., Monday - Friday.

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF NORFOLK
COX CABLE HAMPTON ROADS, INC.,

Plaintiff,

v.

IN CHANCERY NO. C-90-851

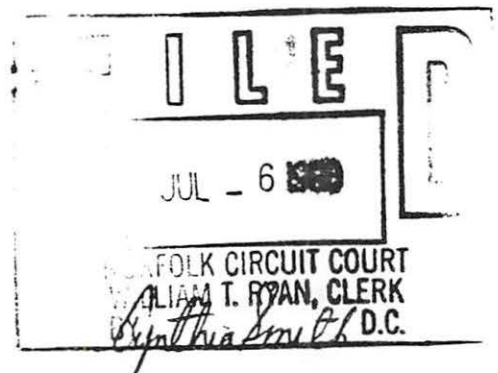
CITY OF NORFOLK, VIRGINIA,

Defendant.

DEMURRER

Defendant, City of Norfolk, by counsel, demurs to the Bill of Complaint and Motion for Temporary Injunction herein, saying as follows:

1. Plaintiff is not entitled to an injunction, in that it has an adequate remedy at law under Virginia Code §58.1-3984.
2. Plaintiff is not entitled to a declaratory judgment on the same ground.
3. Count I fails to state a cause of action in that, as a matter of law, the City has authority to levy the tax at issue.
4. Count II fails to state a cause of action in that the franchise agreement on its face obliges plaintiff to pay all lawful taxes.
5. Count III fails to state a cause of action in that, as a matter of law, the tax is one of general application which raises no First Amendment implication.



6. Count IV fails to state a cause of action in that, as a matter of law, the tax ordinance by its own terms applies to SMATVs, so there is no discrimination.

7. Count V fails to state a claim because the tax is a tax of general application which involves no undue discrimination of the kind condemned by the Cable Communications Policy Act of 1984.

8. Count VI fails to state a claim on the same grounds as Count III.

9. Count VII fails to state a claim because, on its face, Article X, §1 of the Constitution of Virginia applies only to property taxes, which this tax is not, and also because, as noted above, there is no discrimination against SMATVs.

CITY OF NORFOLK, VIRGINIA

BY


OF COUNSEL

Jack E. Greer
M. Wayne Ringer
Donald W. Redmond
WILLIAMS, WORRELL, KELLY
GREER AND FRANK, P.C.
600 Crestar Bank Building
Post Office Box 3416
Norfolk, Virginia 23514-3416
(804) 624-2600

Philip R. Trapani
Daniel R. Hagemeister
City Attorney's Office
908 City Hall Avenue
Norfolk, Virginia 23510
(804) 441-2871

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Demurrer was this 6th day of July, 1990 mailed to Mr. Wayne Lustig, counsel for the plaintiff.



Plaintiffs allege that the tax violates both the First Amendment and Article I, Section 12 of the Virginia Constitution. Yet, Robert v. City of Norfolk, 188 Va. 413, 49 S.E.2d 697 (1948) holds only that the Virginia Constitution is broader than the United States Constitution in that it guarantees that "any citizen may freely speak, write and publish his sentiments on all subjects." Id. at 420. Furthermore, Robert relies in large part on license cases that bear no resemblance to the facts of this case.

The Plaintiffs have identified no First Amendment violation of the types present in the cited cases. The tax is clearly a tax of general application which in no way abridges First Amendment concerns. As Minneapolis Star recognizes, First Amendment speakers are often engaged in business and are subject to the same general taxes -- income tax, sales tax, property tax -- as any other business.

VI. THERE IS NO DENIAL OF EQUAL PROTECTION.

Cox Cable's count IV claims a denial of equal protection in that, it says, the ordinance discriminates by imposing a tax on Cox Cable's service that is not imposed on "SMATV operators or those receiving SMATV programming." Bill of Complaint, ¶23 at p. 7.

There is no discrimination because Cox Cable has wrongly read the ordinance. The tax ordinance contains no exemption for SMATV. Quite to the contrary, it applies to all cable television service in the City. SMATV is cable television

service, under both the definition in the Cable Communications Policy Act of 1984, found at 47 U.S.C. §521(6), and Va. Code §15.1-23.1. In identical language, those statutes define a "cable system" as "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 ...". The antenna dish and the wires alleged at ¶22 of the Bill of Complaint appear to be such a facility, and it could not be disputed that SMATV provides cable service to the hotels or hotel guests as alleged in ¶22.^{3/} ^{4/} Since the ordinance applies to SMATVs, it cannot be held to discriminate in favor of SMATVs.

VII. THE SERVICE TAX IS NOT AN EXCESSIVE FRANCHISE
FEE UNDER THE CABLE COMMUNICATIONS POLICY
ACT OF 1984.

Cox Cable's Count v^{5/} charges that the seven percent service tax adds to the five percent franchise fee it already pays the City pursuant to the franchise agreement, making for, in

^{3/}It is not known whether SMATV systems serve structures other than hotels in the City. It is only the hotel SMATVs about which plaintiff complains.

^{4/}Because the definition in the cited statutes requires that the cable service be provided to "multiple subscribers" in order to be a "cable system", the SMATVs complained of by plaintiff may or may not be "cable systems", depending on whether the hotel itself or the hotel patron is the subscriber, and depending on whether any SMATV "system" serves more than one hotel. However, whether the SMATVs are systems is not germane to any inquiry in this case, because the ordinance taxes "cable service", not "systems".

^{5/}Same as the individual plaintiff's Count III.

cm

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF NORFOLK

JOHN PATRICK TEIXEIRA
and
WILLIAM ROBERT WILSON,

AUG 13 1990

Plaintiffs,

v.

IN CHANCERY NO. C-90-850

CITY OF NORFOLK, VIRGINIA,

Defendant.

and

COX CABLE HAMPTON ROADS, INC.,

Plaintiff,

v.

IN CHANCERY NO. C-90-851

CITY OF NORFOLK, VIRGINIA,

Defendant.

FILE NO C1037-90

ORDER

On July 25, 1990, came the parties, by counsel, and were heard on defendant's Demurrers in these consolidated actions. Upon consideration of the briefs and authorities submitted by counsel and of the arguments of counsel, the Court rules as follows:

With respect to the Demurrers which challenge the Bills of Complaints' prayers for injunctive relief on the ground that

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plaintiffs have an adequate remedy at law, the Court finds that plaintiffs have an adequate remedy at law and hereby SUSTAINS the Demurrers to the prayers for injunctive relief, to which action of the Court plaintiffs note their exceptions.

Further, the Court SUSTAINS the Demurrer to Counts II, IV, V, VI and VII of the Bill of Complaint in Chancery Action No. C90-851 and, with respect to Chancery Action No. C90-850, SUSTAINS the Demurrer to Count III and to that part of Count II which asserts a claim based on Article I, §12 of the Constitution of Virginia, and it is ORDERED that all of said Counts or parts thereof be, and the same hereby are, DISMISSED WITH PREJUDICE, to all of which action of the Court plaintiffs note their exceptions.

Further, the Court OVERRULES the Demurrer to Counts I and III of the Bill of Complaint in Chancery Action No. C90-851 and OVERRULES the Demurrer to Count I and that part of Count II of the Bill of Complaint in Chancery Action No. C90-850 which asserts a claim based on the First Amendment of the Constitution of the United States, to which action of the Court defendant notes its exceptions.

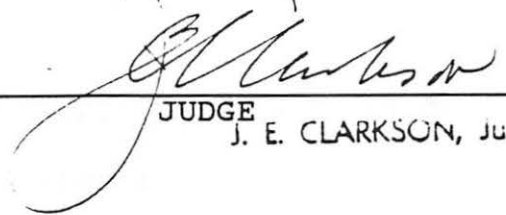
Further, plaintiffs being left to pursue their remedy at law, by way of declaratory judgment or otherwise, on the remaining Counts, the court ORDERS that these consolidated cases be transferred to the Law Side of the Court.

With respect to those Counts or parts thereof as to which the Court has overruled the Demurrers, defendant shall file its Grounds of Defense on or before August 15, 1990.

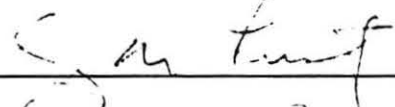

All exceptions noted herein were taken on the grounds as stated in the Demurrers and in the memoranda and briefs submitted by counsel for the parties, and the Clerk is directed to FILE said memoranda and briefs as part of the record herein.

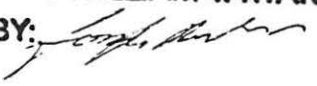
ENTERED:

Aug 13, 1990


JUDGE
J. E. CLARKSON, Judge

SEEN AND EXCEPTIONS NOTED:

 p.q.
 p.d.

A COPY, TESTE: WILLIAM T. RYAN, CLERK
BY:  D.C.

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VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF NORFOLK

COX CABLE HAMPTON ROADS, INC.,)
Complainant,)
v.)
CITY OF NORFOLK,)
Respondent.)

JOHN PATRICK TEIXEIRA and)
WILLIAM ROBERT WILSON, on behalf)
of themselves and others)
similarly situated,)
Complainants,)
v.)
CITY OF NORFOLK, VIRGINIA,)
Respondents.)

TRANSCRIPT OF TRIAL PROCEEDINGS

Norfolk, Virginia
September 10, 1990

Before:

HONORABLE JOHN E. CLARKSON, Judge

CLERK
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5 1991
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SUPREME COURT OF VIRGINIA
~~RECEIVED~~
JAN 22 1993
RICHMOND, VIRGINIA

CHANCERY NO.
CH90-851

FILED
JAN 14 1990
WILLIAM T. KRAM, CLERK
BY: Kjc

ORIGINAL

Appearances:

MAYS & VALENTINE

By: JAMES C. ROBERTS, ESQUIRE
WAYNE LUSTIG, ESQUIRE

And

DOW, LOHNES & ALBERTSON

By: BRENT N. RUSHFORTH, ESQUIRE
Counsel for the Complainants

WILLIAMS, WORRELL, KELLY, GREER & FRANK

By: JACK E. GREER, ESQUIRE
M. WAYNE RINGER, ESQUIRE
Counsel for the Respondent

I N D E X

WITNESSES

ON BEHALF OF THE COMPLAINANTS:	Direct	Cross	Redirect
Frank Bowers	8	32	45
Sam T. Barfield	47	53	53
Stephen D. Bryant	55	61	--

EXHIBITS

NO.	DESCRIPTION	PAGE
ON BEHALF OF THE COMPLAINANTS:		
1	Utility Service Tax from for July 1990	14
2	Request to call Miss Utility before digging	18
3	Copy of Underground Utility Damage Prevention Act	23
4	Letter to Cox Cable from Cable Data	58
5	Spread sheet printout	60
6	Letter to Cox Cable from Norfolk Commissioner of Revenue	11
7	Letter to Cox Cable from Commissioner of Revenue with Utility Service Tax form attached	12
ON BEHALF OF THE RESPONDENT:		
1	Cox Cable bill	38

ARGUMENTS

	PAGE
ON BEHALF OF THE COMPLAINTS:	62
ON BEHALF OF THE RESPONDENT:	97
REBUTTAL ON BEHALF OF THE COMPLAINTS:	149



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FRANKLIN R. BOWERS, called as a witness by
and on behalf of the Plaintiffs, having been duly sworn,
testified as follows:

12

DIRECT EXAMINATION

13

MR. LUSTIG: Good morning, Your Honor.

14

BY MR. LUSTIG:

15

16

17

Q. Mr. Bowers, would you state for Judge
Clarkson your name, address, and your occupation and
position?

18

19

20

A. My name is Franklin R. Bowers. I live at
3393 Herons Gate in Virginia Beach, and I'm vice-president
general manager of Cox Cable Hampton Roads.

21

22

23

Q. Okay. And in your capacity as
vice-president general manager, Cox Cable Hampton Roads --
which if we may we'll call Cox Cable?

24

25

A. Cox Cable.

Q. For purposes of your testimony, what

1 responsibility do you have with reference to the operation
2 of Cox Cable in the City of Norfolk?

3 A. Well, in the City of Norfolk I have the
4 responsibility for every aspect of the operation and the
5 profit and loss aspects, anything to do with government
6 activities, basically overall operation.





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21 Q. Now, let me ask you whether or not you can
22 identify the document which I handed to you which has
23 previously been marked for purposes of identification as
24 Plaintiffs' Exhibit No. 2?

25 A. Yes, sir. This is a bill stuffer that we

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1 did here this summer to request that our customers always
2 inform Miss Utility or One Call when they dig in their
3 yard so they don't cut cable lines.

4 Q. Okay.

5 MR. LUSTIG: I would ask that that be placed
6 into evidence, if Your Honor please, as Plaintiffs'
7 Exhibit No. 2.

8 THE COURT: All right. Plaintiffs' Exhibit
9 No. 2. Any objection to Plaintiffs' Exhibit No. 2?

10 MR. RINGER: No objection.

11 THE COURT: All right. Do you want to give
12 me the original? It doesn't make any difference to me,
13 but it would keep the number system consistent.

14 MR. LUSTIG: I'll try to stay consistent.

15 THE COURT: Thank you.

16 All right. Plaintiffs' Exhibit No. 2.

17 (Request to call Miss Utility
18 before digging was marked Plaintiffs'
19 Exhibit No. 2 and received in
20 evidence.)

21 BY MR. LUSTIG:

22 Q. Would you tell his Honor how you came to
23 send out this mailing stuffer?

24 A. Well, yes, sir. We send this out as a
25 courtesy to our customers and also to protect our cable

1 lines from being cut, primarily during the summer months
2 especially there's a lot of construction that goes on, and
3 we try to avoid unnecessary outages as a result. We're
4 also required by law to be a participant in the One Call
5 aspects under the state statute.



1 Q. Are they a member of, or an operator within,
2 and joined the One Call?

3 A. Yes.

4 Q. Miss Utility --

5 A. They certainly are.

6 Q. -- program.

7 Fine.

8 THE COURT: Now, maybe I'm missing the
9 point. In other words, those companies have lines or
10 something underground that they don't want dug up.

11 MR. LUSTIG: Apparently. And that is the
12 point that we'll try to bring to Your Honor to the extent
13 that there is any question about whether or not this
14 stuffer termed with the acronym Miss Utility makes us in
15 some way a utility.

16 THE COURT: Miss Utility thinks you are.

17 Any underground utility lines including Cox
18 Cable line.

19 MR. LUSTIG: Oh, I understand. I
20 understand. And, of course, there is law which refers to
21 our lines as utility lines, but not utility service, as we
22 pointed out to the Court in our briefs. And, furthermore,
23 the fact that the statute in the code section which you
24 have before you actually provides that these utility lines
25 are to include oil and petroleum products, et cetera. And

1 so we're trying to point out in terms of what might be
2 called a utility line doesn't become a utility as such,
3 where you have, for example, oil and petroleum products on
4 the one hand; additionally, you've got a brokerage firm
5 and a credit union, because of their lines.

6 THE COURT: All right.

7 BY MR. LUSTIG:

8 Q. Now, Mr. Bowers, tell me is there such
9 television service that is known as SMATV and referred to
10 generally as SMATV?

11 A. Yes, sir, there is.

12 Q. All right. Would you explain to his Honor
13 what is a SMATV?

14 A. SMATV stands for -- is Satellite Master
15 Antenna Television, and it is a reception generally off a
16 satellite. In fact, off a satellite receiver antenna
17 system from a satellite positioned 22,000 miles in the
18 sky, and it is received for distribution in either a local
19 -- like a hotel or a hospital or some operation such as
20 that on a commercial basis.

21 Q. Okay. Does it have a certain type -- or is
22 it known to have a certain type of transmission path that
23 is different from the transmission path which you provide
24 to your subscribers?

25 A. Right. We would have what is called a

Zahn.

73B

Norfolk, Virginia

F BOWERS DIRECT

1 closed transmission path going through coaxial cable. Of
2 course, they are open and received off air directly from a
3 satellite versus ourselves through a cable line.

4 Q. And the difference, the essential difference
5 in terms of the transmission has to do with the path of
6 that transmission?

7 A. Right. The closed path versus the open
8 path.

9 Q. And Cox Cable is what kind of path?

10 A. Closed transmission path.

11 Q. Okay. And SMATVs are what type of
12 transmission?

13 A. An open transmission path.

14 Q. Okay. Now, in terms of the product which is
15 provided to its subscribers, is the product that is
16 provided by Cox any different than the product that is
17 provided to SMATV operators?

18 A. Not at all.

19 Q. Okay. Explain that to his Honor.

20 A. The product is the same product that comes
21 off the same satellites. We aim our satellite receivers
22 at the same dishes, whether you receive ESPN network from
23 the same source, same vendor.

24 THE COURT: What you are talking about is
25 the same relationship between radio and telephone, aren't



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Q. Insofar as Exhibit No. 2 -- do you have those -- do you have copies?

A. No, I don't.

Q. There's a copy of exhibit 2.

Would you just read for the record not all the symbols, but starting with the "48 hours before you dig," would you read that, please?

A. "48 Hours before you dig...

"Call Miss Utility at 1-800-552-7001.

"This means not only construction, but your garden, new fence, or mailbox as well. A quick call to Miss Utility will prevent the problem of accidentally cutting any underground utility lines, including Cox Cable lines.

"Miss Utility is a free service that will

1 mark the utility lines on your property that have
2 not been placed their by private owners. By
3 having underground services marked damage to
4 existing lines can be prevented."

5 Q. And I assume this, as you say, this was a
6 stuffer in the bills that went out. The bills went out to
7 all customers?

8 A. Yes, sir.

9 Q. And I think that was sometime in June?

10 A. I believe you're correct.

11 Q. And the purpose I assume is to tell the
12 customer to call, in order to avoid cutting any
13 underground utility lines including Cox Cable lines. That
14 was your purpose in sending it out?

15 A. Right. So we don't get Cox Cable lines
16 severed, correct.





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In their equal protection claim in this case, which was count 4 of Cox's original bill of complaint, the sole and entire argument of violation of equal protection was that our tax applied to Cox Cable but not to SMATV, and in the bill of complaint they defined what SMATV was, and they defined it as a satellite dish that got a signal. And then there was a case where over

1 the wire -- and I think the word wire appeared in the bill
2 of complaint -- transmitted this down to the television
3 set.

4 Now, I said when we were here before that
5 because there was a piece of wire involved, and because
6 the people at the end of it were serving video programs,
7 and that's really all that is necessary under the state
8 code definition of what cable service is, that by their
9 pleading they had demonstrated that SMATV was cable
10 television service within the meaning of our tax
11 ordinance, and that our tax ordinance therefore applied to
12 that, so that there could be no discrimination.

13 Now, today -- and this is what I started to
14 speak about when we first got here this morning, that
15 there was going to be evidence that there was something
16 new. Now today they say, well, that is not exactly what
17 SMATV is. SMATV is just those radio waves coming down
18 from that satellite, and that I guess they are saying that
19 from the point where that satellite dish is, and they
20 transmit that signal on down, SMATV doesn't have anything
21 to do with that.





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He stopped right there, and did not tell you what law it was that he was relying on to suggest that Cox Cable has to serve all comers, because there is no such law. It's in the franchise agreement, which is a contract entered into between the City of Norfolk and a contracting party.

Now, you could go out into a less urban area of the state, or more remote area of the state, and you

1 would find another cable operator who didn't have that
2 provision in his franchise agreement, because he can't
3 serve the entire county. He can't serve areas that are
4 less than a certain amount of population density. Does
5 that mean that that is not a public utility in that area,
6 but it is a public utility in the City of Norfolk, simply
7 because the franchise agreement, two parties met together
8 and said this is what we'll put in the agreement.

*

*

*



Office Of The
Commissioner Of The Revenue



SAM T. BARFIELD
Commissioner

June 6, 1990

WILLIAM D. SMITH
Chief Deputy

CERTIFIED MAIL

Mr. Franklin R. Bowers
Vice President and
General Manager
Cox Cable of Hampton Roads
5200 Cleveland Street
Virginia Beach, Virginia 23462

Reference: Amendment-City Code Section 24.213, 1979

Dear Mr. Bowers:

For your information, I am enclosing a copy of an Ordinance, passed by the Norfolk City Council on May 22, 1990, to be effective July 1, 1990.

The City Council has designated the Commissioner of the Revenue as the Administrator of this tax and in order to avoid any confusion, I would like very much to outline for you how the tax will be handled by this office.

In accordance with the Ordinance the tax is 7% of the total bill and will be considered to be fiduciary funds, held in trust for the City, payable on the 20th of the month following.

Should you have any suggestions as to how the administration of this tax can be made more convenient for you, please feel free to call me. I will supply you with the necessary reporting forms in the near future.

Sincerely,

Sam T. Barfield

Sam T. Barfield
Commissioner of the Revenue

STB:gw



FOURTH JUDICIAL CIRCUIT OF VIRGINIA
CIRCUIT COURT OF THE CITY OF NORFOLK

JOHN E. CLARKSON
JUDGE

September 19, 1990

100 ST. PAUL'S BOULEVARD
NORFOLK, VIRGINIA 23510

James C. Roberts, Esquire
Wayne Lustig, Esquire
Robert D. Seabolt, Esquire
MAYS & VALENTINE
800 Town Point Center
150 Boush Street
Norfolk, Virginia 23510

Brent N. Rushforth, Esquire
Timothy J. O'Rourke, Esquire
DOW, LOHNES & ALBERTSON
1255 23rd Street, N.W.
Washington, D.C. 20037-1194

Jack E. Greer, Esquire
M. Wayne Ringer, Esquire
Donald W. Redmond, Esquire
WILLIAMS, WORRELL, KELLY
GREER AND FRANK, P.C.
600 Crestar Bank Building
Post Office Box 3416
Norfolk, Virginia 23514-3416

Philip R. Trapani, Esquire
City Attorney
Daniel R. Hagemeister, Esquire
Deputy City Attorney
City Attorney's Office
City Hall Building
Norfolk, Virginia 23510

Re: John Patrick Teixeira
and
William Robert Wilson
v.
City of Norfolk, Virginia
Chancery No. C90-850

Cox Cable Hampton Roads, Inc.
v.
City of Norfolk, Virginia
Chancery No. C90-851

Gentlemen:

The City of Norfolk has the power:

To raise annually by taxes and assessments in said City such sums of money as the council hereinafter provided for shall deem necessary for the purposes of said City, and in such manner as said council shall deem expedient, in accordance with the Constitution and laws of this State and of the United States; provided, however, that it shall impose no tax on the bonds of said City. (Sec. 2 Norfolk Charter)

The Code of Virginia § 15.1-841 gives a municipal corporation the right to raise annually by taxes and assessments on property, persons and other subjects of taxation, which are not prohibited by law, such sums of money as in the judgment of the municipal corporation are necessary to pay the debts, defray the expenses, accomplish the purposes and perform the functions of the municipal corporation in such manner as the municipal corporations deems necessary or expedient.

The Norfolk City Charter enacted by the Virginia General Assembly in 1948 empowered the City of Norfolk to impose a tax on consumers of "water, gas, electricity or telephone or any other public utility services". The Norfolk City Council passed Ordinance Number 36,026 which amended and reordained subsection (E) of § 24-213 of the Norfolk City Code that includes cable television service within the definition of the term "utility service". The Ordinance also amended and re-ordained subsection (A) of § 24-214 of the Norfolk City Code to establish a (7) per cent utility tax on cable television service. It is an elementary principal of constitutional law, that the propriety, wisdom, necessity and expediency of legislation are exclusively matters for legislative (Norfolk City Council) determination. The only concern of this Court is whether the above ordinances are within the power of the legislative body and whether it is free from constitutional or legal impediment.

The City of Norfolk pursuant to Virginia Code § 15.1-23.1 may grant a license or franchise or issue a certificate of public convenience and necessity to no more than one cable television system and impose a fee thereon and may award additional franchises as it deems appropriate if such governing body finds that the public welfare will be enhanced after a public hearing.

The City of Norfolk did by Ordinance 35,664 grant a franchise to Cox Cable Hampton Roads, Inc., hereinafter Cox Cable, to construct, operate and maintain a cable television system in the City. The purpose was to contribute significantly to meeting the communications needs and desires of many individ-

uals, associations and institutions. Cox has the authority to use city streets for their lines, etc. (Franchise 4.03); for fifteen years (4.4); it is subject to the police power of the city to adopt and enforce ordinances necessary to the health, safety and welfare of the public and shall comply with all applicable general laws and ordinances enacted by the city pursuant to that power (Franchise 4.06). Cox Cable shall provide services to any person within 21 days (Franchise 5.03). Cox has the right to install its cables, wires and other facilities underground (Franchise 7.06 A), or above ground from poles (7.06 B). Cox pays the city 5% of its annual gross revenues as compensation for use of streets and other public property.

The City says that Cox Cable is a utility; Cox Cable says it is not. The Court finds the following facts:

1. Cox Cable supplies the citizens of Norfolk a valuable commodity and service for a fee depending upon the service offered and received;
2. Cox has the contractual right to and does use Norfolk public right-of-ways (streets);
3. Cox and Norfolk entered into a contract and the City passed Ordinance Number 35,664, "City of Norfolk Cable Television Franchise Ordinance" to bring about the development and operation of a cable television "system", so as to contribute significantly to meet the communications needs and desires of many;
4. The franchise is to last fifteen years, subject to all applicable provisions of local, state and federal laws, rules and regulations;
5. Cox shall provide service to those in the City requesting service;
6. Where cable, wires and other "like facilities" of a public or public utility district are placed underground, Cox shall do likewise;
7. Cox Cable pursuant to Virginia Code Chapter 10.3, Underground Utility Damage Prevention Act, must join a notification center and has advised their customers that "Miss Utility is a free service that identifies utility lines - cable, telephone, electrical, etc. - that you may encounter in your own digging".

Black's Law Dictionary, 4 ED (1951) states in part:

A public utility is considered to be a business or service which is engaged in regularly supplying the public with some commodity or service which is of public consequence and need such as electricity, gas, water, transportation, or telephone or telegraph service; not limited or restricted to any particular class of the community; holds itself out as ready, able and willing to serve the public; the term implies a public use of an article, product, or service, carrying with it the duty of the producer or manufacturer, or one attempting to furnish the service to serve the public and treat all persons alike without discrimination; it is synonymous with "public use", and refers to persons or corporation charged with the duty to supply the public with the use of property or facilities owned or furnished by them; to constitute a true "public utility; the devotion to public use must be of such character that the public generally, or that part of it which has been served and which has accepted the service, has the legal right to demand that that service shall be conducted, so long as it is continued with reasonable efficiency under reasonable charges; etc.

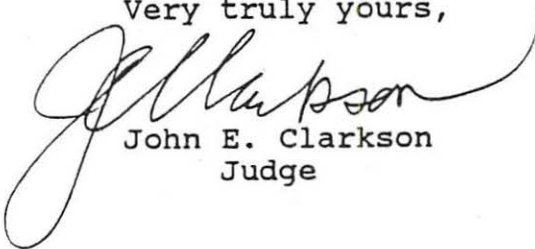
The Court finds that Cox Cable is a "public utility" and therefore under the Norfolk City Charter would be an "other public utility service".

Next, Cox Cable alleges the utility tax violates the First Amendment. The Court finds that it does not. Norfolk did not single out Cox Cable for special treatment. All public utilities, telephone, electrical service, gas service, water service and cable television service must pay. Clearly the First Amendment does not prohibit all regulation of the press. It is beyond dispute that the states and the federal government can subject the press to generally applicable economic regulation without creating constitutional problems. Minneapolis Star v. Minnesota Commissioner of Revenue, 460 U.S. 575, 103 S.Ct. 1365 (1983). However, "a discriminatory tax on the press burdens rights protected by the First Amendment." Arkansas Writers Project, Inc. v. Ragland 107 S.Ct. 1722, 1726 (1987). The cases approving such economic regulation however emphasized the general applicability of the challenged regulation to all businesses.

The utility tax has not been drawn so as to impinge on Cox Cable's freedom of speech. Cox's customers will be affected by costs not borne by other First Amendment companies so that if there is any affect on plaintiff Cox it is economic rather than one bearing on freedom of speech. The tax classification created is not arbitrary or irrational. Apparently, Charlottesville, Virginia, Blacksburg, Virginia and Waynesboro, Virginia have a similar utility tax levied by the city upon every purchaser of a utility service including cable television.

In each of the cases now consolidated for trial, the Court finds that the ordinances are within the power of the council of the City of Norfolk and are free from constitutional or legal defect. Accordingly, the Court will dismiss the bills and enter judgment on behalf of the City of Norfolk. I ask counsel for the defendant to prepare a sketch of a proper decree and after endorsement of counsel forward to me for entry.

Very truly yours,



John E. Clarkson
Judge

JEC/mlj

865

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF NORFOLK

JOHN PATRICK TEIXEIRA

and

AT LAW NO. L90-3154

WILLIAM ROBERT WILSON,

COX CABLE HAMPTON ROADS, INC.,

Plaintiffs,

v.

CITY OF NORFOLK, VIRGINIA,

Defendant.

AT LAW NO. L90-3155

L2727-90

ORDER

On September 10, 1990, came the parties and their counsel and the issues in this case were tried to the Court, without a jury, upon counts I and III of Cox Cable Hampton Roads, Inc.'s Bill of Complaint and upon Count I and the First Amendment claim of Count II of plaintiffs Teixeira's and Wilson's Bill of Complaint. The Court heard testimony of witnesses called by plaintiffs, whereupon plaintiffs rested. Defendant called no witnesses and rested its case.

WHEREUPON, the Court heard arguments of counsel and took the matters at issue under advisement.

Thereafter, for the reasons set forth in the court's letter opinion dated September 19, 1990, the court ruled in favor of the defendant upon the issues joined in the said Counts of

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the respective Bills of Complaint, and accordingly, the Court does now

ORDER that upon Count I of each Bill of Complaint the relief sought by plaintiffs is DENIED and the claims thereunder DISMISSED in that the City of Norfolk, Virginia, was and is properly authorized to enact Ordinance No. 36026 as adopted on May 22, 1990, and further as to Cox Cable Hampton Roads, Inc.'s Count III and as to the First Amendment claim of Count II of Teixeira's and Wilson's Bill of Complaint, the relief sought by plaintiffs is DENIED and the claims thereunder DISMISSED in that the same said Ordinance is not illegal as violative of the rights of the plaintiffs under the First Amendment of the United States Constitution, and further, as to the claim of Cox Cable Hampton Roads, Inc., under Count III for relief pursuant to 42 U.S.C., §1983, judgment is entered in favor of the defendant, together with its costs. Plaintiffs herein note their objections and exceptions to the rulings of the Court herein, and it is further

ORDERED that the terms of the Court's Order of August 14, 1990 are hereby incorporated into and made a part of this Order, and it is further

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ORDERED that all briefs and memoranda previously submitted by any of the parties, together with the transcript of testimony and the Court's letter opinion of September 1990, shall be and hereby are made a part of the record in this case.

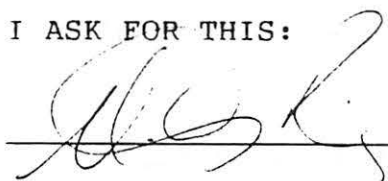
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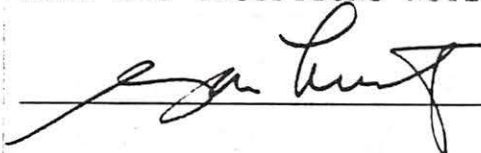
JUDGE

J. E. CLARKSON, Judge

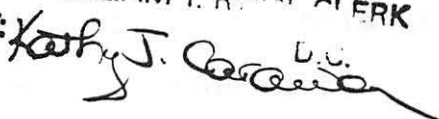
I ASK FOR THIS:

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SEEN AND EXCEPTIONS NOTED:

 p.q.

A COPY, TESTE: WILLIAM T. RYAN, CLERK

BY:  D.C.

203

Present: All the Justices

COX CABLE HAMPTON ROADS,
INC., ET AL.

v. Record No. 910207

OPINION BY JUSTICE LEROY R. HASSELL
November 8, 1991

CITY OF NORFOLK

FROM THE CIRCUIT COURT OF THE CITY OF NORFOLK
John E. Clarkson, Judge

In this appeal, we consider certain challenges to the City of Norfolk's taxing power, as well as the constitutionality of the tax imposed.

Cox Cable Hampton Roads, Inc. filed this suit for injunctive, declaratory, and other relief against the City of Norfolk. Cox Cable sought a declaration that an ordinance enacted by the City which permits it to impose a utility tax on cable television service is invalid. John Patrick Teixeira and William Robert Wilson, subscribers of cable television service provided by Cox Cable, filed a separate bill of complaint in which they sought injunctive relief and a declaration that the ordinance is invalid. The City filed demurrers to both bills, and the trial court consolidated the proceedings.¹

Cox Cable alleged that: the City lacked the legislative authority to impose a tax upon the purchase of cable television service; the ordinance which imposed the tax abridged Cox Cable's rights guaranteed by the First Amendment of the United States Constitution; and the tax infringed upon Cox Cable's rights

¹Cox Cable, Teixeira, and Wilson asserted identical claims in their respective bills. Therefore, we will refer to these complainants collectively as Cox Cable.

guaranteed by the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution.²

The trial court granted the City's demurrer to Cox Cable's Equal Protection claim. Cox Cable's claims that the City lacked the power to enact the tax and that the tax abridged Cox Cable's First Amendment rights were tried by the court.

We shall recite the facts in accordance with well-established principles that a demurrer admits the truth of all material facts that are properly pleaded, facts which are impliedly alleged, and facts which may be fairly and justly inferred from alleged facts. Palumbo v. Bennett, 242 Va. ___, ___, ___ S.E.2d ___, ___ (1991). On demurrer, a court may also examine exhibits which are filed with the pleadings. Flippo v. F & L Land Company, 241 Va. 15, 17, 400 S.E.2d 156, 156 (1991). Furthermore, we will, when necessary, discuss those facts, which relate to Cox Cable's First Amendment claims, which were adduced during the trial.

Cox Cable executed a franchise agreement with the City. The Norfolk City Council approved the franchise agreement by the enactment of an ordinance on July 25, 1989. The franchise agreement, which is a part of the pleadings, is for a term of 15 years. Cox Cable is required to provide cable television service to anyone in Norfolk who requests and pays for such service. On May 22, 1990, the Norfolk City Council enacted an ordinance which

²Complainants also asserted other claims which are not before this Court on appeal.

permitted the City to establish a utility tax base and utility tax rate for cable television service at a rate of seven percent of a consumer's total bill, excluding certain charges.

I.

Cox Cable argues that Norfolk lacks authority from the Virginia General Assembly to impose a utility tax on consumers of cable television service. The City, however, argues that § 2(1) of its Charter is a general grant of taxing authority and authorizes the City to impose a tax on television cable service.

Section 2(1) of the Norfolk City Charter states, in part:

In addition to the powers mentioned in the preceding section the said city shall have power:

(1) To raise annually by taxes and assessments in said city such sums of money as the council hereinafter provided for shall deem necessary for the purposes of said city, and in such manner as said council shall deem expedient, in accordance with the Constitution and laws of this state and of the United States; provided, however, that it shall impose no tax on the bonds of said city.

This Court has on numerous occasions construed language virtually identical to the language contained in the Norfolk City Charter and, on each occasion, we have held that the General Assembly conferred upon the municipality the general power of taxation. For example, in Norfolk v. Norfolk Landmark Pub. Co., 95 Va. 564, 28 S.E. 959 (1898), we considered whether the City of Norfolk's Charter authorized it to impose a license tax. The Charter contained the following provision:

For execution of their powers and duties, the city council shall raise, annually, by taxes and assessments, in said city, such sums of money as they shall deem necessary to defray the expenses of the same, and in such manner as they shall deem expedient, in accordance with the constitution and laws of this State and of the United States; provided,

however, that they shall impose no tax upon the bonds of said city.

Id. at 566-67, 28 S.E. at 960. We held that this language conferred upon the City the general power of taxation.

When the legislature confers upon a municipality the general power of taxation, it grants all the power possessed by itself in respect to the imposition of taxes; and the city can then impose taxes, in its discretion, upon all subjects within its jurisdiction not withheld from taxation by the legislature, whether they be taxed by the State or not.

Id. at 567, 28 S.E. at 960.

In Fallon Florist v. City of Roanoke, 190 Va. 564, 58 S.E.2d 316 (1950), we also considered language contained in the Roanoke City Charter which is identical to the language found in the Norfolk City Charter, and we held that such language conferred upon the City of Roanoke the general power of taxation. Fallon Florist v. City of Roanoke, 190 Va. at 577, 58 S.E.2d at 322. See also Fredericksburg v. Sanitary Grocery Co., 168 Va. 57, 68-69, 190 S.E. 318, 323 (1937). We find no reason to depart from our established precedent. Accordingly, we hold that § 2(1) of the Norfolk City Charter confers upon the City the general power of taxation, which includes the power to impose a tax on cable television service.³

³The City argues that § 2(b) of the Norfolk City Charter, which authorizes the City to levy and collect consumer utility service taxes, also authorizes a tax on cable television service. In view of our holding that § 2(1) of the Norfolk City Charter permits the City to tax cable television service, we do not consider this issue.

II.

In its bill of complaint, Cox alleged that its First Amendment rights were violated because the "[o]rdinance singles out cable television for a burden not imposed upon other communications media," and there was no compelling governmental interest to justify this burden which "violated Cox Cable's right to freedom of speech." The trial court rejected this argument, stating that the tax did not "single out Cox Cable for special treatment" but was applied to all public utilities, including telephone, electric, water, gas, and cable service. Relying upon Minneapolis Star v. Minnesota Comm'r of Revenue, 460 U.S. 575 (1983), and Arkansas Writers Project, Inc. v. Ragland, 481 U.S. 221 (1987), the trial Court held that the government does not contravene First Amendment rights by subjecting the press to economic regulation which is generally applicable to all businesses.

The principles upon which the trial court relied were discussed by the United States Supreme Court in a case decided after the trial court's decision. The Supreme Court in Leathers v. Medlock, ___ U.S. ___, 111 S.Ct. 1438 (1991) specifically addressed the issue whether the "First Amendment prevents a State from imposing its sales tax on only selected segments of the media." Id., ___ U.S. at ___, 111 S.Ct. at 1442. In Leathers, cable operators contended that the Arkansas sales taxation of cable television services and exemption or exclusion of the tax on newspapers, magazines, and satellite broadcast services violated their First Amendment rights.

The Supreme Court stated that "taxation of First Amendment speakers is constitutionally suspect when it threatens to suppress the expression of particular ideas or viewpoints." Id., ___ U.S. at ___, 111 S.Ct. at 1443. The Court identified three circumstances where this threat exists and can be justified only by a compelling governmental interest: (1) when the tax applies only to the press, as the taxes based on circulation or use of paper and ink in publication production at issue in Grosjean v. American Press Co., 297 U.S. 233 (1936) and Minneapolis Star, respectively, in contrast to a general sales tax as in Ragland and Leathers; (2) when the tax targets a small group of First Amendment speakers as in Minneapolis Star which applied only to the thirteen publishers of the state's 374 paid circulation newspapers, or to the "few Arkansas magazines" which were not religious, sport, trade or professional magazines in Ragland; and (3) when the taxation is based on content as in Ragland. Leathers, ___ U.S. at ___, 111 S.Ct. at 1442-43. All of these circumstances impact a "limited range of views" and risk the "distort[ion of] the market for ideas." Id., ___ U.S. at ___, 111 S.Ct. at 1444.

The Supreme Court held that none of these circumstances were applicable to the sales tax at issue in Leathers. The tax did not apply only to the press but was a tax of general application. It did not target a small group of First Amendment speakers because it applied uniformly to all cable systems in the state, totaling approximately 100. While acknowledging that the provision of television service through the use of satellite

communications was not subject to the sales tax, the application of the tax to 100 cable companies "hardly resembles a 'penalty for a few.'" Finally, the Arkansas tax was not based on content. Id., (citing Minneapolis Star, 460 U.S. at 592).

In considering whether there was "an additional basis," for holding that the sales tax violated the First Amendment, the Supreme Court specifically rejected the contention that taxing cable television while exempting satellite television service constituted "intermedia and intramedia discrimination" and violated the First Amendment.⁴ Leathers, ___ U.S. at ___, 111 S.Ct. at 1445.

Thus, Leathers, while rejecting different tax treatment of two classes of First Amendment speakers, e.g., newspapers and magazines, or satellite and cable, as a First Amendment violation per se, reaffirmed the basic principle that taxation of a small group of First Amendment speakers gives rise to the suspicion that the tax was intended to interfere with First Amendment rights. Id., ___ U.S. at ___, 111 S.Ct. at 1444. Nevertheless, the Court held that taxation of 100 cable companies dispelled any such suspicions. Id., ___ U.S. at ___, 111 S.Ct. at 1445.

Cox attempts to distinguish Leathers by arguing that the Norfolk tax is not analogous to the Arkansas sales tax. It is not a statewide tax applying to 100 cable companies; rather, Cox

⁴The Court left for consideration on remand petitioner's contention that the taxing distinction between cable and other media constituted an Equal Protection violation because the Arkansas Supreme Court's decision was based solely on the First Amendment.

asserts it is a local tax which can apply to only one company -- Cox Cable. Therefore, Cox asserts, it is suspect and can be justified only by a compelling governmental interest.

This argument ignores the fact that the taxing ordinance, like the Arkansas sales tax, applies to all cable companies that might operate in the City. Cox Cable's franchise is not exclusive and does not apply to areas annexed to the City in which other cable television businesses may provide cable services.

To accept Cox's position would virtually eliminate the ability of local governments to raise operating revenues through general taxation ordinances whenever there happened to be a single, or only a few, enterprises engaging in First Amendment activities. If, for example, a city had a single magazine, subjecting the sales of magazines to a sales tax would, under Cox's rationale, violate the First Amendment. In contrast, no such violation would exist if the state applied a sales tax to all magazines because a greater number existed statewide. The number of First Amendment speakers affected is not, in our opinion, the test established in Leathers. To be constitutionally suspect, the taxation scheme must be "structured so as to raise suspicion that it was intended to [interfere with First Amendment activities]." Id., ___ U.S. at ___, 111 S.Ct. at 1444. The Norfolk taxing ordinance is not so structured. As in Leathers, it "is not a tax structure that resembles a penalty for particular speakers or particular ideas." Id., ___ U.S. at ___, 111 S.Ct. at 1445. It is a tax of general applicability, does

not target a small group of First Amendment speakers, and is not content based.

Therefore, we hold that the tax at issue does not violate Cox's rights under the First Amendment to the United States Constitution or Article I, Section 12 of the Virginia Constitution.

III.

Finally, Cox Cable argues that the trial court erred because it granted the City's demurrer to Cox Cable's Equal Protection claim. We agree.

Cox Cable, in support of its Equal Protection claim, plead the following:

On information and belief, SMATV systems serve a significant number of hotels in the City. Such systems employ a central dish antenna that receives television signals from a satellite in fixed orbit. Satellite dish antennas may be located at the building site, or signals may be received by microwave through small receiving antennas on top of the building. The signal is thereafter distributed by wire to individual viewers.

The utility tax imposed by the Ordinance applies to Cox Cable and its subscribers but not to SMATV operators or those receiving SMATV programming. However, the television programming provided by SMATV Systems operating in the City is virtually identical to that provided by Cox Cable to its subscribers--movies, sports, news, and entertainment.

There is no compelling governmental interest to support taxing of cable television services while exempting SMATV.

The City filed a demurrer to Cox Cable's Equal Protection claim on the basis that SMATV is a form of cable television service and, therefore, the ordinance imposed a tax upon both Cox Cable and Satellite Master Antenna Television Systems (SMATV).

In Portsmouth v. Citizens Trust, 216 Va. 695, 222 S.E.2d 532 (1976), we discussed the relevant principles which must be applied when undertaking an Equal Protection analysis:

Recognizing that the states possess broad power to classify . . . for purposes of taxation, the Supreme Court has held that equal protection does not compel identity of treatment but 'only requires that the classification rest on real and not feigned differences, that the distinction have some relevance to the purpose for which the classification is made, and that the different treatments be not so disparate, relative to the difference in classification, as to be wholly arbitrary.' Walters v. City of St. Louis, Mo., 347 U.S. 231, 237 (1954).

Id. at 698, 222 S.E.2d at 534.

Applying these principles, along with our established rule that the purpose of a demurrer is to test the legal sufficiency of the pleadings, we hold that the trial court erred when it granted the City's demurrer. Cox Cable alleged that SMATV and cable television services are virtually identical; that the City imposes a tax on cable television but does not tax SMATV, and, thus, the tax ordinance creates a classification which does not rest on real differences; that the distinction does not have relevance to the purpose for which the classification is made; and that the different treatments are arbitrary. Cox Cable is entitled to a trial on the merits so that it can have an opportunity to prove its allegations.

Accordingly, that portion of the trial court's judgment which sustains the demurrer to Cox Cable's Equal Protection claim will be reversed and remanded for further proceedings. We will affirm all other portions of the judgment of the trial court.

97 Affirmed in part, reversed
in part and remanded.

VIRGINIA:

*In the Supreme Court of Virginia held at the Supreme Court Building in the
City of Richmond on Friday the 8th day of November, 1991.*

Cox Cable Hampton Roads, Inc., et al., Appellants,
against Record No. 910207
Circuit Court Nos. L90-3154/L2726-90
and L90-3155/L2727-90
City of Norfolk, Appellee.

Upon an appeal from a
judgment rendered by the Circuit
Court of the City of Norfolk on
the 7th day of November, 1990.

For reasons stated in writing and filed with the record,
the Court is of opinion that there is error in part in the judgment
appealed from. Accordingly, that portion of the judgment which
sustains the demurrer to appellants' Equal Protection claim is
reversed and remanded to the said circuit court for further
proceedings. All other portions of the judgment are affirmed.

This order shall be certified to the said circuit court.

A Copy,

Teste:

Philip A. Seash
Clerk

RECEIVED THIS 3RD DAY OF DECEMBER
IN THE YEAR 1991, FROM THE SUPREME COURT OF
VIRGINIA AND IS HERE ENTERED OF RECORD.

ENTER: *[Signature]*

VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF NORFOLK

COX CABLE HAMPTON ROADS, INC.,)

Plaintiff,)

v.)

CITY OF NORFOLK,)

Defendant.)

AT LAW NO.
L90-3155

TRANSCRIPT OF PROCEEDINGS
(Excerpt)

Norfolk, Virginia

July 29, 1992

BEFORE: Honorable John E. Clarkson, Judge

Appearances:

MAYS & VALENTINE

By: ROBERT D. SEABOLT, ESQUIRE
JAMES C. ROBERTS, ESQUIRE
Counsel for the Plaintiff

WILLIAMS, KELLY & GREER

By: M. WAYNE RINGER, ESQUIRE
JACK E. GREER, ESQUIRE
Counsel for the Defendant

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99

I N D E X

<u>Witness</u>	<u>Direct</u>	<u>Cross</u>	<u>Red.</u>	<u>Rec.</u>
Dana Coltrin	15	69	105	

E X H I B I T S

NO.	DESCRIPTION	PAGE
ON BEHALF OF PLAINTIFF:		
1	Channel lineup card	6
2	Accounts payable distribution to general ledger	6
3	Commercial taxes by month	22
4	Channel lineup with brief description	23
5	Cox Satellite brochure	59
6	Description of PRIMESTAR	63
7	Plaintiff's answers to interrogatories	112
ON BEHALF OF DEFENDANT:		
1	Multiple dwelling cable agreement	85
2	Hotel/motel cable service and access agreement	87
3	Various hotel/motel cable service and access agreements	92
4	Hotel/motel multiple dwelling cable agreements	93
5	Sundance Apartments cable agreement	95
6	Television agreement	113
7	Granada Hospital Group checks	114
8	Contract summary	114
9	Full service-service agreement with Sheraton Military Circle	115

E X H I B I T S

NO.	DESCRIPTION	PAGE
10	Service agreement with MHC Airport Inns	115
11	Subscriber licensing agreement for Hotel Madison	115
12	Lease agreement for Hotel Madison	116
13	LodgeNet guest pay agreement for Days Hotel Waterside	116
14	Invoice for Hotel Madison	117

1 brief that is filed with the Court and as Mr. Seabolt said
2 to you, that the classification is TV programming. And
3 because Cox provides television programming and is taxed
4 while SMATV and home dishes which also provide television
5 programming are not taxed, the tax has no -- does not fall
6 under the Equal Protection Clause.

7 I want the Court to understand that at the
8 outset that we disagree categorically with looking at the
9 classification in that way. The classification that is
10 made by the city ordinance is a classification based on
11 utility service, public utility service. And I guess I
12 want to say that for an equal protection challenge to a
13 tax where the classification is not in the eyes of the
14 beholder or the eye of the tax person who wants to try to
15 draw some other people into the class with him to knock
16 the tax down, the classification is made by the
17 legislature or here, the city council.

18 And when the city council imposes a tax it
19 implies to public utilities which includes Cox as you have
20 held in the earlier stage of this proceeding. There is
21 nothing wrong with the classification scheme if there are
22 some other things who may be in competition with Cox that
23 are not utilities. And I know they are not covered by the
24 tax. And that's the fundamental difference in our
25 approach to the case from Cox's approach.

101A

1 MR. SEABOLT: Your Honor, is this the
2 preferred location for examining witnesses?

3 THE COURT: Anywhere you want. We are very
4 relaxed here. This is not a federal court. You can sit
5 at counsel table, you can stand there, you can stand in
6 the middle of the room, anywhere you want.

7 MR. SEABOLT: I appreciate that.

8 THE COURT: Wherever you are most
9 comfortable. And you can sit as far as I'm concerned.
10 Whatever you want to do.

11 MR. SEABOLT: I'll be handing documents to
12 the witness. If I may stand here.

13 THE COURT: All right. That will be fine.

14 DANA COLTRIN, a witness called on behalf of
15 the Plaintiff, after having been previously sworn, was
16 examined and testified as follows:

17 DIRECT EXAMINATION

18 BY MR. SEABOLT:

19 Q. Sir, would you please state your name and
20 address and your present occupation.

21 A. Dana G. Coltrin. I live at 5521 Lakewood
22 Drive, Norfolk, Virginia.

23 Q. Speak into the microphone if you would.

24 THE COURT: I can hear all right. In fact,
25 I think it would be better if it's turned off anyway. Put

1 it aside. If anyone can't hear let me know.

2 THE WITNESS: I'm the technical operations
3 manager for Cox Cable Hampton Roads, Incorporated.

4 BY MR. SEABOLT:

5 Q. Mr. Coltrin, would you describe your duties
6 as a technical operations manager at Cox?

7 A. I'm responsible for the maintenance
8 construction and currently upgrade of the physical plant
9 facility of Cox Cable, along with I have responsibilities
10 for FCC compliance; both refranchising and new
11 franchising, and explore new business opportunities and
12 competitive analysis of various businesses we may want to
13 get into or compete with.

14 Q. Now, when you say the physical plant, where
15 is the physical plant of Cox Cable?

16 A. That's the actual cable plant that is
17 located on the telephone and power poles throughout the
18 community and within the easements, within the city which
19 are underground. Where we have underground plants there
20 are no poles available to attach to.

21 Q. And within the hierarchy of Cox Cable
22 Hampton Roads, who do you report to?

23 A. I report to the vice-president/general
24 manager Frank Bowers.

25 Q. Is it fair to say he's in charge of the

1 operation out there?

2 A. Yes.

3 Q. How long have you held this position as
4 technical operations manager at Cox?

5 A. I've held this position a total of four
6 years.

7 Q. Have your duties remained fairly constant
8 over that time?

9 A. Yes, they have.

10 Q. What is your prior experience in the cable
11 industry? If you could summarize it.

12 A. I have a total of 21 years experience in the
13 cable industry. The last 10 have all been served with Cox
14 Cable. I have served from -- anywhere from systems
15 general manager to operations manager. Probably 80
16 percent of my experience has been on the technical
17 operations side of the cable industry.

18 Q. Do you have professional affiliations
19 related to cable?

20 A. I'm a member of the Society of Cable
21 Television Engineers, and I'm active in that
22 organization.

23 Q. Mr. Coltrin, you said that part of your
24 responsibilities include something about competitive
25 businesses. Would you re-elaborate on that?

1 A. Yes. One of the things that we try and do
2 is to explore new revenue sources at Cox Cable along with
3 our competitors as best as possible. And part of my
4 responsibilities are to do the technical and financial
5 analysis of those various businesses which have included
6 looking into the MDS business, the home satellite
7 business, the direct broadcast satellite business, along
8 with extensions of franchises and use of our facilities
9 for other uses other than cable television as it's known
10 today; subletting some of our frequency band with or
11 excess capacity to other people that may want to use it
12 for other communications purposes.

13 Q. You mentioned MDS. Is that an acronym for
14 something?

15 A. That stands for multi-point distribution
16 system. It's a low power microwave used for transmitting
17 multiple signals through the air. Sometimes called
18 wireless cable.

19 Q. All right. Now, this responsibility of
20 yours to be familiar with the competitive environment,
21 does that extend to all aspects of Cox Cable business?

22 A. Yes, it does.

23 Q. Now, Cox Cable Hampton Roads serves what
24 jurisdictions in the Tidewater area?

25 A. In a general sense it's Southern Hampton

1 Roads. It's specifically the community of Norfolk,
2 Portsmouth, Virginia Beach, Chesapeake, and Currituck,
3 North Carolina.

4 Q. Does Cox maintain any office as such in the
5 City of Norfolk?

6 A. Yes, it does.

7 Q. Where is that located?

8 A. We have two offices currently in the City of
9 Norfolk. One located on 4585 Village Avenue, and one on
10 Military Highway located in Best Square.

11 Q. What purposes do those offices serve?

12 A. The one in Best Square is what we would call
13 a customer service center where you can pay bills,
14 exchange converters, sign up or discontinue services. The
15 other facility on Village Avenue is where we locate our
16 administrative and technical facilities, our local
17 origination facilities along with personnel, and our fleet
18 maintenance department is there.

19 Q. You say local origination. What do you mean
20 by that?

21 A. We produce on channel 11 local programming
22 which we air throughout the community along with produced
23 commercials and so forth for our ad air connect business
24 there.

25 Q. Mr. Coltrin, in the City of Norfolk does Cox

1 have customers or subscribers that fall into the category
2 of hotels, hospitals, apartment complexes, businesses of
3 that nature?

4 A. Yes, they do. Within the City of Norfolk we
5 currently have I believe 57 customers under contract for
6 what we call commercial services.

7 Q. If I may, I'm going to hand you an exhibit
8 here. Mr. Coltrin, this document that I've handed you,
9 would you tell the Court what this consists of?

10 A. This is a listing of all the contracts that
11 we have for commercial businesses located in the City of
12 Norfolk. They include hotels, motels, apartment
13 complexes, condominiums and hospitals.

14 Q. All right. Who prepared this document?

15 A. I did.

16 Q. From what?

17 A. I used two sources. One, our contract file,
18 and the second, our accounts payable revenue file to
19 deliver the revenues and then the taxes that were paid on
20 each account.

21 Q. Would you just go through the various
22 columns here and just orient us as to what these
23 represent?

24 A. The first column is the name or the
25 incorporated name of the business that we have a contract

1 with. The second column is the address location of the
2 property. The next column is the number of units that we
3 service under that contract. The next column is the most
4 current rate that that business is paying us for cable
5 services.

6 Q. Is that on a monthly basis or an annual
7 basis?

8 A. Those are monthly payment figures.

9 Q. All right.

10 A. And the next column is the current tax rate
11 based upon the current rate of payment that is being
12 paid. And then the rest of the columns going across
13 continuing on throughout the document are the month by
14 month taxes that were accumulated and paid on each one of
15 those accounts.

16 Q. Turning to the last page, Mr. Coltrin, have
17 you done a calculation of the total billings to these 57
18 customers and the current monthly tax collected from these
19 same customers?

20 A. Yes. And the total is \$48,103.95.

21 Q. And for what period does that cover?

22 A. That is the period inclusive of July 1990
23 through June 30, 1992.

24 MR. SEABOLT: Your Honor, I move admission
25 of this exhibit as Plaintiff's Exhibit 3.

1 MR. RINGER: No objection.

2 THE COURT: No objection. All right.

3 Plaintiff's Exhibit Number 3.

4 (Plaintiff's Exhibit No. 3

5 was marked and received.)

6 MR. SEABOLT: Thank you.

7 BY MR. SEABOLT:

8 Q. Mr. Coltrin, what services does Cox offer
9 the businesses on this list?

10 A. We offer the same channel lineup that we
11 offer throughout the community. It encompasses various
12 services, a total of about 40 as I recall, what we call
13 basic cable television services or anything from various
14 satellite changes which include ESPN to Virginia distant
15 which includes WWOR, WGN. And in some cases we also offer
16 a pay channel on top of that basic service. Normally it
17 is HBO.

18 Q. Would the channel lineup that you offer
19 these businesses be essentially the same as the channel
20 lineup that is a part of the stipulation?

21 A. Yes.

22 Q. And, Mr. Coltrin, I'm going to show you now

23 --

24 MR. SEABOLT: Excuse me, Your Honor.

25 BY MR. SEABOLT:

1 Q. Mr. Coltrin, would you describe this
2 document that I'm handing you here?

3 A. That is a photocopy of our channel lineup
4 with a brief description of each one of the products on
5 each channel that is photocopied from what we call our
6 customer handbook. It's a little bit more detailed than
7 what we use for our channel lineup card. It describes the
8 hours of programming along with the type of program that's
9 on each one of those channels.

10 Q. This is something that Cox provides to
11 residential and commercial customers?

12 A. Yes, we do.

13 MR. SEABOLT: Your Honor, I move its
14 admission as our next exhibit, Exhibit Number 4.

15 THE COURT: Any objection?

16 MR. RINGER: No objection.

17 THE COURT: All right. Plaintiff's Exhibit
18 Number 4.

19 (Plaintiff's Exhibit No. 4
20 was marked and received.)

21 BY MR. SEABOLT:

22 Q. Mr. Coltrin, from what source does Cox Cable
23 get these stations?

24 A. We arrive at them from various sources. Our
25 cable programming comes from over-the-air reception of

1 various television signals. We also have some of the
2 over-the-air television signals known as 3, 10, 13, 27, 33
3 in this market. We also receive some of those by direct
4 microwave versus receiving over the air.

5 In addition, we use an ITFS signal for
6 several which is supplied to us by WHRO which provides us
7 several of the educational channel programs that we get.

8 The municipal channel that we have on the
9 system, channels 28 and 29, are supplied by us, reverse
10 feed coaxial cable. And we also receive a large majority
11 of our signals by earth station or sometimes known as a
12 dish or TVRO which is located at various satellites that
13 are parked over the horizon that we then receive signals
14 from.

15 Q. Of the various methods that you just
16 described for receiving programming, what method accounts
17 for the majority of the majority signals that you --

18 A. They are received by satellite.

19 Q. Transmitted to the dishes?

20 A. Transmitted to various dishes. We have a
21 total I believe of seven dishes aimed at various
22 satellites.

23 Q. Where are those dishes located?

24 A. They are all located at 5200 Cleveland
25 Street, Virginia Beach.

1 Q. Once you receive those signals through your
2 -- from your various dishes, how do they get to the
3 subscriber? What happens after they hit your dish?

4 A. Basically, after they have been received by
5 our dish, they are sent through a processing network and
6 then intergraded with the other types of channels we get,
7 such as the off-air and so forth. It's inserted on a
8 coaxial cable. Or in the case of the city, on to a fiber
9 optic cable and transmitted to a redistribution site
10 located in Norfolk on Lakewood Plaza at the corner of
11 Norview and Tidewater Drive.

12 From that point we then redistribute on
13 coaxial cable versus fiber optic cable out to various
14 subscribers throughout the entire community. It's what we
15 call a tree and branch or trunk and feeder system where we
16 use a larger cable so we can go farther, then inject it to
17 into a smaller cable. And the smaller cable is the one
18 that we split or tap to the in-service individual, the
19 subscribers.

20 THE COURT: Do I understand that you get all
21 your signals by dish and you transmit all your signals by
22 wire?

23 THE WITNESS: We receive majority by dish.
24 And then transmit all of them by wire from that point
25 forward. It's usually two different kinds of wire. One

1 is a fiber optic or glass cable, and the other being an
2 electrical cable or coaxial cable.

3 THE COURT: Excuse me.

4 MR. SEABOLT: Certainly.

5 BY MR. SEABOLT:

6 Q. Once the signal -- the combined signal is
7 sent to an individual subscriber, is any equipment
8 necessary to enable a subscriber to view the signal on his
9 or her television?

10 A. Our basic service -- there is unscrambled.
11 Thus if they would have a cable-ready television set,
12 capable of picking up through channel 50, they would be
13 able to see all of our basic programming. We provide at
14 no charge a converter to our residential subscribers. If
15 they do not have a tuner that's capable of tuning that
16 far, they can see all the services offered on basic. We
17 do offer pay programming which is scrambled which does
18 then require a converter to even be able to see it.

19 Q. Would you give some examples of programming
20 that is scrambled and requires a converter to unscramble?

21 A. Basically, those things are called Showtime,
22 Encore, Cinemax. Our pay-per-view is called Viewers
23 Choice and Home Box Office which is a pay program, but we
24 do not -- we use a trapping mechanism outside the home to
25 control that versus a scramble method which is a little

1 bit different technology. It doesn't require a box to
2 receive that. That's the only pay program we control that
3 way.

4 Q. But if someone wants to watch HBO, do you go
5 to the house and remove the trap?

6 A. Yes.

7 Q. Would that same description apply to a
8 subscriber that is not a residential person, not at his
9 home, but a business that is receiving the signal?

10 A. Yes. A business would be receiving the
11 signal the same way. We do have some limitations of the
12 kinds of services that we can provide to some businesses
13 based upon our contractual relationship with programmers.

14 Q. How are your customers, all customers,
15 commercial and residential, charged for the service?

16 A. They are charged by month in advance.

17 Q. And what is the -- we have the list here for
18 what you charge your 57 commercial customers. What is the
19 range of rates that apply to individuals?

20 A. There is basically a single rate of \$19.50
21 to residential customers per month for our complete basic
22 subscription. We do have a service that we call limited
23 basic that is only a 17-channel service which is six
24 dollars a month.

25 Q. And if someone subscribes to not only your

1 basic service but all of the available pay programming,
2 such as HBO, Showtime, what is the maximum that someone
3 would pay on a monthly basis?

4 A. For the first TV set I believe it's \$62 now
5 in a package type deal. We do some discounting as you add
6 more programming to your service.

7 Q. There would be additional charges if there
8 were more televisions in the house?

9 A. Yes. There would be an additional charge
10 for each television set.

11 Q. Focusing on these 57 commercial accounts, if
12 one of those businesses, a hotel or hospital wanted to
13 receive this type of programming from another source,
14 forgetting the local channels for a moment, what other
15 sources are out there to provide this type of programming?

16 A. The primary resource other than cable would
17 be a system called SMATV or satellite master antenna
18 television which is -- which can provide basically the
19 same types of programming that we can provide.

20 Q. Would you describe how an SMATV system
21 operates?

22 A. Basically, a satellite master antenna system
23 will be operated by placing a dish or TVRO antenna on top
24 of a roof or next to the building that's going to be
25 subscribing or a group of buildings that's going to be

1 subscribing to the service. They will derive various
2 satellite channels off of air from various satellites that
3 they want to receive programming. Combine those signals
4 into a single combined service and then insert them into a
5 cable and distribute them to -- if we are dealing with a
6 hotel, to the various hotels rooms. If we are dealing
7 with an apartment, to the various apartments. Or in the
8 case of a hospital, the various hospital rooms, dropping
9 off signals to each one of those rooms.

10 Q. Now, if a hotel wants to have SMATV as
11 opposed to dealing with Cox Cable, can they put a dish on
12 its roof and aim it at a satellite and pick up
13 programming?

14 A. No. They would have to subscribe to those
15 services through some type of a broker or vendor which
16 would sell those services. Some might also sell them the
17 dish or install the dish with the wire. Some might just
18 sell the program together.

19 Q. Once a facility, such as a hotel or hospital
20 with SMATV system makes arrangements with a vendor or
21 broker as you have described, would you describe the
22 process of how the facility is able to receive signals
23 from a technical standpoint?

24 A. Basically, once the physical dish is
25 installed and so forth, there are decoders installed after

1 the dish -- between the dish and the actual rooms to be
2 serviced. And the vendor that they are buying the
3 services through will have the decoders authorized so that
4 they could descramble the various satellite channels that
5 they want to subscribe to. Without that decoder
6 authorization they wouldn't be able to receive any of the
7 more desirable programming that are available on
8 satellite.

9 Q. How is the -- would you describe briefly the
10 decoding process? Is that something that someone does
11 manually or is it a signal?

12 A. It's what we call addressable technology.
13 The satellite vendor can address or talk to the decoder
14 located in the facility, wherever they've located all
15 these decoders, and by serial number address each one of
16 them and tell them whether or not they are allowed to
17 decode various programming. It's done through a matching
18 of the serial number to an account number that will be set
19 up by that third-party vendor to -- in order to be able to
20 talk to it and, therefore, there is a contractual
21 relationship established. They are there purchasing
22 programming for that particular customer or entity.

23 Q. So is the decoding done by a signal from the
24 satellite?

25 A. Basically, yes. The satellite fee

1 authorizes the decoding procedure.

2 Q. You referred to this process as
3 addressability. Is Cox Cable's television system
4 addressable?

5 A. Yes, it is.

6 Q. And how does the addressability --

7 THE COURT: I'm sorry. You've lost me. Go
8 back to addressability.

9 MR. SEABOLT: I'll ask the witness to
10 describe addressability and compare the addressability of
11 the Cox Cable system as compared with that of an SMATV
12 system.

13 THE WITNESS: Basically, it's a technology
14 to talk to the decoder. On the older technologies, what
15 would happen is someone would have to physically go to the
16 site and put a chip or authorize a decoder to decode that
17 particular system. That's the way our cable system used
18 to operate. That's the way the satellite business used to
19 operate.

20 Now what happens is is there is a software
21 controlled chip inside of each decoder, and the satellite
22 vendor can talk to it by sending a satellite signal down
23 and matching the serial number to an authorization code,
24 and then based upon that authorization code being valid,
25 the satellite decoder, for example, will decode CNN or it

1 might decode Showtime or HBO.

2 THE COURT: There is a central control place
3 for all of these?

4 THE WITNESS: It's operated by a general
5 instrument corporation in New York where they can -- they
6 are the preferred vendor for scrambling methodology. And
7 from that center they can talk to both SMATV decoders and
8 they call can also talk to the decoders located in our
9 head end at Cox Cable.

10 BY MR. SEABOLT:

11 Q. When you say talked to, do you mean send a
12 signal from?

13 A. It's an actual digital conversation that
14 occurs between the satellite and the decoder technically.

15 Q. Well, in terms of addressability, does that
16 suggest in any sense that the conversation as it were
17 between the satellite and a decoder can take place with
18 respect to individual decoders?

19 A. Yes. That's the key part of
20 addressability. What is important is that this is a
21 conversation to an individual decoder, that we can talk
22 individually to each decoder separately and we can send
23 separate messages to each one. For example, you can talk
24 to a decoder. Say you may have HBO. You can talk to
25 another decoder and you can say it will have Showtime or

1 ESPN.

2 And that decoder is also changeable.
3 Sometime in the future you may want to change a decoder
4 and allow it to receive Showtime versus HBO. It can
5 change that methodology.

6 That's the same way we control our converter
7 boxes that are inside the homes. At a particular home or
8 address there is a converter sitting in the home and they
9 call us up and say they would like to subscribe to
10 Showtime along with the various basic channels, and we
11 will send a signal down to just that particular box and
12 authorize it only to receive that channel. And we can do
13 that to any converter that is quote, unquote, addressable.

14 THE COURT: You give it, you take it away.

15 THE WITNESS: That's correct.

16 BY MR. SEABOLT:

17 Q. So just as SMATV technology is addressable
18 so is Cox Cable?

19 A. That's correct.

20 Q. All right. Mr. Coltrin, you have been
21 describing SMATV systems generically. Are there
22 commercial facilities in Norfolk hotels, hospitals and the
23 like that actually have SMATV systems?

24 A. Yes, there are.

25 MR. RINGER: That's stipulated, Your Honor.

1 MR. SEABOLT: I was just going to offer it
2 to the witness.

3 BY MR. SEABOLT:

4 Q. You have reviewed the stipulation?

5 A. Yes. I have reviewed the stipulation.

6 Q. And on the stipulation where various
7 programming is described, is that the same -- are all of
8 those programming options also available from Cox Cable?

9 A. Yes. They would be.

10 Q. Do you know how SMATV systems bill their
11 customers?

12 MR. RINGER: Your Honor, I want to say at
13 this point that if the witness has personal knowledge of
14 these facts, I don't object. But I don't want any
15 speculation.

16 MR. SEABOLT: No. I don't want him to
17 guess.

18 THE COURT: If he knows I'll let him
19 testify.

20 BY MR. SEABOLT:

21 Q. Do you know?

22 A. I'm familiar with Granada which is billed to
23 Sentara. It is a unique situation where that's a
24 contractual relationship with Granada, a foreign company
25 that provides a lot of television services to hospitals.

1 They have been given permission to come into the
2 hospital. And there is billing for the monthly services,
3 but there is a reconciliation done because the actual
4 patient pays for -- pays Granada, and there is a revenue
5 situation that's justified against the billing for that so
6 that Sentara only receives a portion of the total amount
7 of this that is collected for that.

8 In the cases of hotels, the only one that
9 I'm familiar with there is -- because we pursued the
10 Marriott Hotel here in town and have talked with the
11 general manager there. They are billed by a company
12 called Spectradyne on a monthly basis for services
13 rendered. They pay for two different kinds of services.
14 They pay for, first of all, what they call free to the
15 guest service on a monthly basis by room.

16 MR. RINGER: Your Honor, this is hearsay.
17 The contract with Spectradyne and so forth and the
18 documents which may establish some of these aspects can
19 come into evidence because they've been exchanged in
20 discovery, but I'm worried about the witness getting
21 beyond what the document shows. And I object to his
22 hearsay testimony.

23 THE COURT: Well, we certainly don't want
24 hearsay.

25 MR. SEABOLT: No, sir. And he limited his

1 comments to Spectradyne which we have an exhibit that
2 we've agreed is authentic. And I think at this point it
3 would be appropriate to just offer this as our next
4 numbered exhibit.

5 Your Honor, I'm going to move on and I'll
6 get this particular document straight. It has been
7 something that has been agreed to by counsel. I need to
8 organize it in a better fashion at a break.

9 THE COURT: All right.

10 BY MR. SEABOLT:

11 Q. Mr. Coltrin, when a SMATV system receives
12 programming, what do they do with it? Do they send it to
13 individual rooms within its facility if it's a hotel?

14 A. Basically, if it's a hotel they'll send it
15 to the individual rooms. In the case of a hospital they
16 send it to the individual patient rooms. In the case of
17 an apartment or condominium they would send it to the
18 apartment or condominium on a wire that runs throughout
19 the complex, and they split or tap off a signal and
20 service it into that individual room.

21 Q. If that same facility would have -- would
22 happen to receive programming from Cox Cable, how would
23 the process of redistributing it differ, if at all?

24 A. Not really differs at all. It would be
25 distributed very similar to that. We use the same type of

1 devices as far as distribution is concerned.

2 Q. Mr. Coltrin, what is the difference in the
3 operation of a cable television system and in a SMATV
4 system, if any?

5 A. Very little. The difference is really in
6 the methodology of how we get the signals there more than
7 anything else. The program availability with the
8 exceptions of possibly some inclusive programming that
9 each one may have that the other doesn't, which is
10 generally very limited, the big difference is the fact
11 that they get their signals directly to the property by
12 live over-the-air or in open technology; whereas we get it
13 to the various property through a closed technology which
14 is of a coaxial or fiber optic cable. We don't use an
15 over-the-air transmission method to get to our viable
16 customer.

17 THE COURT: I'm very old fashioned and I'm
18 back at the crystal radio stage where we had it memorized
19 how crystal radios worked. But isn't this the same as
20 almost a telephone line or a telegraph line versus radio?

21 THE WITNESS: This is very similar.

22 THE COURT: Isn't that the distinction
23 really?

24 THE WITNESS: You can do that kind of
25 transmission over the air by wire is what we are basically

1 saying. Telephone service over the air versus telephone
2 service on the air. But the end product is really still
3 the same.

4 THE COURT: The end product is you get a
5 signal at the other end if you hear someone or see
6 someone?

7 THE WITNESS: That's correct.

8 THE COURT: Well then, aren't we really
9 talking about the difference in the transmission? What I
10 focused on, if I remember correctly in the first trial,
11 was that Cox was a utility in that it was running its
12 wires along utility wires and along utility easements and
13 it had equipment. I mean your plant is your wires --

14 THE WITNESS: Uh-huh.

15 THE COURT: -- or your other equipment. I'm
16 sure it's very complicated. But that was the distinction
17 that I got. It was somewhat like a telegraph company that
18 has wires and goes in houses where the radio company sits
19 here and sends out a beam up in the air and somehow it
20 gets over to here and someone can hear. That's the
21 distinction.

22 THE WITNESS: I would say that's a good
23 distinction.

24 THE COURT: It's certainly simplistic.

25 THE WITNESS: It's a simple discussion.

1 THE COURT: And so they move to what is the
2 utility I guess. And I felt a utility was, you know,
3 electrician, the telephone and cable. I'm trying to think
4 how this SMATV could be a utility. It doesn't use any
5 easements, it doesn't use any wire. It's just something
6 you shoot up out of the air, and which is all beyond my
7 economics degree comprehension, but I'm trying to find out
8 how you could be -- how they could be a utility company.

9 MR. SEABOLT: Your Honor, if I may, we are
10 not maintaining that they are a utility. We are saying
11 that --

12 THE COURT: You are saying you are not a
13 utility either.

14 MR. SEABOLT: That's decided in this case.
15 This Court has decided that.

16 THE COURT: How can they be a utility?

17 MR. SEABOLT: They are not a utility. But
18 what they sell is the same thing that we sell.

19 THE COURT: They sell the same product.

20 MR. SEABOLT: And there are many other
21 aspects of the operations that are identical in terms of
22 the addressability, their similarities in billing, the way
23 that it is redistributed once it gets to the hotel. It's
24 the same.

25 THE COURT: It's not just the same -- there

1 is a difference between broadcasting into the air or
2 sending it through a cable.

3 MR. SEABOLT: Right. If I were to diagram
4 the process from the origination of a movie in Hollywood
5 to the point it gets to the television, our position is
6 everything is the same essentially except for the way it
7 gets from the seller to the customer. Many things happen
8 along that spectrum that are identical. And that's really
9 what this case is about.

10 THE COURT: I think I agree with you. I
11 certainly understand that much.

12 MR. SEABOLT: We are not here to prove that
13 SMATV is a utility and should have been taxed all along
14 with us. That's not what we are saying. We are saying --

15 THE COURT: There are similar industries
16 that do the same thing. They just do it a little bit
17 different.

18 MR. SEABOLT: That's right. We are taxed,
19 they are not. That's the violation. Unfair competition
20 shown.

21 BY MR. SEABOLT:

22 Q. Mr. Coltrin, do you know -- are you familiar
23 with the process of how SMATV vendors, as it were, the
24 brokers or vendors of the programming to SMATV facilities
25 go about signing up their customers?

1 A. They'll do various things to sign up
2 customers. They have local representatives that will
3 tour. We have had head-to-head competition on several
4 properties where they have made a proposal and we've made
5 a proposal.

6 MR. RINGER: Your Honor, if I may interpose
7 an objection. To be sure that the witness is testifying
8 from firsthand knowledge --

9 MR. SEABOLT: I'll try to lay a foundation.

10 THE COURT: He said they were going
11 head-to-head.

12 MR. SEABOLT: It's also his job to know how
13 these things work because it's one of his
14 responsibilities. Even though it's his job, he's the man
15 who is in charge of keeping up with the competition.

16 MR. RINGER: That doesn't change the fact
17 that it may be hearsay.

18 THE COURT: We certainly don't want any
19 hearsay. I understand.

20 BY MR. SEABOLT:

21 Q. You did go head-to-head in at least one
22 transaction, did you not?

23 A. In many transactions. We have gone
24 head-to-head on SMATV, in this various thing. I've now
25 forgotten your first question.

1 THE COURT: I think what he's saying is he's
2 a competitor to every one of these things. They can run a
3 wire into any of these hotels, couldn't you?

4 THE WITNESS: We have wire into those
5 hotels.

6 BY MR. SEABOLT:

7 Q. You could run it into theirs?

8 A. Yes, we could. We are currently trying to
9 get some of that business that's on that list, yes.

10 Q. That is an important point with -- the
11 specific point I was making is the one that you answered,
12 that they do have local representatives in the area when
13 it comes time to sign up or compete for business?

14 A. Yes. They do. We've competed directly
15 head-to-head in proposals. Those that we have not
16 competed head-to-head I don't have any knowledge of.

17 Q. Are they limited to just commercial or could
18 they go into a home?

19 A. No. They can sell to a home. They can sell
20 to a home.

21 Q. All they have to do is put up a dish?

22 A. That's correct.

23 THE COURT: Actually, I don't know this, but
24 I have read it. Can't anyone buy these dishes? If they
25 were going to be honest persons they can buy the

1 equipment. If they were smart enough to do it to put it
2 in.

3 THE WITNESS: Anyone can buy the dish. If
4 you are smart enough, yes, you can steal the service. But
5 we have been under some prosecution of going after those
6 people. Technically, if you want to though, yes, you can
7 purchase your own dish and niche a decoder and have it
8 authorized directly through various vendors that will sell
9 you a package.

10 THE COURT: I notice down in Mexico they
11 advertise those dishes that they say will unscramble
12 everything in the United States. You can buy them here,
13 too?

14 THE WITNESS: We have bought them in
15 prosecution cases as a matter of fact in this market.

16 BY MR. SEABOLT:

17 Q. We are going to talk in just a minute about
18 the residential side of this a little more. On the
19 commercial side dealing with hotels, you went head-to-head
20 for the business at the Marriott?

21 A. Yes, we did.

22 Q. Is that correct?

23 A. Yes.

24 Q. And Cox did not --

25 A. We were not successful in getting the

1 Marriott business, no.

2 Q. Do you know the total number of hotel rooms
3 in the Norfolk area to whom Cox provides cable television
4 service presently?

5 A. Basically, there are about 12 hundred of the
6 ones that are listed in the stipulation.

7 Q. Cox's.

8 A. Cox's?

9 Q. Yes.

10 A. About 44 hundred.

11 Q. And how about the number of rooms that are
12 serviced by SMATV?

13 A. That's the 12 hundred figure.

14 Q. Now at the previous trial the number was
15 around 800.

16 A. The difference there is the Marriott in
17 downtown Norfolk.

18 Q. Does Cox serve the Omni?

19 A. Yes, they do.

20 Q. The Omni at Waterside?

21 A. The Omni at Waterside. Actually services
22 the Omni at Virginia Beach, but that's not of concern in
23 this trial.

24 Q. Before we move to the residential side, I'd
25 like you to answer just a few questions about apartment

1 complexes and condominiums that are listed on your list of
2 57 customers. To your knowledge, are there any SMATV
3 systems in place at apartment complexes or condominiums in
4 Norfolk?

5 A. Not to my knowledge.

6 Q. Are there companies that provide programming
7 to SMATV systems in neighboring jurisdictions?

8 A. Oh, definitely. There are two competing
9 companies. One by the name of MaxTel, one by the name of
10 ODC that services several thousand customers in this
11 general market.

12 Q. And would their service to apartment
13 complexes and condominiums in these neighboring
14 jurisdictions be set up essentially in the same way as you
15 described the SMATV service in hotels and hospitals?

16 A. Yes, they would.

17 Q. And where did you say MaxTel and ODC are in
18 operation?

19 A. They are in I think about eight apartment
20 complexes in the City of Virginia Beach.

21 Q. Does Cox consider these SMATV providers to
22 be potential competitors for its -- for Cox's apartment
23 and condominium business?

24 A. Most definitely. We have lost several key
25 accounts to MaxTel.

1 Q. Well, not in the City of Norfolk?

2 A. Not in the City of Norfolk yet.

3 Q. Turning to the residential market, Mr.

4 Coltrin, can you give us the current number of residential
5 subscribers in the City of Norfolk, approximately?

6 MR. RINGER: Your Honor, I just want to say
7 that the Bill of Complaint in this case originally
8 complained about SMATV. It didn't complain about home
9 dishes or TVROs or PRIMESTAR which is a thing that they
10 talk about in their brief. I don't believe that there is
11 any analytical difference as far as we are concerned on
12 the law whether there are these home dishes or not. I
13 don't think they really add anything or change anything
14 about my argument or theirs, but it wasn't pled.

15 And I guess I would say at this time that
16 the evidence could come in subject to my objection to
17 preserve the point that, although I don't think it makes
18 any difference, and I don't think it makes much difference
19 to them except that it adds something to their case. If
20 Your Honor believes that you are satisfied with my
21 argument about SMATV but there is something wrong about
22 the home dishes, then I would like to ask to have leave to
23 have further investigation of that because it was not
24 pled. I don't think that's going to be business, but I
25 just want to --

1 THE COURT: I don't think it will.

2 MR. SEABOLT: If I may briefly, Your Honor.
3 I'm not sure there is an objection pending or not. But in
4 our Count IV we did emphasize SMATV. We also incorporated
5 previous allegations that were in the complaint up to
6 Count IV where we complained specifically in paragraph 19
7 that the ordinance in question did not apply to SMATV or
8 to other technologies for distributing television
9 programming. We do have the reference there in the
10 original complaint.

11 We've been consistent in our briefs with
12 this Court and the Supreme Court, that we are concerned
13 about all competing technologies. And we did identify in
14 our discovery to the City that there were approximately
15 one hundred TVROs which is an acronym synonymous with
16 earth stations there.

17 So I'm not sure if there is an objection. I
18 know there is not one at this moment, but since it may
19 come up later I just want to be clear that we did plead
20 it. It wasn't a basher headline, but it's there. And
21 there was an opportunity to ask in discovery for detail in
22 that which was not taken advantage of here. So with that
23 background, Your Honor, subject to what Mr. Ringer has
24 argued, I would like to proceed with questioning on the
25 residential market.

1 THE COURT: All right. I'll let you
2 proceed.

3 MR. SEABOLT: Thank you.

4 BY MR. SEABOLT:

5 Q. The current number of subscribers in the
6 residential market, Mr. Coltrin, is?

7 A. As of the end of June I believe it was
8 50,723.

9 Q. Does that include military personnel
10 stationed in Norfolk?

11 A. No, it does not. Not on base that is.

12 Q. But it would include military?

13 A. It includes military housing that are off
14 base, yes.

15 Q. Has Cox ever done a study of potential total
16 number of households that it could service in Norfolk?

17 A. Yes. We currently, based upon our mapping,
18 show about a hundred and three thousand customers that we
19 could service from a residential basis.

20 Q. So you are at about 50 percent?

21 A. About 50 percent.

22 Q. Penetration, is that the term of art?

23 A. Yes.

24 Q. Is the programming that you offer to
25 residential households that which is shown on the channel

1 lineup cards that's a part of the stipulation?

2 A. Yes. It's identical to the exhibit you gave
3 me earlier.

4 Q. And do your services include what is called
5 pay-per-view?

6 A. Yes. That's the key difference probably
7 between our commercial contractual service and residential
8 is we do offer pay-per-view where you can purchase an
9 individual movie and pay for it individually at a time
10 that might be convenient to you. And we charge on an
11 individual basis for each one of the movies. Price is
12 running from \$3.95 to \$5.95.

13 Q. Would you describe briefly the process that
14 a customer would go through in order to order a
15 pay-per-view movie?

16 A. We have a couple of ways to do that. One,
17 they can pick up the phone and call our office and order
18 it.

19 The more convenient methodology is to call
20 our office number, and we have an ARU or automatic
21 response unit. Well, if you have a touch tone phone you
22 can go ahead and enter your account number and the movie
23 that you would like through a menu and purchase that
24 movie.

25 The third way is called ANI which is

1 automatic number identification where you call a special
2 number within a time window, generally one hour before the
3 movie that you want to watch. And basically you just pick
4 up the phone and dial that number and wait until it picks
5 up and hang up, and within 30 seconds you've got the
6 movie.

7 Q. And is it the addressability system that
8 allows this system to operate correctly?

9 A. Yes. That's correct.

10 Q. Your residential customers are billed
11 monthly?

12 A. Yes, they are.

13 Q. What alternatives are available to
14 residential subscribers in the City of Norfolk if they
15 didn't want to receive their television programming from
16 Cox?

17 A. Basically, of course, if you want to receive
18 the limited availability --

19 Q. You mean the local channels?

20 A. The local channels, VHF, UHF, channel 10,
21 13, 3, the CBS, ABC affiliates and so forth, along with
22 supplementing that with. Movies, if you want to rent
23 tapes from BlockBuster.

24 The next methodology would be that of
25 purchasing some type of satellite technology. There are

1 two popular technologies. One called C-band and one
2 called KU-band or DBS technology.

3 Q. We are going to talk about both of those
4 individually. First, let me ask you some questions about
5 C-band. Would you describe what you mean by C-band
6 satellite service?

7 A. C-band basically refers to the band of the
8 satellite being used to transmit the signals, that is, the
9 same bands used for the SMATV, the commercial business
10 along with broadcasting signals to cable operators. The
11 difference with an individual home is you erect the dish
12 either on your roof or in your backyard. You have to be
13 able to have it set up off to the southwest to see the
14 satellite over the horizon, and is installed at your home
15 and wires run to the home. And there is a decoder that's
16 installed inside your home. Again, it's addressed through
17 the satellite, and you purchase the signals that you want
18 to purchase. Cox operates a C-band satellite business
19 called Cox Satellite Service.

20 Q. Before we get to Cox's satellite business,
21 Mr. Coltrin, do you know whether there are businesses --
22 well, first of all, let me ask you. Where do these
23 individuals get their satellite dishes?

24 A. They can purchase them from one of a -- I
25 think there is about six vendors in town that sell them

1 along with -- you can buy one at Price Club or Radio Shack
2 or some other places that have sold the dishes. And you
3 have to subscribe generally to a national programming
4 service after you have installed your own dish.

5 Q. We'll get to the programming in just a
6 second, but as far as the dishes are concerned, you have
7 personal knowledge that there are vendors or companies
8 operating in the Tidewater area that sell these dishes?

9 A. Yes, there are.

10 Q. Can you name some of them?

11 A. One is named Dome Satellite. One is
12 formerly named Virginia-Carolina Satellite. Now I think
13 it's called Satellite Technology. There is a company
14 called MetroCom. There are a couple others that I'm not
15 recalling off the top of my head. Dome and Virginia
16 Satellite are the two biggest vendors in the market.

17 Q. Do you have any information as to the number
18 of home satellite dishes owned by residents in the City of
19 Norfolk?

20 A. I have an older number. We conducted a
21 survey in 1986-87, and at that time there were
22 approximately a hundred.

23 MR. RINGER: I object. I have a feeling
24 that the results of the survey are hearsay.

25 THE WITNESS: No, they are not.

1 MR. SEABOLT: Hang on a second.

2 THE COURT: It seems to me that they would
3 be just by themselves.

4 MR. SEABOLT: Well, I think I can lay a
5 foundation that this was -- the number that he's relying
6 on is a part of the business records of Cox Cable and that
7 it's part of his responsibility to know how many there
8 were at that time. And he'll also give some testimony on
9 what has happened since this particular account was done.

10 THE COURT: Well, I think if we are talking
11 about a survey that's per se hearsay. I don't know how we
12 can get around it. The figures may be right or it may be
13 wrong. I don't know.

14 MR. SEABOLT: But, Your Honor, I think that
15 under an exception to the hearsay for business records,
16 for the shop book rule -- I mean he will say that he has
17 seen the survey and it is something that is relied upon in
18 his business for making decisions.

19 THE COURT: Well, aren't business records
20 usually generated in the course part of the business
21 rather than what someone gives you and they happen to get
22 in your business records.

23 MR. SEABOLT: Well, his people did the
24 survey. He sent people out who were mapping the system
25 and they counted the dishes.

1 THE COURT: His people. I see what you are
2 saying. In other words, his people made the survey.

3 MR. SEABOLT: Yes.

4 MR. RINGER: If the people who made the
5 entry in the business records actually went and saw the
6 satellite dishes and knew that the people who had them
7 were subscribers to something, then I don't object.

8 THE COURT: Yes. I think you are right. If
9 his people did the survey, then they would certainly be
10 business records. All right.

11 BY MR. SEABOLT:

12 Q. Mr. Coltrin, who did the survey?

13 A. My staff. Basically, they were counted
14 during the mapping of our plant, prior to upgrading our
15 facilities. We walked out the entire City of Norfolk
16 along with the City of Virginia Beach and Portsmouth. And
17 one of their directives, along with verifying the location
18 of our plant, was to indicate any satellite dish that they
19 could physically see on the property. And we noted those
20 in our mapping records at the time. That was done between
21 1986 and 1987. I do not have a count beyond that time
22 period.

23 Q. Was this done under your supervision?

24 A. Yes, it was.

25 Q. And what were the number of dishes that were

1 counted?

2 A. It was 99 as I recall.

3 Q. Do you have any information regarding the --
4 whether that number has increased or decreased since the
5 survey was done?

6 A. Not directly as far as a count is
7 concerned. Only the popularity of the dishes in a general
8 sense.

9 Q. Do you know whether the number of satellite
10 dish vendors in the Tidewater area has grown since then?

11 A. Yes, it has. Based upon the advertising in
12 the yellow pages, basically.

13 MR. RINGER: Your Honor, I would have to
14 object again. I thought I heard Mr. Seabolt say he was
15 going to bring forward this information about the survey.
16 What existed in '86 or '87 before this tax took effect in
17 1990 is not really germane to this case. I'm not trying
18 to be difficult. I have a notion that one way or the
19 other they can prove there is at least one home dish
20 receiver in Norfolk operating today. I just want to pin
21 down to the facts and not get beyond what is --

22 MR. SEABOLT: Your Honor, they have not done
23 a count since 1986. But his responsibility is to keep up
24 with the competitive environment, and he has a foundation
25 for stating his opinion, that that number has increased

1 since 1986. And I'm trying to have him testify as to why
2 he thinks that number has increased.

3 THE COURT: Well, did I hear him say that
4 his company runs a satellite dish company?

5 MR. SEABOLT: We are going to get into
6 that.

7 THE COURT: He can certainly talk about that
8 which would establish I guess your point.

9 MR. SEABOLT: We will get to that.

10 THE COURT: All right.

11 BY MR. SEABOLT:

12 Q. Mr. Coltrin, you did mention that there is a
13 company called Cox Satellite that is involved with selling
14 programming to home dish owners?

15 A. Yes. We have a national company call Cox
16 Satellite. It is based in Macon, Georgia. It has a 1-800
17 number. And you can call that number and subscribe to
18 various packages of services to your C-band satellite. We
19 are not the only company that does that. There are other
20 national vendors that do that. Basically, we have a
21 listing of many packages that you can buy, from buying a
22 single channel up through many.

23 Q. We'll get into the programming offered in a
24 moment. What is the relationship between Cox Satellite
25 and Cox Cable Hampton Roads, the corporate relationship?

1 A. The corporate relationship is we are both
2 owned by the parent company Cox Communication.

3 Q. Does Cox Satellite have subscribers in the
4 City of Norfolk?

5 A. Yes, they do.

6 Q. Do you have any knowledge of losing sales as
7 it were of Cox Cable service to someone who's going to get
8 satellite service? Has that been stated?

9 A. Yes.

10 MR. RINGER: Your Honor, that's hearsay,
11 too. I would expect if they try to sell a resident and
12 the man says no, I'm going to buy a satellite service,
13 that's a statement. But that's hearsay.

14 THE COURT: There may be a lot of reasons
15 why people change from one service to another. It might
16 not have anything to do with price.

17 MR. SEABOLT: Well, that's correct, Your
18 Honor. I think it goes to the question of his knowledge,
19 that there are people in Norfolk that have this service.

20 THE COURT: I think he's testified. I
21 understand that they did.

22 MR. RINGER: It's hearsay for him to say
23 that we tried to sell somebody cable service and they told
24 us they were going to have a satellite. That's hearsay.

25 THE COURT: I think he's established that

1 their system in the City of Norfolk that use the dish --

2 MR. RINGER: He's established that there is
3 -- that Cox Satellite, his sister company, has customers
4 here. But I object on the basis of hearsay to any --

5 THE COURT: Why they changed.

6 MR. RINGER: That he's found anything else
7 because there has been no personal knowledge of testimony
8 except about this survey back in 1987.

9 THE COURT: If we continue we won't have any
10 hearsay.

11 BY MR. SEABOLT:

12 Q. Mr. Coltrin, I'm going to hand you a copy of
13 a document and ask if you can identify it for us?

14 A. This is a photocopy of Cox Satellite's
15 brochure for subscribing to C-band satellite services.

16 Q. Does it accurately depict the programming
17 that is offered by Cox Satellite, programming to
18 subscribers?

19 A. Yes, it does.

20 Q. And would that exclude subscribers not in
21 the City of Norfolk?

22 A. Yes, it does.

23 Q. Do you know whether there are other such
24 vendors competing with Cox Satellite, like for the
25 provision of this type of service?

1 A. Yes. There are a couple of companies in the
2 market that do compete with Cox Satellite.

3 Q. Do you know their names?

4 A. Jones Intercable, TCI, ComSat. Those are
5 the only ones that I have specific knowledge of.

6 MR. SEABOLT: Your Honor, I move the
7 admission of this document as our next numbered exhibit.

8 MR. RINGER: No objection.

9 THE COURT: All right. This will be 5 I
10 believe.

11 MR. SEABOLT: I believe that's correct.

12 THE COURT: Plaintiff's Exhibit Number 5.

13 (Plaintiff's Exhibit No. 5
14 was marked and received.)

15 BY MR. SEABOLT:

16 Q. If a subscriber -- once a subscriber in the
17 City of Norfolk decides to sign up as it were for
18 programming through Cox Satellite from a technical
19 standpoint, what is done to enable that person to receive
20 a programming?

21 A. Basically, the satellite decoder located in
22 their home is authorized to receive the services they want
23 to sign up through by talking directly from the satellite
24 to their dish, to their decoder directly and
25 individually.

1 Q. Is the same addressability technology used
2 that you described before?

3 A. For SMATV on the commercial basis as used
4 for the individual.

5 Q. Does Cox Satellite bill its customers
6 monthly?

7 A. Yes, they do.

8 Q. Does Cox Satellite offer pay-per-view
9 programming?

10 A. Yes, they do.

11 Q. Does Cox Cable Hampton Roads consider
12 satellite television programming vendors, such as Cox
13 Satellite, to be in competition with its service, meaning
14 Cox Cable Hampton Roads television service?

15 A. Yes. We consider it to be a competitor.

16 Q. You mentioned another technology that would
17 be an option to residential subscribers. Specifically you
18 called it KU-band?

19 A. Uh-huh.

20 Q. Would you define what you mean by KU-band
21 service and how it is similar to a -- different from a
22 C-band service?

23 A. The KU-band stands for the band with or
24 frequency that is used by that satellite. And the
25 reference there is the fact because it is a higher

1 frequency being used they can use a smaller dish or
2 receiving antenna than what C-band can. This allows the
3 dish to be smaller, easier installed. Actually can be
4 just laid out on the ground almost or it can be mounted
5 permanently to the house. And for a residence the
6 installation cost is significantly smaller.

7 Q. Mr. Coltrin, is KU-band services you've
8 described actually available to residents in the City of
9 Norfolk at this time?

10 A. Yes, it is.

11 Q. From what source?

12 A. From a company called PRIMESTAR.

13 Q. And what is PRIMESTAR?

14 A. PRIMESTAR is the consortium of cable
15 operators. A total of 10. Cox is one partner in that
16 particular consortium. And they jointly own a satellite
17 and program it and provide DBS type or direct broadcast
18 satellite services to people who have the KU-band type
19 dish.

20 THE COURT: Is that the latest in
21 technology?

22 THE WITNESS: That's really the latest
23 technology. Right now the dishes are about this size
24 (indicating). Hopefully as they progress the dishes will
25 be smaller than what they are.

1 BY MR. SEABOLT:

2 Q. The court reporter won't know what this size
3 is.

4 A. About a meter.

5 THE COURT: So you don't have something on
6 your roof the size of this bench?

7 THE WITNESS: Right. The C-band dishes tend
8 to be about four and a half to five feet in diameter.

9 BY MR. SEABOLT:

10 Q. Mr. Coltrin, I'm going to show you a
11 document and ask if you can identify very generally as to
12 what it represents.

13 A. This is a descriptive brief synopsis of
14 PRIMESTAR and the product that we offer, the listing of
15 the partners involved in PRIMESTAR and the PRIMESTAR
16 management partners.

17 Q. All right. Mr. Coltrin, does this
18 accurately describe the services offered by PRIMESTAR to
19 residents in Tidewater, including the City of Norfolk?

20 A. Yes.

21 MR. SEABOLT: Your Honor, I move admission
22 of this document as our next exhibit.

23 THE COURT: Any objection?

24 MR. RINGER: I haven't finished looking at
25 it, Your Honor.

1 THE COURT: All right. Take your time.

2 MR. RINGER: I have no objection, Your
3 Honor.

4 THE COURT: All right. This will be
5 Plaintiff's Exhibit Number 6.

6 (Plaintiff's Exhibit No. 6
7 was marked and received.)

8 BY MR. SEABOLT:

9 Q. Mr. Coltrin, when you say we, does Cox Cable
10 Hampton Roads own PRIMESTAR or they are one in the same?
11 What is the relationship between Cox Cable Hampton Roads
12 and PRIMESTAR?

13 A. Cox Cable Hampton Roads is an authorized
14 franchisee of PRIMESTAR. We directly do not own or
15 operate that, but we are a local representative and we
16 have installers and sales force that are selling this
17 product in the market.

18 Q. What programming specifically is available
19 from PRIMESTAR to residents of the City of Norfolk?

20 A. The specific programming are a total of
21 seven distant channels. Distant channels being WGN, WWOR
22 and so forth that constitutes the prime television portion
23 of the television that is mentioned in the brochure. They
24 also have movies available on a pay-per-view basis and a
25 technical audio service, similar but it's not the same as

1 our technical cable radio service that we have on cable.

2 Q. Leaving aside cable radio because that's not
3 a part of this case, are all of the programming options
4 available from PRIMESTAR also offered by Cox Cable?

5 A. Similar. Not identical.

6 Q. All right. There are a couple of stations
7 that are different?

8 A. Yes. There are a couple of west coast
9 television stations we do not offer. We use more east
10 coast stations because of the proper area of our local
11 market.

12 Q. What programming do you have in common with
13 PRIMESTAR?

14 A. We have four of the distant that are in
15 common. WSBK --

16 Q. Where is that out of?

17 A. That is in Boston. WWOR which is in New
18 York, WGN which is Chicago, and WTBS which is located in
19 Atlanta.

20 Q. All of those stations are described in that
21 excerpt from the customer handbook, are they not?

22 A. Yes, they are.

23 Q. If someone signs up for PRIMESTAR service,
24 do they have to have a decoder?

25 A. Yes. There is a decoder similar to the

1 decoder used for C-band satellite.

2 Q. And is the system addressable as you've
3 described it before?

4 A. Yes. It's the same addressability as I
5 described before.

6 Q. Does PRIMESTAR bill its customers monthly?

7 A. Yes, it does.

8 MR. SEABOLT: I need to go back to one
9 question regarding C-band service if Your Honor would
10 permit this.

11 THE COURT: All right.

12 BY MR. SEABOLT:

13 Q. I neglected to ask you about similarities
14 between programming available from Cox Cable service
15 versus programming available to the owner of a C-band
16 satellite dish.

17 A. Basically, all the programming would be
18 available with the exception of one or two exclusive
19 products.

20 Q. What do you mean by exclusive products?

21 A. Both vendors, Cox included, may have
22 exclusivity on a specific product. For example, in this
23 market we own the rights to TNT. For example, in a
24 satellite side, a C-band vendor called ComSat has various
25 exclusive pay-per-view movie products that they will not

1 sell to the cable operator, but in general, probably 90 to
2 95 percent of the product is available on the C-band cable
3 or the other side.

4 Q. And as shown by the flier that is in
5 evidence from Cox Satellite, does the customer for C-band
6 service have the option of selecting various packages of
7 programming?

8 A. Yes, they do.

9 Q. Is that packaging method of marketing
10 television programming unique to Cox Satellite?

11 A. No, it is not.

12 Q. Is Cox Cable Hampton Roads in competition
13 with PRIMESTAR?

14 A. Yes.

15 Q. Even though you offer it as an option?

16 A. That's part of the reason why we got into
17 the business.

18 Q. Is that the way the industry's going now?

19 A. It's our feeling that that could be a very
20 highly competitive technology in the coming decade.

21 THE COURT: Without the wires, without all
22 the personnel having to service those wires and --

23 THE WITNESS: There is only one piece of
24 electronics, the reliability of the home satellite. It's
25 just more reliable than what cable service would be, plus

1 it is more compatible with high definition television
2 which is coming down the ecology pike.

3 BY MR. SEABOLT:

4 Q. Just as your parent company in Cox
5 Communications has a satellite service, do you know
6 whether other national cable television companies are
7 getting into that business as well?

8 A. Yes.

9 Q. Can give some examples?

10 A. The other partners of PRIMESTAR are
11 definitely marketing that same service. TCI in this
12 market which is Chesapeake is marketing PRIMESTAR in this
13 market along with UA and Warner on the other side of the
14 water here.

15 Q. What is UA?

16 A. United Artist which owns Newport News
17 Cablevision, and Warner which owns Hampton, Virginia.
18 There is also a company called ComCast which is a partner
19 of Jones Intercable which is a partner of PRIMESTAR which
20 are also vendors that market that service. We market for
21 each area. Cox Hampton Roads sells through a marketing
22 strategy the marketer for PRIMESTAR in this particular
23 market. That doesn't mean that in some other market the
24 other cable operator might not be. We market into
25 Chesapeake, even through TCI.

1 Q. What does that stand for?

2 A. TCI is for Tele-Communications, Inc. They
3 are the owner of the franchise in Chesapeake.

4 Q. I know you have been speaking of PRIMESTAR.
5 But does TCI also have an affiliate that is in the
6 business of marketing programming to satellite dish
7 owners?

8 A. Yes. Market C-band satellite also.

9 Q. Mr. Coltrin, this is a stipulation exhibit
10 that shows the amount of tax that the City has been paid
11 by Cox Cable.

12 A. Yes.

13 Q. Does this represent dollars that was
14 collected from subscribers?

15 A. Yes. And paid to the City of Norfolk.

16 Q. And paid to the City. Can you describe for
17 the Court any impact that this tax has on Cox Cable
18 Hampton Roads itself?

19 A. Our customers perceive any change in the
20 billing as a rate increase which greatly impacts our
21 ability to market the service and continue to maintain our
22 subscribership. No matter what happens to the bill, we
23 receive complaints, whether it's a rate increase that we
24 generated or some new tax or fee that has to be added to
25 the bill. The consumer looks at it from total money that

1 they pay for that service by month, and therefore, any tax
2 or fee that's added is perceived as an additional cost and
3 is a barrier to our ability to compete for that
4 subscriber's entertainment dollars.

5 MR. SEABOLT: May I have just one moment,
6 Your Honor?

7 THE COURT: Certainly.

8 MR. SEABOLT: Your Honor, I have no further
9 questions of this witness.

10 THE COURT: All right.

11 CROSS-EXAMINATION

12 BY MR. RINGER:

13 Q. Mr. Coltrin, you told Mr. Seabolt that rate
14 increases upset your customers?

15 A. Yes, they do.

16 Q. Over a period of time that Cox Cable Hampton
17 Roads has been providing cable service in Norfolk, you
18 have on your own initiative, not as taxes or other fees,
19 increased your rates from time to time to time to time to
20 time, year to year; isn't that true?

21 A. Yes, we have.

22 Q. The PRIMESTAR that you told Mr. Seabolt that
23 competes with you is a product that you are selling, is
24 that not correct?

25 A. That's correct.

1 Q. The PRIMESTAR distributor for Hampton Roads
2 is Cox Cable Hampton Roads, Inc., the plaintiff in this
3 case; is that right?

4 A. That is also correct.

5 Q. So when you say it competes, you mean inside
6 your own house you offer two products which compete with
7 each other?

8 A. That's correct.

9 Q. But PRIMESTAR, since it's your product, is
10 not in competition with your company, isn't it?

11 A. That is correct.

12 Q. Now, your testimony is that the service that
13 is offered by Cox Cable is the same or very similar to the
14 service that a subscriber can get from PRIMESTAR or from
15 SMATV or from C-band, correct?

16 A. Basically similar, yes.

17 Q. All right. Again, very earlier in your
18 discussion with Mr. Seabolt he laid aside local
19 programming. Do you remember that?

20 A. Yes, he did.

21 Q. Cox Cable Hampton Roads provides local
22 programming to its customers, is that not correct?

23 A. Yes, we do.

24 Q. And that includes channel 3 and channel 10
25 and channel 13 and the major network affiliates plus

1 channel 15 which is PBS, and channel 27 which is the local
2 independent station, and channel 33, another local. I
3 guess that's the Fox network?

4 A. Now Fox, yes.

5 Q. You provide -- Cox Cable Hampton Roads
6 provides that to your subscribers, correct?

7 A. Yes, we do.

8 Q. And I think you said to us that there were
9 some other things that you provided as well on a microwave
10 or maybe some other letters that I didn't understand that
11 were in connection with the PBS station.

12 A. Well, there are two access changes required
13 by franchise on the system.

14 Q. I remember about the access channels, but
15 there were some other things that you talked about that I
16 thought you said were directly from microwave to you or
17 some other place.

18 A. Basically, we don't receive all of the
19 over-air broadcasters by receiving them off air. We
20 receive some of them by direct microwave transmission.
21 Ever since the ice storm a couple of Christmases ago --

22 Q. Well, what I'm trying to say is in addition
23 to those TV broadcast channels that we just talked about,
24 what other services are you offering to your subscribers
25 that do not come to you via satellite?

1 A. The access channels are required by
2 franchise which is channels 28 and 29. We also provide a
3 local origination channel which is channel 11 which
4 provides local programming of local interests, and also it
5 has a character generation for community bulletin board.

6 Q. That's the Cox network?

7 A. Basically.

8 Q. So all of your residential and commercial
9 subscribers in the city receive all of those things?

10 A. Yes, they do.

11 Q. Those things are not available from SMATV?

12 A. That's correct.

13 Q. They are not available from C-band or
14 KU-band?

15 A. Not directly, that's correct.

16 Q. So that is an example of something that's
17 more than what you provide to your customers than SMATV or
18 these other technologies provide. Do you agree with that?

19 A. Yes.

20 MR. RINGER: Your Honor, may I pull the
21 blackboard around?

22 THE COURT: Sure. Is there some chalk over
23 there?

24 MR. RINGER: Yes, sir.

25 BY MR. RINGER:

1 Q. I'm going to try to draw some pictures to
2 help us understand. All right. Now, I'm going to say
3 that's a satellite dish ^{antenna} ~~in town~~. All right. And you've
4 got I think you said seven of those out of your shop in
5 Virginia Beach?

6 A. Uh-huh.

7 Q. And up in the air, up in space there are
8 geosynchronous satellites up to 23,000 miles. These are
9 little satellites beaming these things down and you pick
10 them up on these dishes?

11 A. Uh-huh.

12 Q. Now, that's how you get your satellite
13 program?

14 A. That's correct.

15 Q. And then there is some electronic black
16 boxes attached to that signal process?

17 A. Uh-huh.

18 Q. Then for your local programming, any way
19 that you can get it, is just off the air. I'm going to
20 draw what we used to have on our roof up in West
21 Virginia. Does it look anything like that?

22 A. It looks pretty close to that.

23 Q. I'm going to call it a TV antenna, all
24 right?

25 A. Okay.

1 Q. And we'll agree that's where we get some of
2 your off the air or -- is it off air or on air?

3 A. What we call off air.

4 Q. And that includes things like WHRO and WTKR
5 and so forth?

6 A. Right.

7 Q. And so there is a black box attached to that
8 as well?

9 A. Uh-huh.

10 Q. And then there is some other sources like
11 microwave. And I'm going to draw a little thing and call
12 it a microwave antenna, okay?

13 A. Okay.

14 Q. So you get some things like that. And then
15 there is some technologies used to blend all that
16 together?

17 A. Uh-huh.

18 Q. And it goes out over your system and
19 eventually gets to this subscriber down here, correct?

20 A. Uh-huh.

21 Q. Now the subscriber doesn't have to have any
22 of this on his premises at all to enjoy your service?

23 A. That's correct.

24 Q. If he's got a cable-ready TV, all he needs
25 is a television set?

1 A. That's correct.

2 Q. And did you say that in addition he may need
3 a converter if he's got some pay services?

4 A. Yes. He may need a converter.

5 Q. He may need a converter, but all he
6 definitely needs is a television set?

7 A. Uh-huh.

8 Q. Now a person who has satellite service from
9 SMATV or C-band or KU-band has got to have a satellite
10 dish on his premises, correct?

11 A. Uh-huh.

12 Q. That's something that's not necessary to the
13 enjoyment of your services, but the satellite subscribers
14 have got to have that. And it's from a meter across to
15 somewhat bigger thing that some people may not think looks
16 very nice. Other people may love the way they look. But
17 whether you like it or don't like it it's got to be
18 present on the premises, correct?

19 A. That's correct.

20 Q. And, in addition, there has got to be some
21 electronic black boxes that attach to that in order to
22 receive the satellite signal, correct?

23 A. Yes.

24 Q. And if there is just a cable that goes from
25 that to the TV set, what the person watching television

1 can see is satellite programming, correct?

2 A. That's correct.

3 Q. But he can't see WTKR or WHRO unless he's
4 got something more what I've drawn here, correct?

5 A. He would have to have a home antenna or
6 rabbit ear or something.

7 Q. And that's not something that ComSat
8 provides to him. That's something he's got to provide
9 himself?

10 A. Yes. That's true.

11 Q. When you all were selling cable television
12 to people and they talked with you about what channels
13 they are going to watch, some of them take note of the
14 fact that among the things that you are going to charge
15 them to watch are WTKR and other local stations that they
16 can get for nothing if they don't have your service, don't
17 they?

18 A. Well, there is a kind of competing
19 discussion on that in the Congress right now.

20 Q. Well, I know. But I'm talking about today.

21 A. Basically, yes. We provide that as a
22 convenience to the customer. One is from the fact of
23 better reception.

24 Q. Well, that's what I'm coming to. One of the
25 things you tell your customers is you may get better

1 reception on the local channels if you have cable TV than
2 if you just have the TV antenna, correct?

3 A. On some channels though. On others we
4 degrade the signal.

5 Q. Well, I understand. So you may -- where I
6 live I can't pick up channel 27 very well, but --

7 MR. SEABOLT: Your Honor, I think there is a
8 limit to cross-examination as far as personal testimony.
9 If we could keep that to a minimum.

10 THE COURT: We'll keep out of the record the
11 poor reception that counsel has on 27.

12 BY MR. RINGER:

13 Q. But if there are people that have poor
14 reception on channel 27, one of the things you can tell
15 them is we can get you better reception probably, right?

16 A. Yes.

17 Q. Okay. And I guess I wanted to -- say this
18 guy over here that has the TV that's hooked up to your
19 system, he doesn't have any need of that area, correct?

20 A. Unless they want to watch the off-air
21 signals we don't carry.

22 Q. Right. Right. But just to watch the things
23 that you do carry, he doesn't have need of that?

24 A. That's correct.

25 Q. And if he did have it, there would have to

1 be some more electronics to mix your signal so he could
2 watch television or he would have to disconnect you and
3 hook up the one --

4 A. True. By law we are supposed to offer that
5 option though.

6 Q. Sure. I understand. But he doesn't have
7 to?

8 A. He doesn't have to have it.

9 Q. But the guy over here who's got the
10 satellite has to have a local antenna if he wants to get
11 the off-air signals?

12 A. That's correct.

13 Q. Now, let's talk about the SMATV service that
14 services the hotel or an apartment complex or a hospital.
15 That's going to be a facility in which there are some
16 number of television sets, some number of residential
17 units or hospital rooms or hotel rooms, whole bunch of
18 television sets in different places to be watched by
19 different people, correct?

20 A. Yes.

21 Q. And they've got to have -- if they have
22 SMATV -- this satellite dish on their premises just like
23 the residential customers do?

24 A. Yes.

25 Q. And if they want to watch local programming

1 as well, then they've got to have a local programming
2 antenna, correct?

3 A. Uh-huh.

4 Q. And they got to have some way to mix those
5 things together, correct?

6 A. Uh-huh.

7 Q. And then they've got to have a mechanism by
8 which the signal is generated to all of the units,
9 correct?

10 A. That's correct.

11 Q. Now, if we were to erase this satellite dish
12 up here and say that the hotel just had the local receiver
13 and the electronics and the wires or cable of which is
14 distributed -- that's a picture of a MATV system, isn't
15 it?

16 A. That's correct.

17 Q. That's a master antenna television, correct?

18 A. Uh-huh.

19 Q. As opposed to satellite master antenna
20 television, correct?

21 A. That's basically the difference.

22 Q. So the hotel that has the ^{internal} ~~international~~
23 distribution and the antenna, the master antenna, not the
24 satellite master antenna, but the master antenna, can
25 provide all of its customers with the local programming

1 without the intervention of satellite, correct?

2 A. Yes, they could.

3 Q. And without the intervention of Cox Cable
4 Company if they don't care about their reception, correct?

5 A. They should be able to do a decent job.

6 Q. And that's free to the hotel and to the
7 people who watch the TV unless the hotel charges them for
8 it; isn't that right?

9 A. Yes. Generally hotels don't charge for that
10 service.

11 Q. I agree with that.

12 A. Yes.

13 Q. Now, when you add the satellite and hook it
14 into this transmission system, then you've got a satellite
15 master antenna television system, correct?

16 A. Yes.

17 Q. Now, if it's a hotel that Cox services, you
18 don't need either one of these antennas; is that right?

19 A. That's correct.

20 Q. And you just got a wire that runs in from
21 over here where you have your plant. You know, it goes
22 through things, but it eventually gets to the hotel. Now,
23 there are going to have to be some electronic facilities
24 on there to boost that signal so it will show on 600
25 televisions or --

1 A. It would be the same as what he had to do
2 with the master or SMATV.

3 Q. Sure. But they don't any longer have to
4 have the satellite receiver or decoder or any of those
5 things on the premises?

6 A. That's correct.

7 Q. They just get that wire that comes in
8 through a hole in the wall or through the ground, correct?

9 A. Uh-huh.

10 Q. That's the physical difference between what
11 you provide and what SMATV or other satellite technologies
12 provide, correct?

13 A. Yes.

14 Q. And the programming difference is that your
15 customers receive local programming from you, but a
16 satellite -- a hotel with a satellite company doesn't
17 receive their local programming from the satellite. They
18 have to have a separate master antenna system, correct?

19 A. That's correct. They have to have off air.

20 Q. Now, you said to us -- you said to Mr.
21 Seabolt that you had prepared this Exhibit 3, this table
22 here?

23 A. Yes.

24 Q. And that you had gone over your commercial
25 accounts and your contracts in order to derive at this

1 information, correct?

2 A. Yes.

3 Q. And you know that I was out in your all's
4 shop the other day and you furnished me copies of all
5 those contracts. I tell you it gave me carpal tunnel
6 syndrome to carry them away, but I have them there. I
7 want to show you some examples of them. Do you recognize
8 that contract?

9 A. Yes.

10 Q. That's the contract that covers the service
11 that you provide out at DePaul Hospital; is that correct?

12 A. That's correct.

13 Q. Now, on the Exhibit 3 table that you
14 prepared, you have a line entry for DePaul Hospital, \$450
15 a month charged and \$31.50 a month tax. See that here,
16 third line from the bottom.

17 MR. RINGER: Your Honor, on the first page.

18 THE COURT: I've got it.

19 BY MR. RINGER:

20 Q. And that's based on the charge as set forth
21 in this contract of \$2.50 a unit times 180 units as I have
22 highlighted in the body of the contract. Do you agree
23 with that?

24 A. Yes.

25 Q. Did I give you the highlighted copy?

1 A. I can see the black mark.

2 Q. Well, I wasn't looking at that. I was
3 looking at the inside.

4 A. Okay. Yes.

5 Q. 180 units. And on the next page I think it
6 shows \$2.50 a unit per month, correct?

7 A. Uh-huh.

8 Q. So \$2.50 times 180 is \$450 a month. And
9 this line item here reflects what you, Cox, received
10 pursuant to that contract, correct?

11 A. Yes.

12 Q. Now, that contract, though it says DePaul
13 Hospital on the front of it, is a contract between Cox and
14 something called HT&T, Inc., correct?

15 A. Yes.

16 Q. Who is HT&T, Inc.?

17 A. They are a television rental company if I
18 remember correctly.

19 Q. The \$450 a month that you receive pursuant
20 to this contract, who pays that? Is it DePaul Hospital or
21 HT&T, Inc.?

22 A. I personally couldn't tell you.

23 Q. Who can?

24 A. Kent Hudgins may be able to. I know our
25 comptroller would be able to.

1 Q. Are either of the gentlemen here?

2 A. Kent Hudgins, yes.

3 Q. This figure does not reflect -- this figure
4 on the table which is the exhibit does not reflect any
5 receipt of payments from anyone who's a patient at DePaul
6 Hospital, does it? This is just what the hospital or HT&T
7 pays; is that correct?

8 A. Yes.

9 Q. There is a charge made to the patient in the
10 hospital room for watching this television?

11 A. I don't know about DePaul.

12 Q. Well, that's the one I'm asking you about.

13 A. No.

14 Q. This is the one that you have the contract
15 with?

16 A. Yes.

17 Q. Is Cox Cable receiving any money from a
18 patient in the hospital room?

19 A. Not that I know of.

20 Q. All right. Would I be right in thinking
21 that the whole of the revenues that flows to Cox Cable as
22 a result of having cable service at that hospital is this
23 \$450 a month?

24 A. Yes. That's what I would assume.

25 MR. RINGER: Your Honor, may I introduce

1 this as Defendant's Exhibit 1?

2 THE COURT: Any objection?

3 MR. SEABOLT: No objection.

4 THE COURT: All right. Defendant's Exhibit
5 Number 1.

6 (Defendant's Exhibit No. 1
7 was marked and received.)

8 BY MR. RINGER:

9 Q. I'm going to hand you another document which
10 I will tell you is one of the contracts that I got when I
11 was out in your shop. Do you agree with me that that's an
12 example of the form of contract that Cox Cable Hampton
13 Roads has with various hotels and motels throughout the
14 system as reflected on your table which is Exhibit 3?

15 A. Yes. This is one of those many standard
16 agreements.

17 Q. And at paragraph two of that agreement, what
18 you are selling them is quote, cable television service,
19 unquote, correct?

20 A. Yes.

21 Q. And if you look over on the next page --
22 it's paragraph three -- one of the things that you
23 contract to do with the hotel is to furnish them with an
24 internal distribution system; is that correct?

25 A. Yes.

1 Q. Now, an internal distribution system is
2 these wires that run through the hotel premises, these
3 cables?

4 A. Yes.

5 Q. And it's a routine thing for Cox and its
6 business when it makes a deal with a hotel or motel to
7 agree to go ahead and run the cable through the walls of
8 the building and right into the hotel rooms, correct?

9 A. In some cases.

10 Q. Well, that's what that language reflects.

11 A. In this particular contract, yes.

12 Q. Now I will tell you that if you look at --
13 well, let me ask you as well. I've highlighted this
14 paragraph down here which tells us that between you and
15 the Econo Lodge on Hampton Boulevard, you are contracting
16 to install that distribution system which will be paid for
17 over time by the hotel in installments, and at the end of
18 the term of the agreement it becomes hotel property. But
19 in the meantime it's yours; is that right?

20 A. That's correct.

21 Q. Now if you would look back at page I think
22 nine of that contract. That's the page that sets out what
23 the various fees are that the Econo Lodge is going to pay
24 you per unit per month, correct?

25 A. Yes.

1 Q. And it shows no charge for the installation
2 of the distribution system, correct?

3 A. That's correct.

4 Q. That's an indication that there was already
5 a distribution system there, don't you imagine?

6 A. Either that or a prior contract had paid it.

7 Q. Well, if you turn to the next page I think
8 you will see the prior contract with the same entity, am I
9 right?

10 A. Yes.

11 Q. And then it has the same provisions in it
12 about the physical plant. And the back of that one, it
13 does show that there was a charge made per unit per month
14 at the Econo Lodge in addition to everything else. They
15 were paying you \$41 a month for the installation of their
16 internal distribution system, correct?

17 A. That's correct.

18 MR. RINGER: All right. Your Honor, may I
19 introduce that as Defendant's Exhibit 2.

20 THE COURT: Any objection?

21 MR. SEABOLT: No objection.

22 THE COURT: All right. Defendant's Exhibit
23 Number 2.

24 (Defendant's Exhibit No. 2
25 was marked and received.)

1 BY MR. RINGER:

2 Q. Now, if I make a contract with one of these
3 brokers of satellite programming, I don't get with that
4 the internal distribution system?

5 A. Depends on the contract you signed.

6 Q. If they are willing to furnish it to you it
7 may be, but you don't know?

8 MR. SEABOLT: Your Honor, I'm going to
9 object. I think what we have here is a lecture on cable
10 television from Mr. Ringer and he's just asking the
11 witness to agree. This witness is very knowledgeable. If
12 he could be asked questions he can provide a lot of this
13 himself.

14 MR. RINGER: Your Honor, this is
15 cross-examination. The point of it is to get him to agree
16 --

17 THE COURT: I would overrule the objection.
18 I think that this is cross-examination. I'll let him
19 handle it the way he wants.

20 BY MR. RINGER:

21 Q. Mr. Coltrin, you reviewed the contracts that
22 I obtained by subpoena from the hotels that had the SMATV
23 service?

24 A. Yes, I have.

25 Q. And are you satisfied from a review of those

1 that those hotels were obliged to furnish their own
2 internal distribution and SMATV?

3 A. I'm trying to remember.

4 Q. Well, I --

5 A. I can remember specifically Granada was the
6 -- they were to supply the system.

7 Q. I'm talking about the hotels now.

8 A. The hotels?

9 Q. Well, the documents will show if you don't
10 remember.

11 A. Okay.

12 Q. If I were to represent to you, Mr. Coltrin,
13 that --

14 MR. SEABOLT: Your Honor, I'm going to have
15 to object to these representations. He has every
16 contract, and he is standing over there and going through
17 them one by one. This witness does not have them in front
18 of him. And I object to these summary characterizations.

19 MR. RINGER: May I ask the witness a
20 question? And if it's necessary to introduce them all I
21 will. But I'm trying to save the space in the Court's
22 file frankly.

23 THE COURT: All right. We've got a lot of
24 space. Don't worry about that. But I'll let you
25 proceed.

1 BY MR. RINGER:

2 Q. If I were to represent to you, Mr. Coltrin,
3 and by my count -- and I admit I may be off one or two --
4 but by my count I found in the contracts for hotels and
5 motels that you all tendered to me out there the other
6 day, contracts with 38 different hotels or motels, which
7 as this one does, this one that we've just introduced into
8 evidence, contemplate the installation of the internal
9 distribution system by Cox, about 38 of them, and I found
10 about six which appeared to contemplate that when Cox
11 Cable came on the premises the hotel already had its own
12 SMATV system; would you agree that I was approximately
13 correct?

14 MR. SEABOLT: Before the witness answers,
15 Your Honor, I understand that by counsel's explanation
16 he's trying to save time, but he's getting into a
17 characterization of the contractual provisions. These
18 documents are stipulated. If Mr. Ringer wants to argue
19 what they mean, I think that's fine. But he should not be
20 asking the witness to agree with his characterization of
21 contract provisions. So I object to the question.

22 THE COURT: Mr. Ringer.

23 MR. RINGER: Your Honor, I think it's a
24 proper question. I don't know what the witness's answer
25 is. If he can answer the question, then that's one

1 thing. If he can't, it's proper. But if the Court
2 requires it, I can introduce all of these.

3 THE COURT: Well, I don't require it. I'm
4 just wondering where you are going. I mean what is it
5 that you are trying to show?

6 MR. RINGER: I'm trying to show that in the
7 majority, the great majority, not universal but the great
8 majority of cases in which Cox provides service to the
9 hotel, it provides as well the service of going in through
10 the hotel and providing the distribution system. Now,
11 what I have represented to the witness about my count, if
12 I made an accounting error, is correct. Now I can
13 introduce them all into evidence and let the Court count
14 them. If the witness disagrees with me, that's what I'll
15 do.

16 THE COURT: If he can answer it. I'll let
17 him answer it.

18 THE WITNESS: I can't specifically say I've
19 counted the number.

20 BY MR. RINGER:

21 Q. Well, do you agree with me that in the great
22 majority of cases Cox contracts to furnish the internal
23 distribution system?

24 A. I wouldn't say I couldn't agree with that.

25 MR. RINGER: Your Honor, I have in my hand

1 the remaining 37 contracts which I think provide for that
2 as I have said. I don't have copies of them to hand
3 around, but I would like to introduce this in bulk as --

4 THE COURT: Hand it to Mr. Seabolt and see
5 if he --

6 MR. SEABOLT: Your Honor, these came from
7 us, and I will take counsel's representation that this is
8 a complete set. If he cares to introduce them and argue
9 from them, I think he's entitled to do that.

10 THE COURT: Do we want to list them as one
11 exhibit or 37 or whatever?

12 MR. RINGER: I think it would be easiest to
13 just call it one unless the Court feels otherwise.

14 THE COURT: That would be fine. That would
15 be a lot easier for my bookkeeping.

16 MR. RINGER: It's stipulated, as Mr. Seabolt
17 says, that these can come into evidence.

18 THE COURT: This group of hotel/motel cable
19 service and access agreements will be Defendant's Exhibit
20 Number 3.

21 (Defendant's Exhibit No. 3
22 was marked and received.)

23 MR. RINGER: Your Honor, to help the Court,
24 I would simply say to you that those were tendered to you
25 as having the common elements of being a contract, each of

1 which contemplates that Cox will provide the internal
2 distribution system for the hotel or motel. And I think
3 that in addition to the one I've already introduced, there
4 are a total of 38 of them or so.

5 THE COURT: All right. Unless it becomes
6 necessary, I won't count them at this point.

7 MR. RINGER: Your Honor, as Defendant's
8 Exhibit 4, I would hand the Court these six or seven
9 contracts between Cox and various local motels which in
10 the body of them, either the original contract or either
11 the present contract or one of its predecessors, it seems
12 to contemplate that there was an existing master antenna
13 television system at the hotel.

14 THE COURT: All right. Any objection to
15 Defendant's proposed Exhibit Number 4?

16 MR. SEABOLT: No, sir.

17 THE COURT: All right.

18 MR. RINGER: And I represent to the Court
19 that I think there are six of those, and one of them is
20 the Omni International Hotel that was mentioned.

21 THE COURT: All right. Defendant's Exhibit
22 Number 4.

23 (Defendant's Exhibit No. 4
24 was marked and received.)

25 BY MR. RINGER:

1 Q. Now, among the things that you treated being
2 as among your commercial accounts, Mr. Coltrin, are some
3 apartment complexes and condominiums?

4 A. Yes.

5 Q. I want to hand you this document and ask if
6 you recognize it as an example of the typical multiple
7 dwelling unit bulk cable service and access agreements?

8 A. Yes. I would say so.

9 Q. And I'd ask you to look again at the --
10 let's see. That one is with --

11 A. Sundance Apartments.

12 Q. Sundance Apartments.

13 A. The Sundance Association.

14 Q. Yes, I see. And that's a contract, as it
15 recites on page one, for the provision of cable television
16 service, correct?

17 A. Yes, it does.

18 Q. And if you turn over to the next page, that
19 contract as well provides that Cox will or has provided an
20 internal distribution system to the apartment complex,
21 correct?

22 A. Correct.

23 Q. Now, this form of contract differs from the
24 hotel contract in the sense that the internal distribution
25 system never becomes the property of the apartment owner;

1 is that right?

2 A. That's correct.

3 Q. So at the end of this agreement you can go
4 in there and rip out all of the cables or anything else
5 that you put in there?

6 A. That's correct. That's one of the options
7 we have.

8 Q. Yes. I understand. The contract entitles
9 you to do that?

10 A. Yes.

11 Q. And if I said to you that that contract was
12 typical of 13 different contracts that you all furnished
13 to me to cover multiple unit dwellings, would you think
14 that sounds about right?

15 A. I think there were 13.

16 Q. Okay.

17 MR. RINGER: Your Honor, we would tender
18 that as Defendant's Exhibit 5.

19 THE COURT: Any objection?

20 MR. SEABOLT: No objection.

21 THE COURT: All right. Defendant's Exhibit
22 Number 5.

23 (Defendant's Exhibit No. 5
24 was marked and received.)

25 BY MR. RINGER:

1 Q. I think you said that presently Cox Cable
2 has slightly over 50 thousand residential subscribers in
3 the City of Norfolk?

4 A. Yes. I think it was 50,700 something.

5 Q. Yes, sir. And do you know of your own
6 knowledge how many subscribers Cox Satellite has for
7 satellite service for residents in the City of Norfolk?

8 A. No, I do not.

9 Q. Do you know of your own knowledge how many
10 subscribers there are for the PRIMESTAR service that you
11 sell in the City of Norfolk?

12 A. No, I do not.

13 Q. Are there people here that are going to know
14 the answers to those questions?

15 A. No, there isn't. I attempted to run those
16 numbers and didn't get a computer report in time thinking
17 you might ask that question. They could be obtained,
18 though.

19 Q. Do you have any ball park idea?

20 A. I really wouldn't want to hazard a guess
21 without some kind of a reference.

22 Q. All right. You said to us in your answers
23 to interrogatories that you thought there were about a
24 hundred TVROs in the City of Norfolk, correct?

25 A. Yes. As of the 1986-87 walkout.

1 Q. Now, the total amount of the tax that the
2 documents show that you have collected from your
3 subscribers, the utility service tax --

4 A. Yes.

5 Q. -- from all subscribers in the City of
6 Norfolk and have been paid over to the City of Norfolk is
7 ^{2.2}
~~27.2~~ some million dollars, correct?

8 A. Yes.

9 Q. The total amount of the tax -- and that goes
10 back to the beginning, July 1, 1990 up through now,
11 correct?

12 A. That's correct.

13 Q. The total amount of tax that you have
14 collected just from the subscribers who are your
15 commercial accounts, the hotels, motels, apartments,
16 condominiums and hospital, the total amount of tax that
17 you have collected over all that period of time and paid
18 to the City of Norfolk is 48 thousand and some odd
19 dollars, correct?

20 A. Yes. That's what I recited earlier.

21 MR. SEABOLT: Your Honor, I'm not trying to
22 obstruct, but he's asking the witness to reaffirm things
23 that are stipulated and are in evidence at this point.
24 And this is an argument. I think it should wait.

25 MR. RINGER: I'm not going to ask him that

1 question again.

2 THE COURT: If you are not going to ask him,
3 all right. It's answered in Plaintiff's Exhibit 3?

4 MR. SEABOLT: Yes, it is.

5 BY MR. RINGER:

6 Q. There are all of that vast bulk of contracts
7 that I handed the Court covering hotels and motels that
8 you provide service to, correct?

9 A. Yes.

10 Q. And there are four hotels and motels in the
11 city that services SMATV, correct?

12 A. That are in the stipulation. I wouldn't say
13 that that might limit all of them.

14 Q. Well, you agree that when you answered my
15 discovery, those were the ones that --

16 A. Those are the ones we had knowledge of.

17 Q. And those are the ones that you have
18 knowledge of as we stand here today?

19 A. As far as I know, yes.

20 Q. You are the one that swore to answer those
21 interrogatories, aren't you?

22 A. Yes.

23 Q. So if I asked you in interrogatories how
24 many there are, you said there are these four?

25 A. Those four. That's the ones I have

1 knowledge of.

2 Q. That's the answer today?

3 A. Yes.

4 MR. SEABOLT: Your Honor, we have a
5 stipulation on that. It's not pertinent what was in the
6 interrogatories. It's now stipulated the facility in
7 Norfolk that have SMATV systems.

8 MR. RINGER: Your Honor, I think on
9 cross-examination I'm entitled to draw these comparisons.

10 THE COURT: All right. Let's move on. If
11 it's already stipulated it's not helpful to get it out
12 again. But anyway, go ahead.

13 BY MR. RINGER:

14 Q. And there are about 13 or so apartment
15 complexes or condominiums that you are serving as a
16 commercial account, correct?

17 A. Yes.

18 Q. And you have told Mr. Seabolt that you don't
19 know of any satellite SMATV or other satellite
20 technologies serving any apartment complexes or the like
21 in the City of Norfolk?

22 A. Within the City of Norfolk, that's correct.

23 Q. Of course it goes without saying, but we
24 best get it in the record. All of this cable that you all
25 have that goes all over the city is totally unnecessary to

1 the satellite reception that an SMATV provider has?

2 A. It's not required, that's right.

3 Q. Well, an SMATV provider with a dish on the
4 hotel premises wouldn't have a need to have miles of
5 cable?

6 A. No. I think that was the earlier
7 discussion, that we get it through the air and we send it
8 to them by cable.

9 Q. And they have no need such as a franchise
10 from the City?

11 A. That's correct.

12 MR. SEABOLT: Your Honor, I think that is a
13 legal issue that has been briefed previously, but I think
14 it's inappropriate to ask this witness whether a SMATV
15 vendor requires a franchise. That's not a proper question
16 for this witness.

17 MR. RINGER: If he knows it is.

18 MR. SEABOLT: If it's a legal question it
19 doesn't matter what his feeling is on that.

20 THE COURT: Well, I'm not sure that I
21 understand the question. You asked him whether they have
22 to have a franchise?

23 MR. RINGER: Yes, sir. He's testified that
24 he's become thoroughly knowledgeable about the business of
25 his competitors, and I'm just testing him on one of the

1 facets of the business.

2 THE COURT: He could also be knowledgeable
3 in his own business which is also a satellite as I
4 understand it.

5 MR. RINGER: Well, that's a good point.

6 THE COURT: I think that you could ask him
7 whether he has a franchise.

8 BY MR. RINGER:

9 Q. Well, the Cox Cable Hampton Roads has a
10 franchise with the City of Norfolk that permits the cable
11 company to use the streets and public rights of way in the
12 city; isn't that right?

13 A. That's correct. And that's the real
14 difference we are talking about here. SMATV, if they had
15 say a hotel complex on two sides of the street, they
16 legally could not connect those without a franchise.

17 Q. You don't know of the existence of such a
18 thing in the City of Norfolk, do you?

19 A. No, I do not.

20 Q. Well, my question to you, if you know that
21 much, then you know that the SMATV hotel that is all on
22 one side of the street and doesn't cross any public right
23 of way doesn't have to have a franchise like Cox Cable has
24 to have; isn't that correct?

25 A. That's correct.

1 Q. You told Mr. Seabolt that you knew of six
2 different vendors from whom C-band home satellite service
3 was available in Tidewater?

4 A. Uh-huh.

5 Q. And you named Dome and Virginia-Carolina and
6 MetroCam and some others that you couldn't remember the
7 name?

8 A. Yes.

9 Q. Now, those people are all in competition
10 with each other, aren't they?

11 A. That's correct.

12 Q. The only cable television company in Norfolk
13 is Cox Cable; isn't that right?

14 A. At this time, yes.

15 Q. I'm sure your franchise is nonexclusive?

16 A. Yes.

17 Q. You could have competition one day?

18 A. Yes, I could.

19 Q. But you don't have it now?

20 A. Not in this city.

21 Q. Now, I think you were talking about
22 PRIMESTAR when -- you told Mr. Seabolt that if someone
23 wanted to receive PRIMESTAR, they called up this telephone
24 number and then the satellite computer would talk to the
25 decoder down in that person's head end on the ground

1 station in order to tell the decoder down there that it
2 was entitled to receive the satellite programming that
3 PRIMESTAR provided, correct?

4 A. That's correct. Either PRIMESTAR, either
5 KU-band or C-band. It's really the same technologies.
6 Just different frequencies.

7 Q. Well, the company -- let me ask you about
8 PRIMESTAR. PRIMESTAR sells the right to receive their
9 signal. Is that a fair way to say it?

10 A. That's correct.

11 Q. You talked to Mr. Seabolt about a person who
12 had a satellite dish could call up PRIMESTAR and receive
13 that signal, correct?

14 A. That's correct.

15 Q. So it's up to that person to have his
16 satellite dish, correct?

17 A. Or he can buy the whole package.

18 Q. PRIMESTAR would sell him?

19 A. PRIMESTAR will sell him the dish, the
20 service, the works. Or you can take your KU-band dish and
21 just subscribe to the service.

22 Q. I think you told us you could buy one of
23 those satellites out at Price Club?

24 A. The C-band type, yes, not PRIMESTAR.

25 Q. Do you know whether you would pay Virginia

1 and Norfolk sales tax on that if you would purchase it out
2 there?

3 MR. SEABOLT: I object, Your Honor. This
4 witness is -- information on whether you pay sales tax at
5 Price Club is not possibly relevant.

6 THE COURT: I don't know that it is either.

7 MR. RINGER: It's a tax case and they are
8 trying to show --

9 THE COURT: I guess we would all pay taxes
10 on purchases we make in Virginia. I don't know if I
11 should take judicial notice of this.

12 MR. RINGER: I think you can.

13 THE COURT: It seems to me that seems to be
14 the law, if you buy something in Virginia you pay tax on
15 it.

16 BY MR. RINGER:

17 Q. Do you know whether -- if PRIMESTAR
18 furnishes the satellite dish to the customer there is a
19 sales tax paid on that transaction?

20 A. I don't specifically recall.

21 Q. All right.

22 MR. RINGER: Your Honor, may I have just a
23 moment?

24 THE COURT: Certainly.

25 MR. RINGER; Your Honor, I have no further

1 questions.

2 MR. SEABOLT: I have brief redirect if I
3 may, Your Honor.

4 THE COURT: All right, sir. Do you think it
5 will be brief? I don't want to keep him here until one
6 o'clock. He's been on the stand a long time.

7 MR. SEABOLT: I think five minutes, ten.

8 THE COURT: Perfect. That's fine.

9 REDIRECT EXAMINATION

10 BY MR. SEABOLT:

11 Q. Mr. Coltrin, why is it that Cox Cable
12 provides the local channels to its customers in addition
13 to these satellite services?

14 A. Actually, it was originally provided because
15 of law. If we go back to 1977-1978, there was a rule
16 called the must carry rule. And at that time we were
17 required to carry under certain carriage provisions
18 certain television signals. They have been built up as
19 our basic service, and Cox as an entity has continued even
20 though that must carry rule has currently been negated.
21 It's the general feel must carry rule has -- we have
22 continued carrying all those signals that were required in
23 the must carry rule with our service.

24 Q. Is it required by the franchise with the
25 City of Norfolk that you carry local channels?

1 A. It is no longer. It was under the original
2 franchise. FCC has now taken that out of their control.

3 Q. Does Cox's decision to continue to carry
4 those stations have anything to do with its perception of
5 customer demand for them?

6 A. That is the other reason why we carry the --
7 particularly the network stations, yes.

8 Q. Now, what's the total number of channels on
9 your lineup card? I don't have it in front of me. Do you
10 know that number offhand?

11 A. I think on that card there are 40 basic
12 channels. I think.

13 Q. And how many local stations do you carry?

14 A. I believe it's seven. I can count them real
15 quick if you like.

16 Q. That's okay. We'll all count on our own.

17 Now, following up on a question Mr. Ringer
18 asked you. To what extent does Cox suggest that its
19 service is advantageous because of clarity of signal? Is
20 that --

21 A. That's no long a marketing strategy. That
22 dropped out in the late '70s, early '80s. It used to use
23 the crystal clear reception. Right now our impetus is to
24 really provide a variety of programming that our customers
25 demand.

192 A

1 Q. And if you don't emphasize the off-air local
2 channels, what programming is it that you emphasize in
3 your marketing?

4 A. Probably emphasize the satellite channel
5 more than anything else.

6 Q. Why is that?

7 A. They are the most popular networks demanded
8 by our customer base.

9 Q. And would these be the same television
10 programming options that are available as you described
11 through C-band and KU-band?

12 A. Yes, they are.

13 Q. Now, talking about the C-band satellite, the
14 larger dishes. For a dish to be visible in someone's
15 backyard -- well, if a dish is visible in someone's
16 backyard, is that dish of any use to the owner without
17 programming from some source?

18 A. No, it would not.

19 Q. Are there some signals that can be received
20 physically without a decoder and without paying?

21 A. Yes. There are some that are not scrambled,
22 yes.

23 Q. What types of service are they?

24 A. Some of the educational programming that are
25 available. The Appalachian network work is not

192B

1 scrambled. There are some training, rescue training that
2 is not scrambled. Some religious programming that is not
3 scrambled.

4 Q. Is there any satellite programming from
5 Cox's channel lineup that is available to a C-band
6 satellite owner that is in an unscrambled form?

7 A. No.

8 Q. And earlier when you referred to the more
9 popular programming options that Cox makes available, the
10 satellite programming, is that also scrambled?

11 A. Yes, it is.

12 Q. So would a home dish owner or a C-band dish
13 owner have to go through a vendor, such as Cox Satellite,
14 in order to receive those signals?

15 A. Yes, they would.

16 Q. When Cox has a contract with say a hotel to
17 provide cable television service and it bills in the
18 distribution system, is there a separate charge in every
19 case for that, for building it, for building the system?

20 A. Not specifically, no.

21 Q. Does that vary by contract?

22 A. It's varied based upon the total contracts;
23 the deal per se that we cut with that particular hotel.

24 Q. And is the hospital that -- if any amount is
25 charged for the building of the system, that it could --

192C

1 MR. RINGER: I object to what may be
2 possible.

3 THE COURT: We don't want -- most anything
4 is possible I guess. I'll sustain the objection.

5 BY MR. SEABOLT:

6 Q. Is there a uniform charge to all hotels for
7 building their system?

8 A. No.

9 Q. Does it vary by contract?

10 A. Yes, it does.

11 Q. Is it something that is negotiated?

12 A. Yes, it is.

13 Q. Are there companies who build a SMATV system
14 and provide the works, including the dish and the internal
15 distribution system?

16 A. Yes.

17 Q. Do you know if any of the companies listed
18 on the stipulation and identified SMATV providers of such
19 a --

20 A. Spectradyne does definitely.

21 Q. You said they are in operation at the
22 Marriott?

23 A. Yes. They are.

24 Q. And that is a situation where Cox was a
25 competitor and lost out?

192D

1 A. Yes.

2 Q. Do you know whether Spectradyne built the
3 internal distribution system for the Marriott?

4 A. Yes, they did.

5 Q. You said that you don't have competition now
6 in the City of Norfolk. There are no other cable
7 television -- I forget. You talked extensively about your
8 competition. But there are no other cable television
9 services in Norfolk?

10 A. That's correct.

11 Q. In other jurisdictions that Cox Cable
12 services, such as Virginia Beach, is that -- first of all,
13 is Virginia Beach's franchise exclusive or nonexclusive?

14 A. It's also nonexclusive.

15 Q. Is there a competing television service in
16 that city?

17 A. Yes, there is.

18 Q. What's the name of that entity?

19 A. Resort Satellite Corporation.

20 Q. And where do they compete with you? All
21 over the city or just in a small part of the city?

22 A. They have a city-wide franchise with a
23 restrictive clause to only seven customers within what
24 they call the Virginia Beach borough.

25 Q. All right. Do you know of any barriers,

192E

1 specific barriers to prevent other cable television
2 companies from competing with you in the City of Norfolk?

3 A. No.

4 MR. SEABOLT: I have no further questions.
5 Thank you, Mr. Coltrin.

6 MR. RINGER: I have nothing further.

7 THE COURT: All right. Mr. Coltrin. Thank
8 you very much. You may step down.

9 Would not this be a convenient time to take
10 lunch?

11 MR. SEABOLT: I think so, Your Honor.

12 THE COURT: I would certainly think so. You
13 all have worked hard today. It's about 20 minutes after
14 12. Let's come back at 1:30. That will be easier to
15 remember.

16 MR. SEABOLT: Thank you so much.

17 THE COURT: I'll see you all at 1:30.

18 (Court recessed at 12:20 p.m.)

19 (Court reconvened at 1:30 p.m.)

20 THE COURT: All right, gentlemen. Thank for
21 being so prompt. All right. Your next witness.

22 MR. SEABOLT: Your Honor, I have no other
23 live witnesses to complete the plaintiff's evidence. I
24 would like to submit in bulk, because I will be arguing
25 from them, the City's answers to interrogatories. If I

192F

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF NORFOLK

COX CABLE HAMPTON ROADS, INC.,)	
)	
Plaintiff,)	
)	
v.)	AT LAW NO. 90-3155
)	
CITY OF NORFOLK, VIRGINIA,)	
)	
Defendant.)	

STIPULATION OF EVIDENCE

Plaintiff Cox Cable Hampton Roads, Inc. ("Cox" or "Cox Cable") and defendant City of Norfolk, Virginia ("City"), stipulate that the following statements accurately represent the facts at all times relevant to this action. This Stipulation does not preclude any party from presenting additional evidence at trial. All exhibits referred to in this Stipulation are true and accurate copies of the originals they purport to represent.

1. All exhibits introduced into evidence in this action prior to its appeal to the Virginia Supreme Court are admitted into evidence in this remand proceeding.

2. Documents received by counsel for the City in response to a subpoena duces tecum issued by the Court at the City's request on July 2, 1992, copies of which have been provided to counsel for Cox, are hereby deemed authentic and admissible in this proceeding without oral testimony.

3. Documents provided by Cox to counsel for the City on July 22, 1992, pertaining to agreements between Cox and various commercial establishments in the City of Norfolk, are hereby

deemed authentic and admissible in this proceeding without oral testimony.

4. The transcript of testimony in this matter from the hearing before this Court on September 10, 1990 is hereby incorporated into this remand proceeding; however, any references in such testimony to conditions existing at the time the testimony was presented is subject to amendment by the party offering such testimony or rebuttal by the opposing party.

5. As of the date of this hearing, Cox Cable offers its subscribers in the City of Norfolk the television programming set forth on its "Channel Lineup" card dated March 16, 1992, a copy of which is attached hereto as Stipulation Exhibit 1.

6. As of the date of this hearing, in the City of Norfolk, the facilities identified below had in operation a Satellite Master Antenna Television ("SMATV") system and ^{obtained} ~~purchased~~ from the vendors identified below the right to receive and retransmit within their facilities the television programming identified below:

<u>FACILITY</u>	<u>VENDOR</u>	<u>PROGRAMMING</u>
Marriott Waterside Hotel 235 E. Main Street Norfolk, VA 23510	Spectradyne, Inc. Dallas, TX	CNN, WTBS, ESPN, HBO, Disney Channel
Madison Hotel Granby Street Norfolk, VA 23510	Satellite Movie Company, Inc. Sioux Falls, SD	CNN, WTBS, ESPN
Sentara Leigh Memorial Hospital 830 Kempsville Road Norfolk, VA 23502	Granada Hospital Group Burlington, MA	CNN, ESPN, WTBS

Sentara Norfolk General
Hospital
600 Gresham Drive
Norfolk, VA 23507

Granada Hospital
Group
Burlington, MA

CNN, ESPN, WTBS

Sheraton Military Circle
870 N. Military Highway
Norfolk, VA 23502

Comsat Video
Enterprises
Memphis, TN

CNN, ESPN,
Showtime

Hotel Norfolk
700 Monticello Avenue
Norfolk, VA 23502

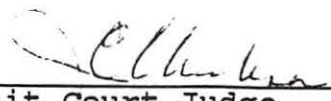
Comsat Video
Enterprises
Memphis, TN

Showtime, ESPN,
CNN

7. In addition to the programming identified in the preceding paragraph that is purchased from vendors, the facilities identified therein also receive via a Master Antenna Television System local broadcast television signals originating in the Hampton Roads area, including WAVY (Channel 10, NBC), WTKR (Channel 3, CBS) and WVEC (Channel 13, ABC), WHRO (Channel 15, PBS), WGNT (Channel 27, Independent) and WTVZ (Channel 33, FOX). The hotel and hospital facilities listed in paragraph 6 redistribute these signals via cable wire to individual rooms occupied by their guests or patients but do not charge their guests or patients for receipt of the television programming identified in paragraphs 6 and 7.

8. For the period July 1, 1990, through and including June 30, 1992, the amount of utility tax collected by Cox and paid to the City is as stated on the collections summary attached hereto as Stipulation Exhibit 2.

ENTER: / /

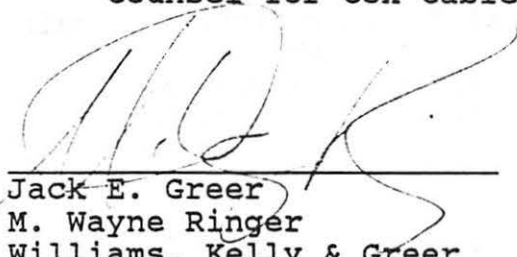

Circuit Court Judge

We ask for this:



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FOURTH JUDICIAL CIRCUIT OF VIRGINIA
CIRCUIT COURT OF THE CITY OF NORFOLK

JOHN E. CLARKSON
JUDGE

100 ST. PAUL'S BOULEVARD
NORFOLK, VIRGINIA 23510

September 18, 1992

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Re: Cox Cable Hampton Roads, Inc. v. City of Norfolk, Va.

Gentlemen:

I have now had an opportunity to review my notes, re-read your memorandum and the cases cited therein.

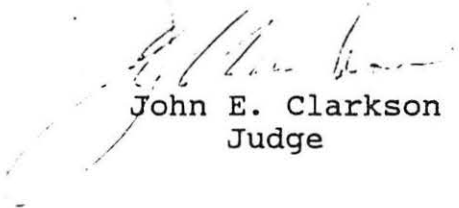
The issue at this point in these proceedings is, does the Norfolk City Cable Television utility service tax deprive plaintiff of equal protection of laws under the 14th Amendment.

It is clear that the City of Norfolk has the power to tax and traditionally and legally is given broad discretion as to classification in devising tax programs to fit their local needs and usages to achieve an equitable distribution of the tax burdens. To be equitable, all members of a class must be treated similarly. I find therefore, that electric, gas, water, telephone and cable television are utility services and as such are taxable by the City of Norfolk. The other television processes competing for the private dollar are not public utilities. I find no equal protection violation and therefore, hold the ordinance

constitutional. I would ask counsel for the City to prepare a sketch of an order and after it has been endorsed by counsel, returned to me for entry.

With best wishes and regards to all, I am

Respectfully,



John E. Clarkson
Judge

JEC:emp

(JEC)

839

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF NORFOLK

COX CABLE HAMPTON ROADS, INC.,

Plaintiff

v.

At Law No.: 90-3155

CITY OF NORFOLK, VIRGINIA,

L2931-92

Defendant

ORDER

On July 29, 1992, came the parties and, pursuant to the order of the Supreme Court of Virginia, the issues presented in Count IV of the Bill of Complaint were tried by the court without a jury. Upon consideration of the evidence and of the arguments of counsel at trial and in the pre-trial and post-trial memoranda, and for the reasons set forth in the court's opinion letter of September 18, 1992, the court holds that the City of Norfolk's utility service tax on cable television does not deny equal protection of laws to plaintiff Cox Cable Hampton Roads, Inc. Accordingly, the court finds its

JUDGMENT for the defendant City of Norfolk, and it is hereby ORDERED that the Bill of Complaint herein be, and the same hereby is, DISMISSED on the merits, to which action of the court plain-

54L

CH

J. Clark
Judge of Circuit Court

I ASK FOR THIS:

Alfred King, p.d.

Robert Sealock, p.g.

Sec. 24-211. Penalty for false statements.

Any person or persons who shall falsely claim an exemption or shall falsely give information on which an exemption is based shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not exceeding one thousand dollars (\$1,000.00) or confinement in jail not exceeding twelve (12) months, or both such fine and imprisonment. (Ord. No. 30,612, § 8, 5-27-80)

Sec. 24-212. Reserved.

ARTICLE V. TAX ON PURCHASE OF UTILITY SERVICES

<i>Total Income All Sources</i>	<i>Tax Exemption (percent)</i>
\$ 0,000.00—\$ 9,000.00	100
9,001.00— 10,000.00	90
10,001.00— 11,000.00	80
11,001.00— 12,000.00	70
12,001.00— 13,000.00	60
13,001.00— 14,000.00	50
14,001.00— 15,000.00	40
15,001.00— 16,000.00	30
16,001.00— 17,000.00	20
17,001.00— 18,000.00	10

(Ord. No. 30,612, § 5, 5-27-80; Ord. No. 32,478, § 1, 7-26-83; Ord. No. 35,061, § 1, 5-24-88)

(a) *Generally.* Certain words and phrases, when used in this article, shall have, for the purposes of this article, the meanings ascribed to them by this section, except where the context clearly indicates a different meaning.

(b) **Agribusiness.** The word "agribusiness" shall include every purchaser who engages in growing produce for human consumption where substantially all of the produce is grown for sale at wholesale.

(c) *Purchaser.* The word "purchaser" shall include every person who purchases a utility service.

(d) *Seller.* The word "seller" shall include every person, whether a public service corporation or the City of Norfolk or not, who sells or furnishes a utility service.

(a) *Utility service.* The phrase "utility service" shall include local exchange telephone service, electricity service, gas service and water service furnished in the corporate limits of the city.

(5) **Wholesale.** The word "wholesale" shall include the selling of goods in gross to retail dealers, and not by the small quantity or parcel to consumers thereof. (Ord. No. 25,986, § 1, 5-25-71; Ord. No. 32,710, § 1, 1-3-84)

Changes in respect to income, financial worth, ownership of property or other factors occurring during the taxable year for which the affidavit mentioned in section 24-208 above is filed and having the effect of exceeding or violating the limitations and/or conditions provided in this section [division] shall nullify any relief of real estate tax liability for the then current taxable year and the taxable year immediately following. (Ord. No. 30,612, § 6, 5-27-80)

Supp. No. 26

(a) For each and every fiscal year beginning July first and ending June thirtieth of each such year, unless otherwise changed by the council, there is

By Philip R. Japen
Office of the City Attorney

NORFOLK, VIRGINIA

By Richard B. Ammon
DEPT. Development**ORDINANCE No. 35,664**

AN ORDINANCE GRANTING A FRANCHISE TO COX CABLE HAMPTON ROADS, INC. TO CONSTRUCT, OPERATE AND MAINTAIN A CABLE TELEVISION SYSTEM IN THE CITY OF NORFOLK; SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OF THE FRANCHISE; PROVIDING FOR REGULATION AND USE OF THE SYSTEM.

- - -

BE IT ORDAINED by the Council of the City of Norfolk:

Section 1:- Statement of Intent and Purpose.

1.01 Statement of Intent and Purpose. The City intends, by the adoption of this Franchise, to bring about the development and operation of a cable television system. The development and operation of a cable television system can contribute significantly to meeting the communications needs and desires of many individuals, associations and institutions.

1.02 Award Fees and Franchising Costs. Grantee shall reimburse the City for all reasonable costs, not to exceed \$25,000.00 including attorney's fees and publication fees, expended in the soliciting, processing and awarding of the Franchise. Payment shall be made by Grantee upon presentation of proper invoices substantiating the cost at the time of acceptance of this Franchise as set forth in Section 15.02 hereof.

Section 2:- Short Title. This ordinance shall be known and cited as the "City of Norfolk Cable Television Franchise Ordinance". Within this document it shall also be referred to as "this Franchise" or "the Franchise".

Section 3:- Definitions. For the purpose of this Franchise, the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future tense words in the plural number include the singular number and words in the singular number include the plural number. The words "shall" and "will" are mandatory and "may" is permissive. Words not defined shall be given their common and ordinary meaning.

3.01 "Basic Service" means any level of service which includes the retransmission of local television broadcast signals and the access channels required herein.

3.02 "Cable Mile" means a mile of cable bearing strand.

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3.03 "Channel" means a frequency band of some width which is capable of carrying either a standard video signal, a number of audio, digital or other non-video signals, or some combination of such signals.

3.04 "Class IV Channel" means a signaling path provided by the System to transmit signals to any type from a subscriber terminal to another point in the System.

3.05 "City" means the City of Norfolk, a municipal corporation in the State of Virginia, its governing body, its delegations, officers, agents, employees and representatives.

3.06 "Commercial Entity" means any association, firm, corporation, partnership, or other legally recognized entity whether for profit or not for profit located in the City.

3.07 "Converter" means an electronic device which converts signals to a frequency not susceptible to interference within the television receiver of a subscriber and by an appropriate channel selector also permits a subscriber to view all Basic Service signals delivered at designated converter dial locations.

3.08 "Drop" means the cable that connects the subscriber terminal to the nearest feeder cable of the System.

3.09 "FCC" means the Federal Communications Commission or a designated representative.

3.10 "Grantee" means Cox Cable Hampton Roads, Inc., its agents, employees, lawful successors, transferees or assignees.

3.11 "Gross Revenues" means all earnings, receipts, fees, commissions, and income whatsoever received by Grantee arising from or growing out of the conduct of business from all sources of operation of the System within the City including, but not limited to, Basic Service monthly fees, Pay Television fees, installation and reconnection fees, leased channel fees, converter rentals, interest on subscriber deposits (unless returned to the subscriber), and local advertising revenues and interactive (non-video) services except that this term does not include any sales, excise or other taxes or fees collected by Grantee on behalf of any state, city, or other governmental unit, bad debt, refunds to subscribers and copyright fees.

3.12 "Installation" means the act of connecting the System from the feeder cable to the subscriber terminal so that cable service may be received by the subscriber.

3.13 "Pay Television" means the delivery over the System of per-channel or per-program audio-visual signals to subscribers for a fee or charge, in addition to the charge for Basic Service.

3.14 "Person" means any individual residing in the City.

3.15 "Public Property" means any real property owned by any governmental unit other than a Street.

3.16 "Street" means the surface of and the space above and below any street, road, highway, freeway, lane, path, way, alley, court, sidewalk, boulevard, parkway, drive or any easement or right-of-way now or hereafter held by the City which shall, within its proper use and meaning, in the sole opinion of the City, entitle Grantee to the use thereof for the purpose of installing or transmitting over poles, wires, cables, conductors, ducts conduits, vaults, manholes, amplifiers, appliances, attachments and other property as may be ordinarily necessary and pertinent to a System.

3.17 "Subscriber" means any Person or Commercial Entity who subscribes to a service provided by Grantee by means of the System.

3.18 "System" means a facility consisting of a set of closed transmission paths and associated signal generation, reception and control equipment that is designed to provide cable television services and interactive (non-video) services which includes video programming and which is provided to multiple subscribers within the City, but such term does not include (A) a facility that serves only to retransmit the television signals of one (1) or more television broadcast stations; (B) a facility that serves only subscribers in one (1) or more multiple unit dwellings under common ownership, control or management, unless such facility or facilities uses any public right-of-way; (C) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Cable Communications Policy Act of 1984, except that such facility shall be considered a System to the extent such facility is used in the transmission of video programming directly to subscribers; or (D) any facilities of any electric utility used solely for operating its electric utility systems.

3.19 "System Upgrade" Refer to Exhibit A.

3.20 "Outage" means at least five (5) subscribers served by any common active component experience a total interruption of cable service.

Section 4:- Grant of Authority and General Provisions.

4.01 Grant of Franchise. This Franchise is granted pursuant to the terms and conditions herein subject to all applicable provisions of local, state and federal laws, rules and regulations.

4.02 Criteria of Selection. The Grantee's technical ability, financial condition and legal qualifications and ability to meet the future cable-related community needs and interests, taking into account the cost of meeting such needs and interests, were considered and approved by the City in full public proceedings which afforded reasonable notice and a reasonable opportunity to be heard.

4.03 Authority for Use of Streets.

A. For the purpose of constructing, operating and maintaining a System in the City, Grantee may erect, install, construct, repair, replace, relocate, reconstruct, remove and retain in, on, over, under, upon, across and along the Streets within the City such lines, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, pedestals, attachments, and other property and equipment as are necessary and appurtenant to the operation of the System, provided that all applicable permits are applied for and granted, all fees paid and all other City codes and ordinances are otherwise complied with.

B. Prior to any significant construction or alteration of cable or strand, Grantee shall, in each case, file plans with the City and receive approval of such plans which approval shall not be unreasonably withheld.

C. Grantee shall construct and maintain the System so as not to interfere unreasonably with other uses of Streets. Grantee shall make use of existing poles and other facilities available to Grantee. Except in an emergency, Grantee shall use reasonable efforts to notify all residents affected by proposed work prior to commencement of that work.

D. Notwithstanding the above grant to use Streets, no Street shall be used by Grantee if the City, in its reasonable opinion, determines that such use is inconsistent with the terms, conditions or provisions by which such Street was created or dedicated, or presently used.

4.04 Franchise Term. This Franchise shall commence upon acceptance by Grantee as defined herein and shall expire fifteen (15) years thereafter unless renewed, revoked or terminated sooner as herein provided.

4.05 Area Covered. This Franchise is granted for the territorial boundary of the City which shall include any new territory which shall become part of the City. Grantee shall provide service upon the same terms and conditions to any Person within the City requesting service provided, however, if any annexed area is served by another cable operator at the time of annexation, Grantee shall not be obligated to provide service to that area.

4.06 Police Powers. Grantee's rights are subject to the police powers of the City to adopt and enforce ordinances necessary to the health, safety and welfare of the public. Grantee shall comply with all applicable general laws and ordinance enacted by the City pursuant to that power.

4.07 Use of Grantee Facilities. The City shall have the right to install and maintain, free of charge, upon Grantee's poles and within the underground pipes and conduits of Grantee, any wires and fixtures desired by the City to the extent that such installation and maintenance does not interfere with the existing current and future operations of Grantee. If Grantee gives the City sixty (60) days notice of any interference, the City will comply with Grantee's request to correct the interference.

4.08 Written Notice. All notices, reports or demands required to be given to the City and to the Grantee in writing under this Franchise shall be deemed to be given when delivered personally to the person designated below, or when seventy-two (72) hours have elapsed after it is deposited in the United States mail in a sealed envelope, with registered or certified mail postage prepaid thereon, or on the next addressed business day if sent by express mail or overnight air courier addressed to the party to which notice is being given, as follows:

If to City: City Manager
11th Floor, City Hall Building
Norfolk, VA 23501

If to Grantee: General Manager
Cox Cable Hampton Road, Inc.
5200 Cleveland Street
Virginia Beach, VA 23462.

Such addresses may be changed by either party upon notice to the other party as provided in this section.

4.09 Franchise Nonexclusive. The Franchise granted herein is non-exclusive. The City specifically reserves the right to grant, at any time, additional Franchises on similar terms and conditions for a System in accordance with state and federal law.

Section 5:- System Design Provisions.

5.01 Subscriber Network. Refer to Response to City of Norfolk, Virginia RFP Section III C, Items 2, 3 and 4.

5.02 Drops to Public Buildings. Refer to Response to City of Norfolk, Virginia RFP Section III C, Item 9.

5.03 Provision of Service. After service has been established by activating trunk and distribution cable for any area: Grantee shall provide service to any Person in that area within twenty-one (21) days from the date of request except under conditions beyond Grantee's reasonable control, at Grantee's then current installation fee; and Grantee will provide service to any Commercial Entity in that area upon terms negotiated between Grantee and the Commercial Entity.

5.04 Technical Standards. The technical standards set forth in Exhibit B shall be used to measure, monitor and otherwise evaluate System performance. Refer to Exhibit B and also Response to City of Norfolk, Virginia RFP Section III C, Item 7; (a-j).

5.05 Testing. The City may at any time require tests, full or partial repeat tests, different test procedures or tests involving a specific subscriber's drop. Request for such tests shall be made on the basis of complaints received, other evidence indicating an unresolved controversy or significant non-compliance with this ordinance. Such tests shall be limited to the particular matter in controversy. The City shall endeavor to so arrange its request for such tests so as to minimize hardship or inconvenience to Grantee or to the subscribers. The test shall be conducted by a qualified engineer selected jointly by the City and the Grantee. The costs of testing necessitated by complaints received or other evidence of unresolved controversy shall be paid by the City if Grantee is found not to be at fault and shall be paid by Grantee if Grantee is found to be at fault.

5.06 Emergency Requirements.

A. Refer to description in Response to City of Norfolk, Virginia RFP Section III C, Item 13.

B. In the case of emergency or disaster, Grantee shall, upon request of the City, make available its facilities to the City for emergency use at no cost to the City. The Grantee shall also make available to the City during the period of the emergency and without cost to the City such personnel as may be required to operate the facilities in order that the Mayor or his designated representative may communicate with the citizens of the City.

5.07 Current Testing Procedures. Refer to Response to City of Norfolk, Virginia RFP Section III C, Item 10.

Section 6:- Service Provisions.

6.01 Basic Service. Grantee shall provide broad categories of programming on Basic Service in addition to any access channel(s) required herein. Grantee shall maintain, a diverse mix, quality and level of Basic Service during the term of this Franchise. Attached as Exhibit (C) for informational purposes only is Grantee present channel line-up. Grantee reserves the right to add, delete or modify.

6.02 Pay Television Services. Initially Grantee will provide:

- o AMC
- o Viewer's Choice
- o Home Box Office
- o Cinemax
- o Showtime
- o The Disney Channel

Grantee reserves the right to make changes.

6.03 Public, Educational and Government Access.

A. Grantee shall make available to the City and provide to each of its subscribers who receive all, or any part of the total services offered on the System, reception on at least one specially designated noncommercial public access channel available for use by the general public on a first come, non-discriminatory basis; one specially designated access channel for use by local educational authorities; and one specially designated access channel available for local government use. The use of these channels shall be under the supervision and control of the City or Norfolk Public Schools. Notwithstanding anything to the contrary, Grantee shall be permitted to use any specially designated access channel for the provision of other services if such channel is not being used for the purposes designated. Subject to the discretion of the City, the City may develop rules and procedures under which the Grantee's permitted use of the public access channel shall cease.

B. Whenever the specially designated noncommercial public access channel, the specially designated education access channel and the specially designated local government access channel are all in uninterrupted video program use from 8:00 AM to 12:00 PM for six (6) weeks running, and there is demand for use of an additional channel for the same purpose, Grantee shall then have ninety (90) days in which to provide one (1) new specially designated access channel for the same purposes.

C. The City shall establish rules pertaining to the administration of the specially designated noncommercial public access channel, specially designated government channel and the specially designated educational channel.

D. Grantee shall establish and maintain a studio facility capable of producing live color programming and at least one-color origination van equipped with two (2) color cameras.

E. Upon request of the City, Grantee shall train a City employee for TV program origination or coordination at City expense limited to Grantee's cost.

F. In response to City's RFP requirement, Grantee will provide the City a one-time cash grant in the amount of \$2.50 per subscriber located within the Franchise area to be utilized by the City to provide equipment, personnel, or facilities to facilitate public, educational, and government access programming. The cash grant will be paid on or before December 31, 1989. The cash grant will be based upon the number of subscribers located within the Franchise area on September 22, 1989.

G. Grantee shall provide at no cost to the City production, technical and administrative consultation assistance to develop educational and government programming.

H. Grantee agrees to provide program origination at the remote locations noted in Response to City of Norfolk RFP Section III C Item 8. Upon designation by the City within sixty (60) days of the effective date of this Ordinance of a remote location which is an alternative to one of the listed locations, Grantee will provide the necessary engineering and construction to include that location for program origination in its System Upgrade at no cost to the City. If the designation is made after sixty (60) days after the effective date of this Ordinance, Grantee will provide the necessary engineering and construction to include that location for program origination and the City shall reimburse Grantee for Grantee's cost for such engineering and construction.

6.04 Local Origination. Grantee will continue to provide local origination programming as long as economically feasible commensurate with community needs.

6.05 Service to Public Buildings. Refer to Response to City of Norfolk, Virginia RFP Section III C, Item 9.

Section 7:- Construction Provisions.

7.01 Completion of Construction. Grantee shall give notice to the City at such time as Grantee has completed the System Upgrade. The notice shall include a certification from an officer of Grantee that the System Upgrade as set forth in Exhibit A has,

in all respects, been completed and that the System is in compliance with all local, state and national codes and standards.

7.02 Construction Standards.

A. All construction practices shall be in accordance with all applicable sections of the Occupational Safety and Health Administration as well as all state and local codes where applicable.

B. All installation of electronic equipment shall be of a permanent nature, durable and installed in accordance with the provisions of the National Electrical Safety Code (National Bureau of Standards) and National Electrical Code (National Bureau of Fire Underwriters) as amended.

C. Antenna supporting structures (towers) shall be designed for the proper loading as specified in the Electronics Industry Association's R.S 3-22A Specifications.

D. Antenna supporting structures (towers) shall be painted, lighted, erected and maintained in accordance with all applicable rules and regulations of the Federal Aviation Administration and all other applicable state or local codes and regulations.

E. All of Grantee's plant and equipment, including but not limited to the antenna site, headend and distribution system, towers, house connections, structures, poles, wire, cable coaxial cable, fixtures and appurtenances shall be installed, located, erected, constructed, reconstructed, replaced, removed, repaired, maintained and operated in accordance with good engineering practices, performed by experienced maintenance and construction personnel so as not to endanger or interfere with improvements the City may deem appropriate to make and also to preserve and protect plants and tree improvements in the tree belt and right-of-way or to interfere in any manner with the rights of any property owner, or to unnecessarily hinder or obstruct pedestrian or vehicular traffic.

F. Grantee shall at all times employ ordinary care and shall install and maintain in use commonly accepted methods and devices preventing failures and accidents which are likely to cause damage, injury or nuisance to the public.

7.03 Construction Codes and Permits.

A. Grantee shall obtain all necessary permits from the City before commencing any construction or extension of the System, including the opening or disturbance of any Street, or private or public property within the City. Grantee shall strictly adhere to all building and zoning codes currently or hereafter

applicable to construction, operation or maintenance of the System in the City and give due consideration at all times to the aesthetics of the property.

B. The City shall have the right to inspect all construction or installation work performed pursuant to the provisions of this Franchise and to make such tests as it shall find necessary to ensure compliance with the terms of the Franchise and applicable provisions of local, state and federal law.

7.04 Preservation and Repair of Streets and Property; Trees. Grantee shall comply with all ordinances of the City pertaining to trees and other vegetation. Any and all streets or public property or private property, which are disturbed or damaged during the construction, repair, replacement, relocation, operation, maintenance or reconstruction of the System shall be promptly repaired by Grantee, at its expense, to a condition as good as that prevailing prior to Grantee's work, as reasonably approved by the City. Any damage caused to the property of building owners or users or any other person as a result of any action or omission by Grantee shall be promptly and fully repaired by Grantee.

7.05 Use of Existing Poles. No poles, conduits, or other wire-holding structures shall be erected or installed by Grantee on City property without prior approval of the City with regard to the location, height, type and other pertinent aspects, such approval not to be unreasonably withheld. The City may require Grantee to provide written justification should the use of such poles and other wire-holding be solely for the purpose of supporting Grantee's cable and wires. The location of any pole, conduit or wire-holding structure of the Grantee on City property shall not be a vested right and such poles, conduits or other structures shall be removed or modified by Grantee at its own expense upon such reasonable request of the City.

7.06 Undergrounding of Cable.

A. Except as hereinafter provided, in all areas of the City where the cables, wires and other like facilities of a public utility or public utility district are placed underground, Grantee shall construct and install its cables, wires and other facilities underground. Amplifier boxes and pedestal mounted terminal boxes may be placed above ground if existing technology reasonably requires, but shall be of such size and design to conform with standard industry practices.

B. In any area of the City where there are certain cables, wires and other like facilities of a public utility or public utility district underground and at least one operable cable, wire or like facility of a public utility or public utility district suspended above the ground from poles, Grantee may

construct and install its cables, wires and other facilities from the same pole, provided should the remaining cables, wires and other like facilities of a public utility or public utility district be relocated underground, Grantee agrees to relocate its cables, wires and other like facilities underground.

C. Grantee shall place cable underground in newly platted areas in concert with other utilities unless this requirement is waived by City.

7.07 Reservation of Street Rights.

A. Nothing in this Franchise shall be construed to prevent the City from constructing, maintaining, repairing or relocating sewers; grading, paving, maintaining, repairing, relocating and/or altering any Street; constructing, laying down, repairing, maintaining or relocating any water mains; or constructing, maintaining, relocating, or repairing any sidewalk or other public work.

B. All such work shall be done, insofar as practicable in such manner as not to obstruct, injure or prevent the free use and operation of the poles, wires, conduits, conductors, pipes or appurtenances of Grantee.

C. If any such property of Grantee shall interfere with the construction or relocation, maintenance or repair of any Street or public improvement, whether it be construction, repair, maintenance, removal or relocation of sewer, public sidewalk, or water main, Street or any other public improvement, forty-five (45) days notice shall be given to Grantee by the City and all such poles, wires, conduits or other appliances and facilities shall be removed or replaced by Grantee in such manner as shall be directed by the City so that the same shall not interfere with the said public work of the City, as determined by the City, and such removal or replacement shall be at the shared expense of the Grantee and the City.

D. Nothing contained in this Franchise shall relieve any person from liability arising out of the failure to exercise reasonable care to avoid injuring Grantee's facilities while performing any work connected with grading, regarding, or changing the line of any Street or public place or with the construction or reconstruction of any sewer or water system.

7.08 Tree Ordinance. Grantee shall comply with all local ordinances pertaining to trees and vegetation.

7.09 Street Vacation or Abandonment. In the event any Street or portion thereof used by Grantee shall be vacated by the City or the use thereof discontinued by Grantee, during the term of this Franchise, Grantee shall not be obligated to remove its

facilities therefrom unless specifically requested by the City to do so, and on the removal thereof Grantee shall, at its own expense, restore, repair or reconstruct the Street area where such removal has occurred, and place the Street area where such removal has occurred, to a condition similar to that existing before such removal took place. In the event of failure, neglect or refusal of Grantee, after ninety (90) days notice by the City to remove the facilities or to repair, restore, reconstruct, improve or maintain such Street portion, the City may do such work or cause it to be done, and the cost thereof as found and declared by the City shall be paid by Grantee as directed by the City and collection may be made by any available remedy.

7.10 Movement of Facilities. In the event it is necessary temporarily to move or remove any of Grantee's wires, cables, poles, or other facilities placed pursuant to this Franchise, in order to lawfully move a large object, vehicle, building or other structure over the streets of the City, upon five (5) days notice by the City to Grantee, Grantee shall move the facilities, at the expense of the person requesting the removal, payment being made in advance. There shall be no charge to the City for such removal. Any service disruption provisions of this Franchise shall not apply in the event that the removal of Grantee's wires, cables, poles or other facilities results in temporary service disruptions.

Section 8:- Operation and Administration Provisions.

8.01 Financial Books and Records. The Grantee shall keep complete and accurate books of account and financial records of gross revenues attributable to its cable television operations in the City. The City and its agents and representatives shall have the right, upon two weeks written notice, to arrange for and conduct an inspection at any time during normal business hours, of all books and records pertaining to City's rights to administer this Franchise; any maps; plans; financial statements which the City or its agents and representatives determine are necessary to verify gross revenues; service complaint logs; performance test results; record of requests for service; and other like materials of Grantee which relate to customer service, construction related requirements and other items related to the City's administration of this franchise. Grantee shall prepare and furnish to the City such additional reports which are related to the City's rights to administer this franchise.

8.02 Annual Reports. Grantee shall file with the City, a copy of the following information, within ninety (90) days of the end of its fiscal year, including the year in which the Franchise becomes effective.

A. A summary of the previous year's activities in the development of the System, including, but not limited to, services begun or discontinued during the reported year.

B. Financial statements verifying total Gross Revenue and the total number of subscribers prepared in accordance with generally accepted accounting principles. In addition to the aforesaid year-end statements, the Grantee shall provide the City with a comfort letter from an independent certified public accountant verifying Gross Revenues.

C. A summary setting forth the results of an annual subscriber survey, if any.

D. A current copy of the subscriber service agreement.

E. A current list of names and addresses of each principal. For the purposes of this requirement the term "principal" means any person, firm, corporation, partnership or joint venture or other entity who or which owns or controls five percent (5%) or more of the voting stock (or any equivalent interest of a partnership or joint venture) of Grantee.

F. A summary of the complaints received during the reported year, by category, and a discussion of any unresolved complaint.

G. The results of any testing pursuant to Section 5.07 thereof. Such tests results shall be certified by an officer of Grantee.

8.03 Confidentiality. At the request of the Grantee, the City shall keep any information provided pursuant to Section 8 of this Franchise confidential.

Section 9:- Consumer Protection Provisions.

9.01 Basic Service Rate Changes.

A. Initial Rates. The initial rates and charges for Basic Service and Pay Television are set forth in Exhibit D. Grantee shall maintain on file with the City at all times a current schedule of all rates and changes.

B. Rate Increases. The City reserves the right to regulate rate increases for Basic Service to the extent not prohibited by federal or state law, subject to the following:

1. During any calendar year, Grantee may raise the rate for Basic Service by five percent (5%) or any amount equal to the prior years' increase in the Consumer Price Index for All

Urban Consumers (CPI-U) published by the United States Department of Labor, whichever is greater.

2. Should Grantee desire to raise the rate for Basic Service in excess of the amount allowed under 1, above, Grantee must apply to the City for approval by filing a proposed rate schedule with the City, which application shall include any justification(s) therefore. Within thirty (30) days of the filing of the rate schedule, the City shall schedule a public hearing on the requested rate increase, at which time all parties desiring to be heard, including Grantee, shall be afforded an opportunity to be heard. Within thirty (30) days of the public hearing, the City shall either approve the rate increase or notify Grantee in writing of its decision to deny the rate increase. The criteria for the City's decision shall be the establishment of rates which are "fair and reasonable" to both the Grantee and its subscribers, allowing for a reasonable rate of return for Grantee. Should the City fail to act on an application for a proposed rate increase within sixty (60) days of the filing of the application, the proposed rate increase may automatically go into effect.

9.02 Rate Changes. Prior to implementing any rate increase for Basic Service, Grantee shall give the following notice:

A. At least twenty-five (25) days advance written notice to the City; and

B. At least twenty-five (25) days advance written notice to subscribers of Basic Service.

9.03 Disconnection or Downgrading of Service.

A. Grantee may impose a charge reasonably related to the cost incurred for a downgrade of service.

B. If a subscriber requests disconnection from service prior to the effective date of an increase in rates, the subscriber shall not be charged the increased rate if Grantee fails to disconnect service prior to the effective date. Any subscriber who has paid in advance for the next billing period and who requests disconnection from service shall receive a prorated refund of any amounts paid in advance.

9.04 Subscriber Complaint Practices.

A. Grantee shall maintain an office within the City which shall be open during all usual business hours. Grantee shall have a publicly listed toll-free telephone number and be so operated as to receive subscriber complaints and requests on a twenty-four (24) hour-a-day, seven (7) days-a-week basis. A written log available for the City inspection shall be maintained

listing complaints and their dispositions, and will be maintained for a rolling period of six (6) months.

B. Grantee shall render efficient service, make repairs promptly and interrupt service only for good cause and for the shortest time possible, and insofar as possible, during periods of minimum use of the System. A written log available for City inspection shall be maintained for service interruptions, and will be maintained for a rolling period of six (6) months.

C. Grantee shall maintain adequate telephone lines and personnel to respond in a timely manner to schedule service calls and answer subscriber complaints or inquiries as required by this Section 9.04. The hours of the customer service department shall, at a minimum, be as set forth in Exhibit E.

D. Subscriber requests for maintenance or repairs Monday through Friday, shall be performed whenever possible by the end of the next day.

E. Any service call to a Subscriber's premises to perform any repair or maintenance work related to Grantee installed equipment necessary to receive service shall be performed at no charge except Grantee may charge according to its actual cost for time and materials for any service call which was necessitated by a negligent or wrongful act of the Subscriber.

F. If Grantee fails to correct a confirmed service problem within twenty-four (24) hours of notice to Grantee, Grantee shall if requested by the subscriber credit 1/30th of the monthly charge to the subscriber for each twenty-four (24) hours during which a subscriber is without service.

9.05 Subscriber Service Information. Grantee shall provide written subscriber service information to each subscriber during each calendar year. This information shall include the following:

A. The procedure for investigation and resolution of subscriber service complaints;

B. Programming services and rates for such services;

C. Billing practices as required by Section 9.06 hereof;

D. Service termination procedures;

E. Change in service procedures;

F. Converter policy;

G. Refund policy; and

H. The City office responsible for the administration of the Franchise with the address and telephone number of that office.

Grantee shall provide a copy of the subscriber service information to the City for review and comment.

9.06 Subscriber Billing Practices.

A. Grantee shall notify each of its subscribers, through the written service information, of its billing practices. The service information shall describe Grantee's billing practices including the following: frequency of billing, time periods upon which billing is based, advance billing practices, security deposit requirements, charges for late payment or returned checks, payments required necessary to avoid account delinquency, availability of credits for service outages, procedures to be followed to request service deletions including the notice period a subscriber must give to avoid liability for such services and procedures to be followed in the event of a billing dispute.

B. Prior to a material change in one of its billing practices, Grantee shall notify all affected subscribers in writing of the change and include a description of the changed practice.

C. The subscriber bill shall contain the following information presented in plain language and format:

1. Name and address of Grantee:

2. The period of time over which service is billed including prorated periods as a result of the establishment and termination of service;

3. The date on which services were rendered;

4. The rate or charge for each service or package of services.

5. The amount of the bill for the current billing period, separate from any balance;

6. Any applicable credits on the date which they were applied;

7. Grantee's telephone number; and

8. The date on which payment is due from the subscriber.

D. Grantee shall not impose a late charge on a subscriber unless a subscriber has received more than thirty (30) days of service for which the subscriber has not paid. Any charge for returned checks shall be reasonably related to the costs incurred by Grantee in processing such checks.

9.07 Rebate Policy. In the event a subscriber establishes or terminates service and receives less than a full month's service, Grantee shall prorate the monthly rate on the basis of the number of days in the period for which service was rendered to the number of days in the billing.

9.08 Annual Subscriber Survey.

A. Commencing in 1990, Grantee shall conduct an annual survey of subscribers. The survey shall be prepared and conducted in good faith so as to provide reasonably reliable measures of subscriber satisfaction with:

1. Signal quality;
2. Response to subscriber complaints;
3. Billing practices;
4. Programming services.

B. Grantee may satisfy the requirements of this Section 9.08 through a telephone survey conducted by an independent person in the business of regularly conducting telephone surveys.

C. As a part of each Annual Report, Grantee shall report in writing what steps Grantee is taking to continue to provide satisfactory subscriber service.

9.09 Interruption of Service.

A. Absent conditions beyond the reasonable control of the Grantee, Grantee shall at all times use its best efforts to maintain all parts of the System in good condition and repair through the term of this Franchise so as to provide service to all subscribers upon an uninterrupted basis.

B. Grantee shall promptly notify the City during City business hours of any significant Outage in the operation of the System. For the purpose of this Section 9.09 a "Significant Outage in the operation of the system" shall mean any Outage of a duration of at least four (4) hours to at least fifteen percent (15%) of the subscribers. Grantee shall keep an Outage log in which all Outages shall be regularly logged and will be maintained on a rolling six (6) month basis. The City shall have access to such log upon reasonable notice and at reasonable times.

C. Grantee shall exercise its best efforts to limit any interruption of service for the purpose of maintaining, repairing, or upgrading the System to periods of minimum use.

D. For purposes of computing the duration of an Outage, said period shall begin when Grantee has actual notice of said Outage, and shall cease when service has been restored.

9.10 Periodic Evaluation.

A. The City may require evaluation sessions during the term of this Franchise, provided, however, there shall not be more than one review session during any five (5) year period.

B. Topics which may be discussed at any evaluation session include, but are not limited to, application of new technologies, System performance, programming offered, access channels, facilities and support, municipal uses of cable, customer complaints, amendments to this Franchise, judicial rulings, FCC rulings, line extension policies and any other topics the City or Grantee deem relevant.

C. During an evaluation by the City, Grantee shall fully participate and cooperate with the City and shall provide without cost readily available information and documents as the City may reasonably request to perform the evaluation.

D. As a result of a periodic review or evaluation session, the City may request Grantee to modify the System or to provide additional services. Grantee will use its best efforts to implement the modifications requested by the City if Grantee, in its discretion, determines the modifications are technologically and economically feasible.

Section 10. General Financial and Insurance Provisions.

10.01 Payment to City.

A. Grantee shall pay to the City an annual amount equal to five percent (5%) of its annual Gross Revenues. The foregoing payment shall be compensation for use of Streets and other public property.

B. Payments due the City under this provision shall be computed at the end of each quarter year for that quarter. Payments shall be due and payable to the City on January 31, April 30, July 31 and October 31. Each payment shall be accompanied by a brief report showing the basis for the computation.

C. No acceptance of any payment shall be construed as an accord that the amount paid is in fact the correct amount, nor shall such acceptance of payment be construed as a release of

any claim the City may have for further or additional sums payable under the provisions of this Franchise. All amounts paid shall be subject to audit and recomputation by the City.

D. With each Annual Report required pursuant to Section 8.03 Grantee shall provide the City with a comfort letter as to the accuracy of the Gross Revenues for the preceding year from an independent certified public accountant. This letter shall be used to determine the exact amount of payments due the City and to correct any overpayments or underpayments by Grantee.

E. In the event any payment is not made on the due date, interest on the amount due shall accrue from such date at the current prime rate as determined by Chase Manhattan Bank, N.A. until paid.

10.02 Performance Bond.

A. At the time the Franchise is accepted, Grantee shall furnish and file with the City a performance and payment bond, or a performance and payment bond together with such other security as is approved by the City. The bond shall run to the City in the penal sum of Three Hundred Thousand Dollars (\$300,000.00). The bond shall be conditioned upon the completion of the System Upgrade in accordance with Section 7.01 of this Franchise.

B. The rights reserved by the City with respect to the bond are in addition to all other rights the City may have under the Franchise or any other law.

C. The bond shall be subject to the reasonable approval of the City and shall contain the following endorsement:

"It is hereby understood and agreed that this bond may not be cancelled without the consent of the City until sixty (60) days after receipt by the City by registered mail, return receipt requested mail, of a written notice of intent to cancel or not to renew."

10.03 Letter of Credit.

A. At the time this Franchise is accepted, Grantee shall provide to the City a Letter of Credit in the principal amount of Twenty Thousand Dollars (\$20,000.00).

B. The Letter of Credit shall serve as security for:

1. The faithful performance by Grantee of all the terms and conditions of the Franchise;

2. Any expenditure, damage or loss incurred by the City occasioned by Grantee's unexcused or uncured failure to comply with all rules, regulations, orders, permits and other directives of the City issued pursuant to this Franchise;

3. The payment by Grantee of all lawful liens and taxes, and all damages, claims, costs or expenses which the City has been compelled to pay or incur by reason of any act or default of Grantee, and all other payments due the City from Grantee pursuant to this Franchise; and

4. The loss of any payments required to be made by Grantee to the City which would have been received by the City but for Grantee's failure to perform its obligations pursuant to this Franchise, during the period of time between Grantee's unexcused or uncured failure to perform on the date in which the City takes over, or, authorized any other person to take over, the construction, operation or maintenance of the System necessitated by such failure.

C. Provision shall be made to permit the City to make draws against the Letter of Credit. Grantee shall not use the Letter of Credit for other purposes and shall not assign, pledge or otherwise use this Letter of Credit as security for any purpose.

D. Within five (5) days after notice to it that any amount has been drawn by the City against the Letter of Credit pursuant to this Section, Grantee shall restore such Letter of Credit to the required amount.

E. If Grantee fails to pay to the City any taxes due and unpaid; or fails to repay to the City any damages, costs or expenses which the City shall be compelled to pay by reason of any act or default of the Grantee in connection with this Franchise; or fails, after thirty (30) days notice of such failure by the City to comply with any provision of the Franchise which the City reasonably determines can be remedied by an expenditure of the security, the City may then seek to withdraw such funds from the Letter of Credit.

10.04 Penalties from Letter of Credit. The City and Grantee understand and agree that the failure to comply with any time and performance requirements set forth in this Franchise will result in damage to the City and that it is and will be impracticable to determine the actual amount of such damage in the event of delay or non-performance. Accordingly, as a result of any acts or omissions by Grantee pursuant to this Franchise, the City may draw from the Letter of Credit the following penalties:

A. For failure to complete the System Upgrade in accordance with Section 7.01 of this Franchise, unless the City approves the delay, the penalty shall be Two Hundred Dollars

(\$200.00) per day for each day, or part thereof, such failure occurs or continues, unless such failure is beyond the reasonable control of Grantee.

B. For failure to provide data, documents, reports or information to City pursuant to Section 8 of this Franchise, or to participate with the City during a System review pursuant to Section 9.10 of this Franchise, the penalty shall be One Hundred Dollars (\$100.00) per day.

C. For failure to test, analyze and report on the performance of the System following a reasonable request by the City pursuant to Section 5.07 of this Franchise, the penalty shall be One Hundred Dollars (\$100.00) per day.

D. Absent conditions beyond the reasonable control of Grantee, for failure of Grantee to comply with the construction, operation or maintenance standards set forth in Section 7 of this Franchise, the penalty shall be One Hundred Dollars (\$100.00) per day.

E. For failure to comply with all reasonable conditions of the City permits to disturb streets, fix streets, or other terms or conditions of the City, pursuant to Section 7 of this Franchise, the penalty shall be One Hundred Dollars (\$100.00) per day.

10.05 Procedure for Imposition of Penalties.

A. Whenever the City finds that Grantee has violated one (1) or more terms, conditions or provisions of this Franchise, for which relief is available against the Letter of Credit, a written notice shall be given to Grantee informing it of such violation or liability. The written notice shall describe in reasonable detail the specific violation so as to afford Grantee an opportunity to remedy the violation. Grantee shall have thirty (30) days subsequent to receipt of the notice in which to correct the violation before the City may resort to the Letter of Credit. Grantee may, within seven (7) days of receipt of notice, notify the City that there is a dispute as to whether a violation or failure has, in fact, occurred. Such notice by Grantee to the City shall specify with reasonable detail the matters disputed by Grantee and shall stay the running of the above-described time.

1. The City or its designee shall hear Grantee's dispute at a meeting called in a timely manner. Grantee shall be afforded notice of the meeting not less than seven (7) days prior to the meeting and afforded an opportunity to participate in and be heard at this meeting. The City or its designee shall supplement the decision with written findings of fact.

2. If after hearing the dispute the claim is upheld by the City, Grantee shall have seven (7) days from notice of such a determination within which to file an appeal de novo with an appropriate state or federal court or agency.

B. The time for Grantee to correct any violation or liability may be extended by the City if the necessary action to correct such violation or liability is of such a nature or character to require more than thirty (30) days within which to perform, provided Grantee commences the corrective action within the thirty (30) day period and thereafter uses reasonable diligence to correct the violation or liability.

C. The Letter of Credit provided pursuant to this Section shall become the property of the City in the event that the Franchise is revoked for cause. Grantee, however, shall be entitled to the return of the Letter of Credit as remains on file at the expiration of the term of the Franchise.

D. The rights reserved to the City with respect to the Letter of Credit are in addition to all other rights of the City whether reserved by this Franchise or authorized by law, and no action, proceeding or exercise of a right with respect to such Letter of Credit shall affect any other right the City may have.

10 06 Damages and Defense.

A. Grantee shall be responsible for, defend, indemnify and hold the City harmless for any damage or loss to any real or personal property of the City or any person, and for injury to or death of any person and any officer, employee or agent of the City arising out of or in connection with the construction, operation, maintenance, repair, or removal of, or any other action of Grantee with respect to, the System, any service or related activity, or the distribution of any service over the System.

B. The City, its officers, employees and agents shall not be liable for any loss or damage to any real or personal property of any person, or for any injury to or death of any person, arising out of or in connection with the construction, operation, maintenance, repair or removal of, or other action or event with respect to the System, except as may result from the acts of the City, its officers, employees and its agents.

C. Grantee shall be responsible for, defend, indemnify, and hold harmless the City, its officers, employees and agents, from and against all liability, special, incidental, consequential, punitive and all other damage, cost and expense (including reasonable attorneys' fees) arising out of or in connection with the construction, operation, maintenance, repair, or removal of the System.

D. In order for the City to assert its rights to be indemnified, defended, and held harmless, the City must:

1. Promptly notify Grantee of any claim or legal proceeding which gives rise to such right;

2. Afford Grantee the opportunity to participate in and fully control any compromise, settlement or other resolution or disposition of such claim or proceeding; unless, however, the City, reasonably determines that its interests cannot be represented in good faith by Grantee; and

3. Fully cooperate with the reasonable requests of Grantee, at Grantee's expense, in its participation in, and control, compromise, settlement or resolution or other disposition of such claim or proceeding subject to paragraph (2) above.

E. In the event the City reasonably determines that its interests cannot be represented in good faith by Grantee, Grantee shall pay all expenses incurred by the City in defending itself with regard to all damages and penalties mentioned in paragraph A above. These expenses shall include all out-of-pocket expenses, such as attorney's fees and costs.

10.07 Insurance.

A. As a part the indemnification provided by Section 10.06, but without limiting the foregoing, Grantee shall file with its acceptance of this Franchise, and at all times thereafter maintain in full force and effect as its sole expense, an acceptable policy or policies of liability insurance, including comprehensive general liability insurance, products/completed operations liability, personal injury liability, broad form property damage, contractual liability, automobile liability (owned, nonowned and hired automobiles) and workers compensation. The policy or policies shall name as additional insured except for workers compensation and for liabilities arising from this Franchise, the City, and in their capacity as such, their officers, agents and employees. Grantee will provide comprehensive liability coverage and automobile liability coverage with a combined single limit of not less than One Million Dollars (\$1,000,000.00), and an Excess Liability Policy with a combined single limit of not less than Two Million Dollars (\$2,000,000.00). The insurance policy or policies shall contain contractual liability insurance naming the Grantee, and shall insure against the types of liabilities covered by the indemnification and hold harmless provision of Section 10.06.

B. The policy or policies of insurance shall be maintained by Grantee in full force and effect during the entire term of the Franchise. Each certificate of insurance shall contain a statement on its face that the insurer will not cancel the policy

or fail to renew the policy, whether for nonpayment of premium, or otherwise, and whether at the request of the Grantee or for other reasons, except after thirty (30) calendar days advance written notice mailed by the insurer to the City and that such notice shall be transmitted postage prepaid, and return receipt.

10.08 City's Right to Revoke. In addition to all other rights which the City has pursuant to law or equity, the City reserves the right to revoke, terminate or cancel this Franchise, and all rights and privileges pertaining thereto, in the event that in the judgment of the City:

A. Grantee violates and fails to cure in the judgment of the City any material provision of this Franchise to the detriment of the City; or

B. Grantee attempts to evade any of the material provisions of this Franchise; or

C. Grantee practices any fraud or deceit upon the City or subscriber; or

D. Grantee becomes insolvent, unable or unwilling to pay its debts, or is adjudged a bankrupt; or

E. Grantee knowingly misrepresent a material fact in the application for or negotiation of, or renegotiation of, or renewal of, the Franchise, which is relied upon by the City.

10.09 Procedures for Revocation.

A. The City shall provide Grantee with a written notice of the cause for revocation and the intent to revoke and shall allow Grantee thirty (30) days subsequent to receipt of the notice in which to correct the violation or to provide adequate assurance of performance in compliance with the Franchise. The City shall provide Grantee with written findings of fact which are the basis of the revocation.

B. Grantee shall be provided the right to a public hearing affording due process before the City prior to revocation.

C. After the public hearing and upon determination by the City to revoke the Franchise, Grantee shall have a period of thirty (30) days, from the date of the City's determination, within which to file an appeal de novo with an appropriate state or federal court or agency.

D. During the appeal period, the Franchise shall remain in full force and effect.

Section 11:- Foreclosure, Receivership and Abandonment.

11.01 Foreclosure. Upon the foreclosure or other judicial sale of the System, Grantee shall notify the City of such fact and such notification shall be treated as a notification that a change in control of Grantee has taken place, and the provisions of this Franchise governing the consent to transfer or change in ownership shall apply without regard to how such transfer or change in ownership occurred.

11.02 Receivership. The City shall have the right to cancel this Franchise subject to any applicable provisions of Virginia law, including the Bankruptcy Act, one hundred twenty (120) days after the appointment of a receiver or trustee to take over and conduct the business of Grantee, whether in receivership, reorganization, bankruptcy or other action or proceeding, unless such receivership or trusteeship shall have been vacated prior to the expiration of said one hundred twenty (120) days, or unless:

A. Within one hundred twenty (120) days after his election or appointment, such receiver or trustee shall have fully complied with all the provisions of this Franchise and remedied all defaults thereunder; and,

B. Such receiver or trustee, within said one hundred twenty (120) days, shall have executed an agreement, duly approved by the Court having jurisdiction in the premises, whereby such receiver or trustee assumes and agrees to be bound by each and every provision of this Franchise.

11.03 Abandonment. Grantee may not abandon the System or any portion thereof without having first given three (3) months written notice to the City. Grantee may not abandon the System or any portion thereof without compensating the City for damages resulting from the abandonment. The City may recover from Grantee damages for the reasonable cost of removal of the System.

Section 12:- Removal, Transfer and Purchase.

12.01 Removal After Revocation or Expiration.

A. At the expiration of the term for which the Franchise is granted and non-renewal, or upon its revocation, as provided for, the City shall have the right to require Grantee to remove, at Grantee's expense, all or any portion of the System from all streets and public property within the City. In so removing the System, Grantee shall refill and compact at its own expense, any excavation that shall be made and shall leave all streets, public property and private property in as good a condition as that prevailing prior to Grantee's removal of the System, and without affecting, altering or disturbing in any way electric, telephone or utility, cables wires or attachments. The City shall have the

right to inspect and approve the condition of such streets and public property after removal. The insurance, and indemnity of the Franchise shall remain in full force and effect during the entire term of removal.

B. If Grantee has failed to commence removal of the System, or such part thereof as was designated, within thirty (30) days after written notice of the City's demand for removal is given, or if Grantee has failed to complete such removal within one (1) year after written notice of the City's demand for removal is given, the City shall have the right to exercise one of the following options:

1. Declare all right, title and interest to the System to be in the City or its delegator with all rights of ownership including, but not limited to, the right to operate the System or transfer the System to another for operation by it; or

2. Declare the System abandoned and cause the System, or such part thereof as the City shall designate, to be removed at no cost to the City. The cost of said removal shall be recoverable from the Letter of Credit, indemnity and penalty section provided for in the Franchise, or from Grantee directly.

12.02 General Purchase Provisions.

A. The City may, upon the payment of a fair valuation, purchase, take over and hold the property and plant of Grantee in whole or in part in the following circumstances:

1. If such purchase or taking over be at the expiration and non-renewal of the Franchise, such valuation shall be at fair market value determined on the basis of the System valued as a going concern, exclusive of the value attributed to the Franchise itself. Fair market value shall be determined by an independent appraisal made by a competent appraiser selected by the City.

2. If such purchase or taking over be at the revocation of the Franchise, such valuation shall be at an equitable price.

B. In no event shall any valuation upon the purchase at expiration and non-renewal or revocation be given to the Franchise.

12.03 Sale or Transfer of Franchise.

A. This Franchise or the System hereunder shall not be sold, assigned or transferred, either in whole or in part, or leased or sublet in any manner, nor shall title thereto, either legal or equitable, or any right, interest or property therein,

pass to or vest in any person without full compliance with the procedure set forth in this Section.

B. The provisions of this Section shall apply to the sale or transfer of all or a majority of Grantee's assets, merger (including any parent and its subsidiary corporation), consolidation, creation of an subsidiary corporation or sale or transfer of stock of Grantee or of its parent so as to create a new controlling interest in the System. The term "controlling interest" as used herein is not limited to majority stock ownership, but includes actual working control in whatever manner exercised.

1. The parties to the sale or transfer shall make a written request to the City for its approval of a sale or transfer.

2. The City shall reply to the parties in writing within forty-five (45) days of the request and shall indicate whether it will approve the requested sale or transfer or will advise of its determination that a public hearing is necessary due to potential adverse effect of the sale or transfer on Grantee's subscribers.

3. If public hearing is deemed necessary pursuant to (2) above, such hearing shall be conducted within twenty (20) days of such determination and written notice of any such hearing shall be given to the Grantee seven (7) days prior to the hearing. The notice shall contain the date, time and place of the hearing and shall briefly state the substance of the action to be considered by the City.

4. Within twenty (20) days after the public hearing, the City shall approve or deny in writing the sale or transfer request.

5. Grantee, upon transfer, shall within sixty (60) days thereafter file with the City a copy of the deed, agreement, mortgage, lease or other written instrument evidencing such sale, transfer or ownership or control or lease, certified and sworn to as correct by the Grantee.

C. In reviewing a request for sale or transfer pursuant to paragraph (A) above, the City may inquire into the technical, legal and financial qualifications of the prospective controlling party, and Grantee shall assist the City in so inquiring. The City may condition said transfer upon such terms and conditions as it deems reasonably appropriate. The City shall not unreasonably withhold its approval. In no event shall a transfer or assignment of ownership or control be approved without the transferee becoming a signator to this Franchise.

Section 13:- Rights of Individuals Protected.

13.01 Discriminatory Practices Prohibited. Grantee shall not deny service, deny access, or otherwise discriminate against subscribers or general citizens on the basis of race, color, religion, national origin, sex or age. Grantee shall comply at all times with all other applicable, federal, state and city laws, and all executive and administrative orders relating to nondiscrimination.

13.02 Subscriber Privacy. Grantee will comply with the provisions of 47 U.S.C. Section 551 as currently written and as may from time to time be subsequently amended.

Section 14:- Miscellaneous Provisions.

14.01 Franchise Renewal.

A. Renewal of this Franchise shall be governed by applicable local, state and federal law.

B. In absence of the applicable law, renewal of this Franchise shall be based on the terms and conditions set forth herein.

C. Grantee shall notify the City in writing of its desire to renew this Franchise during the six-month period which begins with the 36th month before the Franchise expiration.

D. Upon receiving such notification, the City shall, within a reasonable time, supply Grantee with a request for renewal which shall be completed by Grantee and returned to the City within 60 days.

E. Upon receipt of the Grantee's response to the request for renewal of the Franchise, the City shall, within a reasonable time, hold a public hearing in which the Grantee shall be afforded notice and an opportunity to be heard. The public hearing shall be recorded and a record prepared. The public hearing may be continued for a reasonable period of time to enable the City to fully evaluate Grantee's request for renewal.

F. Subsequent to the hearing, the City will either grant or deny renewal of the Franchise based on the following criteria:

1. The Grantee's compliance with the material terms of the existing Franchise;

2. The quality of the Grantee's current service, including signal quality, response to consumer complaints, and billing practices in light of community needs;

3. The Grantee's financial, legal and technical ability to provide the services, facilities, and equipment, as set forth in the request for renewal; and

4. The Grantee's ability to meet future cable-related community needs and interests, taking into account the cost of meeting such needs and interests. In evaluating the Grantee's ability to meet these needs and interests, consideration will be given to the following:

a. The technical excellence of the request for renewal, including system design, equipment quality and reliability, technical standards, performance tests and maintenance procedures.

b. The provision of a cable television system with sufficient capacity to provide flexibility to meet future needs and the Grantee's commitment to expand and upgrade services throughout the franchise term.

c. The depth of commitment to good consumer relations including adequacy of plans and procedures for responding to service problems and complaints on a timely basis.

d. The depth of commitment to local programming including support in the form of equipment, personnel and facilities.

e. The quality of diversity of proposed cable programming.

G. The City shall be allowed to utilize the services of legal, technical and financial consultants to assist in reviewing the Grantee's request for renewal. Grantee agrees to reimburse the City for the first \$30,000.00 of all reasonable costs incurred as a result of the renewal process, including all consulting costs. Costs above \$30,000.00 shall be shared equally by the Grantee and the City.

H. The City shall issue a written decision granting or denying the proposal for renewal based upon the record of the public hearing set forth above, and transmit a copy of such decision to Grantee.

I. Denial of the Grantee's request for renewal may be appealed by Grantee to a court of competent jurisdiction. The court shall grant appropriate relief if Grantee can demonstrate based on a preponderance of the evidence, based on the record of the proceeding conducted under Subsection E above that the adverse finding of the City was not based on the factors described in Section F.

14.02 Continuity of Service Mandatory. Upon expiration and non-renewal or the revocation, termination or cancellation of this Franchise, the City may require Grantee to continue to operate the System for an extended period of time, not to exceed six (6) months. Grantee shall, as trustee for its successor in interest, continue to operate the System under the terms and conditions of this Franchise. In the event Grantee does not so operate the System, the City may take such steps as it deems reasonably necessary to assure continued service to subscribers.

14.03 Work Performed by Others.

A. Grantee shall be responsible for, defend, indemnify and hold the City harmless for any claims or liability arising out of work performed by persons on behalf of Grantee pursuant to this Franchise.

B. All provisions of this Franchise shall apply to any subcontractor or others performing any work or services on behalf of Grantee pursuant to the provisions of this Franchise.

14.04 Compliance with Federal, State and Local Laws.

A. If any federal or state law or regulation shall require or permit Grantee to perform any service or act or shall prohibit Grantee from performing any service or act which may be in conflict with the terms of this Franchise, then as soon as possible following knowledge thereof, Grantee shall notify the City of the point of conflict believed to exist between such law or regulation.

B. If any term, condition or provision of this Franchise or the application thereof to any person or circumstance shall, to any extent, be held to be invalid or unenforceable, the remainder hereof and the application of such term, condition or provision to persons or circumstances other than those as to whom it shall be held invalid or unenforceable shall not be affected thereby, and this Franchise and all the terms, provisions and conditions hereof shall, in all other respects, continue to be effective and to be complied with. In the event that such law, rule or regulation is subsequently repealed, rescinded, amended or otherwise changed so that the provision which had been held invalid or modified is no longer in conflict with the law, rules and regulations then in effect, said provision shall thereupon return to full force and effect and shall thereafter be binding on Grantee and the City.

C. If any section, sentence, clause or phrase of this ordinance or any part thereof is for any reason found to be inconsistent with the rules and regulations of the FCC or invalid by a court of competent jurisdiction, such decision shall not

affect the validity of the remaining portions of this ordinance or any part thereof.

14.05 Nonenforcement by City. Grantee shall not be relieved of its obligation to comply with any of the provisions of this Franchise by reason of any failure or delay of the City to enforce prompt compliance. Any waiver by the City of a breach or violation of any provision of this Franchise shall not operate as or be construed to be a waiver of any subsequent breach or violation.

14.06 Administration of Franchise.

A. The City shall have continuing regulatory jurisdiction and supervision over the System and the Grantee's operation under the Franchise. The City may issue such reasonable rules and regulations concerning the construction, operation and maintenance of the System as are consistent with the provisions of the Franchise. The City reserves the right to delegate and redelegate from time to time any of its rights and obligations under this Franchise.

B. Grantee shall construct, operate and maintain the System subject to the supervision of all the authorities of the City who have jurisdiction in such matters and in strict compliance with all laws, ordinances, departmental rules and regulations consistent with the provisions of the Franchise affecting the System.

14.07 No Recourse Against the City. Grantee shall have no recourse whatsoever against the City or its officials, agents or employees for any loss, costs, expense, or damage arising out of any provision or requirement of this Franchise or because of the enforcement of the Franchise.

14.08 Rights Cumulative. All rights and remedies given to City and Grantee by this Franchise shall be in addition to and cumulative with any and all other rights or remedies, existing or implied, now or hereafter available to the City and Grantee at law or in equity, and such rights and remedies shall not be exclusive, but each and every right and remedy specifically given by this Franchise or otherwise existing or given may be exercised from time to time and as often and in such order as may be deemed expedient by the City and Grantee, and the exercise of one or more rights or remedies shall not be deemed a waiver of the right to exercise at the same time or thereafter any other right or remedy.

14.09 Ordinance and Attachments. The attachments to this Ordinance consisting of the Exhibits and Grantee's Response to City of Norfolk, Virginia, RFP are incorporated by reference. In the event of any inconsistency between this Ordinance and the attachments hereto, the Ordinance shall control.

14.10 Captions. The Section and paragraph captions in this Franchise are for convenience and reference purposes only and shall not affect in any way the meaning or interpretation of this Franchise.

14.11 Calculation of Time. Where the performance or doing of any act, duty, matter, payment or thing is required hereunder and the period of time or duration for the performance or doing thereof is prescribed and fixed herein, the time shall be computed so as to exclude the first and include the last day of the prescribed or fixed period or duration of time. When the last day of the period falls on Saturday, Sunday or legal holiday, that day shall be omitted from the computation.

Section 15:- Effective Date and Time of Acceptance.

15.01 Effective Date. This Franchise shall take effect from and after thirty (30) days from its adoption or upon acceptance by Grantee whichever is later.

15.02 Time of Acceptance and Exhibits.

A. Grantee shall accept this Franchise in form and substance acceptable to the City within thirty (30) days of the adoption of this ordinance unless the time for acceptance is extended by the City. Such acceptance by Grantee shall be deemed the grant of this Franchise for all purposes. In the event acceptance does not take place, this Franchise shall be null and void.

B. With its acceptance, Grantee also shall deliver to the City a certified resolution of Grantee evidencing its power and authority to accept the Franchise. Such documents shall also describe the officer or officers authorized to accept on behalf of Grantee.

C. With its acceptance, Grantee shall also pay costs and expenses incurred by the City in connection with the preparation of this Franchise not to exceed Twenty-five Thousand Dollars (\$25,000.00). The City shall provide an itemized statement to Grantee documenting such costs and expenses incurred by the City.

D. With its acceptance, Grantee shall submit to the City an opinion of counsel stating that, as of the effective date of this Franchise:

1. The Grantee is a corporation, duly organized, validly existing, and in good standing under the laws of the State of Delaware;

2. The Grantee has the requisite power and authority under applicable law and its bylaws and articles of incorporation, is authorized by resolutions of its Board of Directors, and has secured all consents which are required to be obtained as of the effective date of this Franchise, to enter into and legally bind the Grantee to this Franchise and to take all actions necessary to perform all of its obligations pursuant to this Franchise;

3. This Franchise is enforceable against the Grantee in accordance with the provisions hereof;

4. To the best of such counsel's knowledge, there is no action or proceeding pending or threatened against the Grantee or any affiliated person which questions the validity or prospective validity of this Franchise, or of any essential element upon which this Franchise depends, or of any actions to be taken by the Grantee or any affiliated person; and

5. Insofar as the legal capacity of the Grantee to carry out any obligation pursuant to this Franchise is concerned, the execution of, and performance pursuant to, this Franchise will not result in the breach or violation of any provision of the articles of incorporation or bylaws of the Grantee or of any statute, regulation, agreement, judgment, or decree to which it is subject.

E. Within thirty (30) days of its acceptance, Grantee shall also deliver any performance bond, Letter of Credit and insurance certificates required herein that have not previously been delivered.

Adopted by Council July 25, 1989
Effective August 25, 1989

TRUE COPY
TESTE:

R. BRECKENRIDGE DAUGHTREY, CITY CLERK

BY: Shelia N. Milder
DEPUTY CITY CLERK

EXHIBIT A - SYSTEM UPGRADE

Cox Cable Hampton Roads proposed to upgrade the existing 300 MHz cable plant to a new capacity of 400 MHz. The time schedule in which this will be done is described in Section C "Technical Qualification", Item 1, of the Response to City of Norfolk, Virginia Request for Proposal (RFP).

This upgrade will be accomplished using the existing cable plant with replacement of existing electronics and passives to a bandwidth of 400 MHz. Whenever possible, those replacements which would affect a large number of customers will be done in the late night/early morning hours. The replacements which will affect small areas or individuals will be generally done during daylight. In many cases, the upgrade will involve a drop cable replacement from our tap to the customer's home.

At the completion of the upgrade, customers will be notified of new services available to them.

EXHIBIT B - TECHNICAL STANDARDS

The newly upgraded cable system will be operated under the following technical standards:

Carrier to Noise:	41 dB
Cross Modulation:	50 dB w/synchronous modulation
Composite Triple Beat:	50 dB w/CW carrier or 59 dB for modulated carrier
Second Order Distortion:	Better than 57 dB
Hum:	2% or less (non-scrambled channels)
System Bandpass Response:	Trunk N/10 +1 not to exceed 4 dB. Feeder not to exceed 1 dB over trunk.
Difference between any two Adjacent Channels:	3 dB
Difference between any two Channels on the System:	Max 9 dB
Signal Level at T.V. Set:	0 dBmV Min

EXHIBIT C - CHANNEL LINE-UP

1	Pay Per View Preview Channel
2	AMERICA'S SHOPPING CHANNEL/CVN
3	WTKR - Local CBS Channel 3
*4	USA - All Entertainment Network
*5	WTTG - Washington, D.C. Channel 5
6	ESPN - Sports & Entertainment
*7	WTBS - Atlanta Superstation
*8	MTV - Music Television
*9	NICKELODEON - Children's Programming
*10	WAVY - Local NBC Channel 10
11	WCOX - Community Programming
12	CNN HEADLINE NEWS - 24 Hours
*13	WVEC - Local ABC Channel 13
14	CNN - 24 Hour News Network
*15	WHRO - Local PBS Channel 15
16	DISCOVERY - Nature - Science - History
*17	ARTS & ENTERTAINMENT NETWORK
*18	LIFETIME - The Lifestyle Channel
*19	WWOR - New York SuperStation
*20	WDCA - Washington, D.C. Channel 20
*21#	HBO - Movies & Specials - 24 Hours
22	C-SPAN - House of Representatives
*23	TNN - The Nashville Network
24	THE WEATHER CHANNEL - 24 Hours
*25#	THE DISNEY CHANNEL - Family Programming
*26	CBN - The CBN Family Channel
27	WYAH - Local Channel 27
28	EDUCATIONAL CHANNEL
29	GOVERNMENT CHANNEL
*30	FNN - Financial News Network/ MOVIE TIME
31	VTC-TV - Tidewater Educational Channel
*32#	SHOWTIME - Movies & Specials - 24 Hours
33	WTVZ - Local Channel 33
*34	AMC - American Movie Classics/THE TRAVEL CHANNEL
35	HOME TEAM SPORTS/MOVIE TIME
*36	BET - Black Entertainment Television
*37#	CINEMAX - Movies and Specials - 24 Hours
*99#	VIEWERS CHOICE - Pay Per View Movies & Specials

* Includes Stereo.

Optional Premium Channel.

Included for Informational Purposes Only.

EXHIBIT D - INITIAL RATES
(Effective 1/1/89)

Basic Rate:	\$ 16.95/no*
Basic Additional Outlet:	3.50/mo
Pay TV	
HBO:	10.00/mo
Showtime:	10.00/mo
Cinemax:	10.00/mo
Disney:	10.00/mo
AMC:	5.00/mo
Pay TV on A/O:	5.00/mo
Package Prices:	
One-Pay Package:	30.95/mo
Two-Pay Package:	38.95/mo
Three-Pay Package:	46.95/mo
Four-Pay Package:	54.95/mo
Basic Remote:	2.00
Volume Control Remote:	4.00
Installation (Std. Drop):	40.00
Change of Service:	15.00
Reconnect:	25.00
Late Payment Fee:	5.00
Additional Outlet Installation:	25.00
VCR Connection:	15.00
Antenna Switch:	25.00
Converter/Service Deposit (up to)	50.00

* Includes Copyright Pass Through and Antenna Plus Package at \$5.50

Commercial and Bulk Rates Subject to Individual Negotiation.

EXHIBIT E - CUSTOMER SERVICE HOURS

Customer Service Phones:

8:30 a.m. - 5:00 p.m., Monday - Friday

Repair Service Phones:

Will be answered 24 hours a day, 7 days a week

Front Counter Office:

8:30 a.m. - 5:00 p.m., Monday - Friday.

Form and Correctness Approved:

Contents Approved:

Daniel R. Hagermeister
Office of the City Attorney

NORFOLK, VIRGINIA

By *H. Buchanan*
DEPT.

ORDINANCE No. 36,026**R-16D**

AN ORDINANCE TO AMEND AND REORDAIN SUBSECTION (E) OF SECTION 24-213 OF THE CODE OF THE CITY OF NORFOLK, VIRGINIA, 1979, SO AS TO INCLUDE CABLE TELEVISION SERVICE WITHIN THE DEFINITION OF THE PHRASE "UTILITY SERVICE" AND TO AMEND AND REORDAIN SUBSECTION (A) OF SECTION 24-214 OF THE CODE OF THE CITY OF NORFOLK, VIRGINIA, 1979, SO AS TO ESTABLISH THE TAX BASE AND TAX RATE FOR CABLE TELEVISION SERVICE.

- - -

BE IT ORDAINED by the Council of the City of Norfolk:

Section 1:- That Subsection (e) of Section 24-213 of the Code of the City of Norfolk, Virginia, 1979, is hereby amended and reordained so as to read as follows:

(e) Utility service. The phrase "utility service" shall include local exchange telephone service, electricity service, gas service, water service and cable television service furnished in the corporate limits of the city.

Section 2:- That Subsection (a) of Section 24-214 of the Code of the City of Norfolk, Virginia, 1979, is hereby amended and reordained so as to read as follows:

(a) For each and every fiscal year beginning July first and ending June thirtieth of each such year, unless otherwise changed by the council, there is hereby imposed and levied by the city upon each and every purchase of a utility service a tax in accordance with the following schedule:

(1) Water:

- a. Residential, five-eighths-inch meter only, twenty-five (25) percent of the first forty-five dollars (\$45.00).
- b. Commercial, all meters other than five-eighths-inch, twenty-five (25) percent of the first one hundred fifty dollars (\$150.00) and fifteen (15) percent of all over one hundred fifty dollars (\$150.00).

EXHIBIT**241****A**

- c. All of the above are exclusive of service charges made by the city.

(2) Gas and electricity:

- a. Residential gas, twenty-five (25) percent of the first six dollars (\$6.00).
- b. Nonresidential gas, twenty-five (25) percent of the first two thousand dollars (\$2,000.00).
- c. Residential electricity, twenty-five (25) percent of the first fifteen dollars (\$15.00).
- d. Nonresidential electricity, twenty-five (25) percent of the first fifty dollars (\$50.00) and twelve (12) percent of all over fifty dollars (\$50.00).
- e. Agribusiness electricity, twenty-five (25) percent of the first fifty dollars (\$50.00) and twelve (12) percent of all over fifty dollars (\$50.00), but in no event more than two hundred fifty dollars (\$250.00).
- f. All gas and electric service indicated is per single meter. All other gas and electric service in accordance with subsections (c) through (e), below.

(3) Telephone, local exchange service, twenty-five (25) percent of total (excluding charges for coin operated telephones).

(4) Cable television service, seven (7) percent of the total bill, but excluding any charge made for a remote control tuning device.

Section 3:- That this ordinance shall be in effect on and after July 1, 1990.

Adopted by Council May 22, 1990
Effective July 1, 1990

TRUE COPY
TESTE:

R. BRECKENRIDGE DAUGHTREY, CITY CLERK

BY: Shelia N. Nelder
DEPUTY CITY CLERK

ASSIGNMENTS OF ERROR

1. The Circuit Court erred in ruling that the City's tax on cable television service did not violate the Equal Protection Clause of the United States Constitution.

2. The Circuit Court erred in ruling in 1990 that cable television service is a "public utility."

3. The Circuit Court misapplied its holding in 1990 that cable television service is a "public utility," when it held on remand that the City's tax does not violate the Equal Protection Clause as long as cable television is not taxed differently than other "public utilities."

48 HOURS



**TOLL FREE
1-800-552-7001**

"SERVICE IS FREE"

IT IS THE LAW!

"Miss Utility" —



your friend and ours

Did you know?????

IT'S THE LAW!!!!

**48 hours before
you dig . . .**

**call "Miss Utility"
1-800-552-7001**

This means not only construction, but your garden, new fence, or mailbox as well. A quick call to "Miss Utility" will prevent the problem of accidentally cutting any underground utility lines, including Cox Cable lines.

"Miss Utility" is a free service that will mark the utility lines on your property that have not been placed there by private owners. By having underground services marked, damages to existing lines can be prevented.



DIGITAL CABLE RADIO

MUSIC CHANNEL LINE-UP

- 1** Soft Rock
- 2** Hit List
- 3** Country
- 4** Solid Gold Oldies
- 5** Urban Beat
- 6** Classic Rock
- 7** Contemporary Jazz/New Age
- 8** Classical Favorites
- 9** Classical II
- 10** Easy Listening
- 11** Big Band/Nostalgia
- 12** Love Songs
- 13** For Kids Only
- 14** Traditional Jazz
- 15** Musica Latina
- 16** Modern Rock
- 17** Hard & Heavy Rock
- 18** Contemporary Christian/Gospel
- 19** Spectrum



IMPORTANT PHONE NUMBERS

CUSTOMER SERVICE 497-2011

Monday through Friday 8:00 am to 6:00 pm

Call with questions about billing, or for general information

REPAIR SERVICE 497-3300

Monday through Saturday 8:00 am to 10:00 pm

Sunday 11:00 am to 10:00 pm

Call about cable outages or interruptions, and questions about using your VCR with your cable service. In addition, an answering service receives all calls outside normal operating hours and will relay emergency calls to our on-call repair technicians

CUSTOMER SERVICE CENTERS

VIRGINIA BEACH: 5200 Cleveland Street

Monday through Friday 8:30 am to 6:00 pm

Saturday 9:00 am to 12:00 noon

NORFOLK: 415 N. Military Hwy., Best Square

Monday through Friday 8:30 am to 6:00 pm

PORTSMOUTH: 3645 Victory Boulevard

Monday through Friday 8:00 am to 4:30 pm

NOTE: Expanded Basic Service available only with purchase of Limited Basic Service. Premium services Pay Per View and Digital Cable Radio available only with purchase of Limited Basic plus Expanded Basic Services (Compare Basic Service)



3/92



Cox Cable

CHANNEL LINEUP

Effective March 16, 1992

- 1** PREVUE GUIDE PREVIEW CHANNEL
- 2** WTVZ - Local Fox affiliate *
- 3** WTKR - Local CBS affiliate *
- 4** USA - 24-hour entertainment television
- 5** TNT - 24-hour movies and sports
- 6** ESPN - 24-hour sports
- 7** TBS - Atlanta SuperStation *
- 8** CNN - 24-hour news network
- 9** NICKELODEON - Children's network & family programming
- 10** WAVY - Local NBC affiliate *
- 11** WCOX - Community programming from Cox Cable *
- 12** HEADLINE NEWS - 24-hour news
- 13** WVEC - Local ABC affiliate *
- 14** WWOR - New York SuperStation *
- 15** WHRO - Local PBS affiliate *
- 16** DISCOVERY - 24-hour nature, science & history
- 17** A&E NETWORK - Arts and entertainment
- 18** LIFETIME - Lifestyle and women's programming
- 19** THE FAMILY CHANNEL - Family programming
- 20** WSBK - Boston SuperStation *
- 21** HBO - 24-hour movies and specials
- 22** MTV - 24-hour music television
- 23** TNN - The Nashville Network
- 24** THE WEATHER CHANNEL - 24-hour weather
- 25** CNBC - Consumer News and Business Channel
- 26** SHOWTIME - 24-hour movies and specials
- 27** WGNT - Local Independent station *
- 28** EDUCATION ACCESS *
- 29** GOVERNMENT ACCESS *
- 30** QVC - Shopping channel *
- 31** VTC-TV - Tidewater Education channel *
- 32** C-SPAN - U.S. Congress coverage *
- 33** WGN - Chicago SuperStation *
- 34** AMC - American Movie Classics
- 35** HTS - Home Team Sports
- 36** BET - Black Entertainment Television
- 37** THE DISNEY CHANNEL - Family programming
- 38** CINEMAX - 24-hour movies & specials
- 39** ENCORE - Movies from the 60s, 70s & 80s
- 99** VIEWER'S CHOICE - Movies, specials (pay-per-view)
- 42** VIEWER'S CHOICE 2 - Even more movies (pay-per-view)
- 43** PAY PER VIEW PREVIEWS *
- 44** E! - Entertainment Television *
- 45** VH-1 - Video Hits One, music videos *
- 46** COMEDY CENTRAL - Original & classic comedy *
- 47** BRAVO - Theatre, jazz, dance, movies *
- 47** TRAVEL - Travel information *
- 48** THE LEARNING CHANNEL - Educational programming *
- 49** WJCB - Local independent station *
- 51** VISN NETWORK - Religious programming *

* Channels that broadcast some programming in stereo, available to customers whose TV is equipped with internal BTSC-MTS stereo capacity.

* Indicates channels carried on Limited Basic Service.

* Currently available in Norfolk, Portsmouth, and Knotts Island, N.C. only

■ Premium service

COMPANY/DEPT 5410-00 HAMPTON ROADS

VENDOR NAME	VENDOR NUMBER	VENDOR INVOICE #	INVOICE DATE	CHECK NUMBER	CHECK DATE	P.O. #	QUANTITY OR JOB #	SUPPLEMENTAL DESCRIPTION	10 99	DISTRIBUTION AMOUNT	
D#-ACCT#-SUB# 00-12020-0001 A/R-OTHER TRADE NORF UTIL TAX											
CITY TREASURER OF NORFOLK	030087	081090	8/10/90	539928	8/31/90			UTILITY TAX		98,032.82	
								MONTH 08/90 TOTAL		98,032.82 *	
JOSEPH T. FITZPATRICK	100039	091790	9/17/90	548016	9/18/90			UTILITY TAX		113,272.88	
								MONTH 09/90 TOTAL		113,272.88 *	
00-12020-0001 A/R-OTHER TRADE NORF UTIL TAX										ACCOUNT TOTAL	209,305.88 **
										DEPARTMENT 00 TOTAL	209,305.88 ***
										COMPANY 5410 TOTAL	209,305.88 ****



TOTAL PAYMENTS BOTH REPORTS \$2,245,400.³⁷

COMPANY/DEPT 5410-00 HAMPTON ROADS

VENDOR NAME	VENDOR NUMBER	VENDOR INVOICE #	INVOICE DATE	CHECK NUMBER	CHECK DATE	P.O. #	QUANTITY OR JOB #	SUPPLEMENTAL DESCRIPTION	10 99	DISTRIBUTION AMOUNT
DR-ACCT#-SUB# 00-22100-0001	ACCRUED OTHER TAXES NORFOLK UTILITY TAX									
CITY TREASURER OF NORFOLK	030067	101000REQ	10/10/90	540027	10/10/90			SEPT UTILITY TAX		37,880.84
								MONTH 10/90 TOTAL		37,880.84 *
JOSEPH T. FITZPATRICK	100039	111400REQ	11/14/90	540070	11/14/90			UTILITY TAX		90,689.50
								MONTH 11/90 TOTAL		90,689.50 *
JOSEPH T. FITZPATRICK	100039	121700REQ	12/17/90	550302	12/17/90			UTILITY TAX NOV.		101,302.77
								MONTH 12/90 TOTAL		101,302.77 *
JOSEPH T. FITZPATRICK	100039	011101STAT	1/11/91	550986	1/14/91			UTILITY TAX		94,478.29
								MONTH 01/91 TOTAL		94,478.29 *
JOSEPH T. FITZPATRICK	100039	021101REQ	2/11/91	551782	2/13/91			JAN. UTILITY TAX		98,469.48
								MONTH 02/91 TOTAL		98,469.48 *
JOSEPH T. FITZPATRICK	100039	FEB91 TAX	3/14/91	552486	3/15/91			FEB UTILITY TAX		98,753.20
								MONTH 03/91 TOTAL		98,753.20 *
JOSEPH T. FITZPATRICK	100039	UTIL TAX	4/15/91	553215	4/17/91			UTILITIES TAX		98,583.32
								MONTH 04/91 TOTAL		98,583.32 *
JOSEPH T. FITZPATRICK	100039	APRIL TAX	5/10/91	545009	5/14/91			UTILITY TAX		101,419.96
								MONTH 05/91 TOTAL		101,419.96 *
CITY OF NORFOLK	030329	061001REQ	6/10/91	545141	6/10/91			MAY TAX		102,929.62
								MONTH 06/91 TOTAL		102,929.62 *
JOSEPH T. FITZPATRICK	100039	6/91 TAX	7/18/91	545168	7/18/91			UTILTY TAX 6/91		98,695.11
								MONTH 07/91 TOTAL		98,695.11 *
JOSEPH T. FITZPATRICK	100039	061001REQ	8/10/91	556889	8/10/91			TAX (NKV.)		100,727.17
								MONTH 08/91 TOTAL		100,727.17 *
JOSEPH T. FITZPATRICK	100039	AUG-UTILIT	9/16/91	555942	9/30/91			AUG 91 UTILITY TAX		98,017.02
								MONTH 09/91 TOTAL		98,017.02 *
JOSEPH T. FITZPATRICK	100039	SEPT.UT.TX	10/11/91	558166	10/16/91			SEPT.91 UTILITY TX		99,741.70

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COMPANY/DEPT 5410-00 HAMPTON ROADS

VENDOR NAME	VENDOR NUMBER	VENDOR INVOICE #	INVOICE DATE	CHECK NUMBER	CHECK DATE	P.O. #	QUANTITY OR JOB #	SUPPLEMENTAL DESCRIPTION	10 99	DISTRIBUTION AMOUNT
D#-ACCT#-SUB# 00-22190-0001 ACCRUED OTHER TAXES NORFOLK UTILITY TAX										
MONTH 10/91 TOTAL 99,741.76 *										
JOSEPH T. FITZPATRICK	100039	111101REQ	11/11/91	558811	11/13/91			NKV UTILITY TAX		98,057.80
MONTH 11/91 TOTAL 98,057.80 *										
JOSEPH T. FITZPATRICK	100039	121301REQ	12/13/91	559587	12/18/91			NOV. UTILITY TAX		99,991.08
MONTH 12/91 TOTAL 99,991.08 *										
JOSEPH T. FITZPATRICK	100039	DEC91-TAX	1/10/92	560246	1/13/92			NORF.UTIL.TAX-DEC		100,395.75
MONTH 01/92 TOTAL 100,395.75 *										
JOSEPH T. FITZPATRICK	100039	021202REQ	2/12/92	560965	2/12/92			UTILITY TAX		103,205.42
MONTH 02/92 TOTAL 103,205.42 *										
JOSEPH T. FITZPATRICK	100039	FEB'92 TAX	3/08/92	561558	3/10/92			UTIL.TAX FEB'92		103,727.40
MONTH 03/92 TOTAL 103,727.40 *										
JOSEPH T. FITZPATRICK	100039	041802REQ	4/16/92	566170	4/16/92			UTILITY TAX		103,452.89
MONTH 04/92 TOTAL 103,452.89 *										
JOSEPH T. FITZPATRICK	100039	051202REQ	5/12/92	563053	5/13/92			APRIL UTILITY TAX		104,926.87
MONTH 05/92 TOTAL 104,926.87 *										
JOSEPH T. FITZPATRICK	100039	MAY UTILTX	6/15/92	563818	6/15/92			MAY UTILITY TAX		104,649.86
MONTH 06/92 TOTAL 104,649.86 *										
00-22190-0001 ACCRUED OTHER TAXES NORFOLK UTILITY TAX										
ACCOUNT TOTAL									2,036,094.89	**
DEPARTMENT 00 TOTAL									2,036,094.89	***
COMPANY 5410 TOTAL									2,036,094.89	****

NAME	ADDRESS	UNITS	CURRENT RATE	CURRENT TAX	JULY 1990	AUG 1990	SEPT 1990	OCT 1990	NOV 1990	DEC 1990	TOTAL 1990
BAY ISLE MOTEL	2331 E. OCEAN VIEW	71	\$413.22	\$28.93	\$28.08	\$28.08	\$28.08	\$18.30	\$18.30	\$18.30	\$139.13
BLUE HILE	9655 NORFOLK AVE	72	\$198.00	\$13.86	\$13.86	\$13.86	\$13.86	\$13.86	\$13.86	\$13.86	\$83.16
BREAKERS MOTEL	3008 E. OCEAN VIEW	71	\$413.22	\$28.93	\$28.08	\$28.08	\$28.08	\$28.08	\$28.08	\$28.08	\$168.48
CHESA-BAY MOTEL	360 W. OCEAN VIEW	16	\$101.12	\$7.08	\$6.89	\$6.89	\$6.89	\$6.89	\$6.89	\$6.89	\$41.33
COMFORT INN	930 VA BEACH BLVD	171	\$995.22	\$69.67	\$67.63	\$67.63	\$67.63	\$67.63	\$67.63	\$67.63	\$405.78
DAYS INN	5701 CHAMBERS ST	163	\$948.66	\$66.41	\$64.47	\$64.47	\$64.47	\$64.47	\$64.47	\$64.47	\$386.80
DAYS INN	1631 BAYVILLE ST	117	\$914.94	\$64.05	\$62.65	\$62.65	\$62.65	\$62.65	\$62.65	\$62.65	\$375.92
DAYS INN	5708 NORTHAMPTON BLVD	160	\$931.20	\$65.18	\$63.28	\$63.28	\$63.28	\$63.28	\$63.28	\$63.28	\$379.68
ECOMO LODGE	9601 4TH VIEW	71	\$413.22	\$28.93	\$28.08	\$28.08	\$28.08	\$28.08	\$28.08	\$28.08	\$168.48
ECOMO LODGE	8901 HAMPTON BLVD	89	\$517.98	\$36.26	\$35.20	\$35.20	\$35.20	\$35.20	\$35.20	\$35.20	\$211.20
ECOMO LODGE	5819 NORTHAMPTON BLVD	78	\$453.96	\$31.78	\$30.85	\$30.85	\$30.85	\$30.85	\$30.85	\$30.85	\$185.09
ECOMO LODGE	1111 E. OCEAN VIEW	48	\$312.00	\$21.84	\$18.98	\$18.98	\$18.98	\$18.98	\$18.98	\$12.26	\$107.18
ECOMO LODGE	865 W. MILITARY HWY	73	\$424.86	\$29.74	\$28.87	\$28.87	\$28.87	\$28.87	\$28.87	\$28.87	\$173.23
ECOMO LODGE	1050 TIDEWATER DR	66	\$384.12	\$26.89	\$26.10	\$26.10	\$26.10	\$26.10	\$26.10	\$26.10	\$156.62
EXECUTIVE INN	717 S. MILITARY HWY	104	\$605.28	\$42.37	\$41.13	\$41.13	\$41.13	\$41.13	\$41.13	\$41.13	\$246.79
HAMPTON INN	1450 W. MILITARY HWY	130	\$845.00	\$59.15	\$51.42	\$51.42	\$51.42	\$51.42	\$51.42	\$51.42	\$308.49
HAMPTON INN	HAMPTON BLVD	121	\$704.22	\$49.30	\$47.86	\$47.86	\$47.86	\$47.86	\$47.86	\$47.86	\$287.13
HAVEN INN MOTEL	3812 E. OCEAN VIEW	32	\$186.24	\$13.04	\$12.66	\$12.66	\$12.66	\$12.66	\$12.66	\$12.66	\$75.94
AIRPORT HILTON	1500 W. MILITARY HWY	250	\$1,455.00	\$101.85	\$98.88	\$98.88	\$98.88	\$98.88	\$98.88	\$98.88	\$593.25
HOJO INN	515 W. MILITARY HWY	163	\$1,600.46	\$112.03	\$64.47	\$64.47	\$64.47	\$64.47	\$64.47	\$64.47	\$386.80
HOLLIDAY INN	1010 W. OCEAN VIEW	120	\$698.40	\$48.89	\$47.46	\$47.46	\$47.46	\$47.46	\$47.46	\$47.46	\$284.76
HOLIDAY SANDS	1330 E. OCEAN VIEW	105	\$611.10	\$42.78	\$41.53	\$41.53	\$41.53	\$41.53	\$26.97	\$26.97	\$220.05
LaFAYETTE MOTOR INN	4233 GRANBY ST	80	\$465.60	\$32.59	\$31.64	\$31.64	\$31.64	\$31.64	\$31.64	\$31.64	\$189.84
LAKE WRIGHT QUALITY INN	6280 NORTHAMPTON BLVD	308	\$1,792.56	\$125.48	\$121.81	\$121.81	\$121.81	\$121.81	\$121.81	\$121.81	\$730.88
LODGE AT LITTLE CREEK	7969 SHORE DR	48	\$303.36	\$21.24	\$20.66	\$20.66	\$20.66	\$20.66	\$12.26	\$12.26	\$107.18
MacTHRIFT INN	800 E. OCEAN VIEW	33	\$192.06	\$13.44	\$13.05	\$13.05	\$13.05	\$13.05	\$13.05	\$13.05	\$78.31
MOTEL 6	853 W. MILITARY HWY	152	\$988.00	\$69.16	\$60.12	\$60.12	\$60.12	\$60.12	\$60.12	\$60.12	\$360.70
OCEAN SHORE INN	3921 E. OCEAN VIEW	59	\$343.38	\$24.04	\$23.33	\$23.33	\$23.33	\$23.33	\$23.33	\$23.33	\$140.01
OLD DOMINION INN	4111 HAMPTON BLVD	60	\$229.20	\$16.04	\$23.73	\$23.73	\$23.73	\$15.33	\$15.33	\$15.33	\$117.18
OMNI NORFOLK	777 WATERSIDE DR	462	\$2,688.84	\$188.22	\$182.72	\$182.72	\$182.72	\$182.72	\$182.72	\$182.72	\$1,096.33
QUALITY INN	719 E. OCEAN VIEW	101	\$587.82	\$41.15	\$39.95	\$39.95	\$39.95	\$39.95	\$25.95	\$25.95	\$211.67
SCOTTISH INN	1001 W. MILITARY HWY	101	\$587.82	\$41.15	\$39.95	\$39.95	\$39.95	\$39.95	\$39.95	\$39.95	\$239.67
SEA ISLE	315 E. OCEAN VIEW	22	\$128.04	\$8.96	\$8.70	\$8.70	\$8.70	\$5.62	\$5.62	\$5.62	\$42.97
SEA KING MOTEL	4140 E. OCEAN VIEW	33	\$192.06	\$13.44	\$13.05	\$13.05	\$13.05	\$13.05	\$13.05	\$13.05	\$78.31
SEASIDE INN	1120 E. OCEAN VIEW	77	\$448.14	\$31.37	\$30.45	\$30.45	\$30.45	\$19.81	\$19.81	\$19.81	\$150.80
SILVER SANDS MOTEL	2801 E. OCEAN VIEW	29	\$176.03	\$12.32	\$11.47	\$11.47	\$11.47	\$7.55	\$7.55	\$7.55	\$57.06
SURF MOTEL	2918 E. OCEAN VIEW	41	\$238.62	\$16.70	\$16.22	\$16.22	\$16.22	\$10.62	\$10.62	\$10.62	\$74.89
SUPER 8	7940 SHORE DR	75	\$436.50	\$30.56	\$29.66	\$29.66	\$29.66	\$29.66	\$29.66	\$29.66	\$177.98
TWIN SAILS	930 E. OCEAN VIEW	72	\$419.04	\$29.33	\$28.48	\$28.48	\$13.86	\$14.24	\$14.24	\$14.24	\$113.53
WARM SANDS	9635 SHORE DR	46	\$267.72	\$18.74	\$18.19	\$18.19	\$18.19	\$18.19	\$18.19	\$18.19	\$109.16
ANCHORAGE MOTOR INN	929 E. OCEAN VIEW	97	\$564.54	\$39.52	\$38.36	\$38.36	\$38.36	\$24.36	\$24.36	\$24.36	\$188.18
ECOMO LODGE	1850 E. LITTLE CREEK RD	62	\$360.84	\$25.26	\$24.52	\$24.52	\$24.52	\$24.52	\$15.84	\$15.84	\$129.77
ECOMO LODGE	3343 W. MILITARY HWY	48	\$303.36	\$21.24	\$18.98	\$18.98	\$18.98	\$12.26	\$12.26	\$12.26	\$93.74
BEACHCOMBER MOTEL	2090 E. OCEAN VIEW	62	\$360.84	\$25.26	\$24.52	\$24.52	\$24.52	\$12.26	\$12.26	\$12.26	\$110.34
MacTHRIFT	1020 E. OCEAN VIEW	72	\$419.04	\$29.33	\$28.48	\$28.48	\$28.48	\$28.48	\$18.40	\$18.40	\$150.70
ALGONQUIN HOUSE	7320 GLENROIE AVE	124	\$744.00	\$52.08	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
ACHER'S WALK	300 YARMOUTH ST	72	\$720.00	\$50.40	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
DePAUL HOSPITAL	150 KINGSLEY LANE	180	\$450.00	\$31.50	\$31.50	\$31.50	\$31.50	\$31.50	\$31.50	\$31.50	\$189.00
PREMASON HARBOUR	401 COLLEGE PLACE	67	\$670.00	\$46.90	\$46.90	\$46.90	\$46.90	\$46.90	\$46.90	\$46.90	\$281.40
HARBOUR PLACE	215 BROOKS AVE	78	\$776.00	\$54.32	\$54.32	\$54.32	\$54.32	\$54.32	\$54.32	\$54.32	\$325.93



NAME	ADDRESS	UNITS	CURRENT RATE	CURRENT TAX	JULY 1990	AUG 1990	SEPT 1990	OCT 1990	NOV 1990	DEC 1990	TOTAL 1990
NEW CALVARY TOWERS	850 E. OCEAN VIEW	114	\$684.00	\$47.88	\$47.88	\$47.88	\$47.88	\$47.88	\$47.88	\$47.88	\$287.28
PILOT HOUSE	421 W. BUTE ST	29	\$174.00	\$12.18	\$12.18	\$12.18	\$12.18	\$12.18	\$12.18	\$12.18	\$73.08
SUNDANCE APTS	815 E. OCEAN VIEW	26	\$156.00	\$10.92	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
TAYLORS LANDING MARINA	8172 SHORE DR	50	\$300.00	\$21.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
TUCKER HOUSE	770 ARMFIELD RD	57	\$342.00	\$23.94	\$23.94	\$23.94	\$23.94	\$23.94	\$23.94	\$23.94	\$143.64
✓ EVELYN/KATHLEEN APTS	9644 MASON CREEK RD	18	\$108.00	\$7.56	\$7.56	\$7.56	\$7.56	\$7.56	\$7.56	\$7.56	\$45.36
ADMIRALTY MOTEL	N. MILITARY HWY	173	\$0.00	\$0.00	\$68.42	\$68.42	\$68.42	\$44.34	\$44.34	\$44.34	\$338.29
		5419	\$31,745	\$2,222							\$11,818
			\$380,938	\$26,666							

NAME	ADDRESS	UNITS	CURRENT RATE	CURRENT TAX	JAN 1991	FEB 1991	MARCH 1991	APRIL 1991	MAY 1991	JUNE 1991	JULY 1991	AUG 1991	SEPT 1991
BAY ISLE MOTEL	2331 E. OCEAN VIEW	71	\$413.22	\$28.93	\$18.30	\$18.30	\$28.08	\$28.08	\$28.08	\$28.08	\$28.08	\$28.08	\$28.08
BLUE MILE	9655 NORFOLK AVE	72	\$198.00	\$13.86	\$13.86	\$13.86	\$13.86	\$13.86	\$13.86	\$13.86	\$13.86	\$13.86	\$13.86
BREAKERS MOTEL	3008 E. OCEAN VIEW	71	\$413.22	\$28.93	\$28.08	\$28.08	\$28.08	\$28.08	\$28.08	\$28.08	\$28.08	\$28.08	\$28.08
CHESA-BAY MOTEL	360 W. OCEAN VIEW	16	\$101.12	\$7.08	\$7.08	\$7.08	\$7.08	\$7.08	\$7.08	\$7.08	\$7.08	\$7.08	\$7.08
COMFORT INN	930 VA BEACH BLVD	171	\$995.22	\$69.67	\$67.63	\$67.63	\$67.63	\$67.63	\$67.63	\$67.63	\$67.63	\$67.63	\$67.63
DAYS INN	5701 CHAMBERS ST	163	\$948.66	\$66.41	\$64.47	\$64.47	\$64.47	\$64.47	\$64.47	\$64.47	\$64.47	\$64.47	\$64.47
DAYS INN	1631 BAYVILLE ST	117	\$914.94	\$64.05	\$62.65	\$62.65	\$62.65	\$62.65	\$62.65	\$62.65	\$62.65	\$62.65	\$62.65
DAYS INN	5708 NORTHAMPTON BLVD	160	\$931.20	\$65.18	\$63.28	\$63.28	\$63.28	\$63.28	\$63.28	\$63.28	\$63.28	\$63.28	\$63.28
ECONO LODGE	9601 4TH VIEW	71	\$413.22	\$28.93	\$28.08	\$28.08	\$28.08	\$28.08	\$28.08	\$28.08	\$28.08	\$28.08	\$28.08
ECONO LODGE	8901 HAMPTON BLVD	89	\$517.98	\$36.26	\$35.20	\$35.20	\$35.20	\$35.20	\$35.20	\$35.20	\$35.20	\$35.20	\$35.20
ECONO LODGE	5819 NORTHAMPTON BLVD	78	\$453.96	\$31.78	\$30.85	\$30.85	\$30.85	\$30.85	\$30.85	\$30.85	\$30.85	\$30.85	\$30.85
ECONO LODGE	1111 E. OCEAN VIEW	48	\$312.00	\$21.84	\$12.26	\$12.26	\$12.26	\$12.26	\$18.98	\$18.98	\$18.98	\$18.98	\$18.98
ECONO LODGE	865 N. MILITARY HWY	73	\$424.86	\$29.74	\$28.87	\$28.87	\$28.87	\$28.87	\$28.87	\$28.87	\$28.87	\$28.87	\$28.87
ECONO LODGE	1050 TIDEWATER DR	66	\$384.12	\$26.89	\$26.10	\$26.10	\$26.10	\$26.10	\$26.10	\$26.10	\$26.10	\$26.10	\$26.10
EXECUTIVE INN	717 S. MILITARY HWY	104	\$605.28	\$42.37	\$41.13	\$41.13	\$41.13	\$41.13	\$41.13	\$41.13	\$41.13	\$41.13	\$41.13
HAMPTON INN	1450 N. MILITARY HWY	130	\$845.00	\$59.15	\$51.42	\$51.42	\$51.42	\$51.42	\$51.42	\$51.42	\$51.42	\$51.42	\$51.42
HAMPTON INN	HAMPTON BLVD	121	\$704.22	\$49.30	\$47.86	\$47.86	\$47.86	\$47.86	\$47.86	\$47.86	\$47.86	\$47.86	\$47.86
HAVEN INN MOTEL	3812 E. OCEAN VIEW	32	\$186.24	\$13.04	\$12.66	\$12.66	\$12.66	\$12.66	\$12.66	\$12.66	\$12.66	\$12.66	\$12.66
AIRPORT HILTON	1500 N. MILITARY HWY	250	\$1,455.00	\$101.85	\$98.88	\$98.88	\$98.88	\$98.88	\$98.88	\$98.88	\$98.88	\$98.88	\$98.88
HOJO INN	515 N. MILITARY HWY	163	\$1,600.46	\$112.03	\$64.47	\$64.47	\$64.47	\$30.24	\$32.18	\$32.18	\$32.18	\$32.18	\$32.18
HOLIDAY INN	1010 W. OCEAN VIEW	120	\$698.40	\$48.89	\$47.46	\$47.46	\$47.46	\$47.46	\$47.46	\$47.46	\$47.46	\$47.46	\$47.46
HOLIDAY SANDS	1330 E. OCEAN VIEW	105	\$611.10	\$42.78	\$26.97	\$26.97	\$26.97	\$41.53	\$41.53	\$41.53	\$41.53	\$41.53	\$41.53
LaFAYETTE MOTOR INN	4233 GRANBY ST	80	\$465.60	\$32.59	\$31.64	\$31.64	\$31.64	\$31.64	\$31.64	\$31.64	\$31.64	\$31.64	\$31.64
LAKE WRIGHT QUALITY INN	6280 NORTHAMPTON BLVD	308	\$1,792.56	\$125.48	\$121.81	\$121.81	\$121.81	\$121.81	\$121.81	\$121.81	\$121.81	\$121.81	\$121.81
LODGE AT LITTLE CREEK	7969 SHORE DR	48	\$303.36	\$21.24	\$12.26	\$12.26	\$12.26	\$12.26	\$20.66	\$20.66	\$20.66	\$20.66	\$20.66
MacTHRIFT INN	800 E. OCEAN VIEW	33	\$192.06	\$13.44	\$13.05	\$13.05	\$13.05	\$13.05	\$13.05	\$13.05	\$13.05	\$13.05	\$13.05
MOTEL 6	853 N. MILITARY HWY	152	\$988.00	\$69.16	\$61.92	\$61.92	\$61.92	\$61.92	\$61.92	\$61.92	\$61.92	\$61.92	\$61.92
OCEAN SHORE INN	3921 E. OCEAN VIEW	59	\$343.38	\$24.04	\$23.33	\$23.33	\$23.33	\$23.33	\$23.33	\$23.33	\$23.33	\$23.33	\$23.33
OLD DOMINION INN	4111 HAMPTON BLVD	60	\$229.20	\$16.04	\$15.33	\$15.33	\$15.33	\$15.33	\$15.33	\$15.33	\$15.33	\$15.33	\$15.33
OMNI NORFOLK	777 WATERSIDE DR	462	\$2,688.84	\$188.22	\$182.72	\$182.72	\$182.72	\$182.72	\$182.72	\$182.72	\$182.72	\$182.72	\$182.72
QUALITY INN	719 E. OCEAN VIEW	101	\$587.82	\$41.15	\$25.95	\$25.95	\$25.95	\$39.95	\$39.95	\$39.95	\$39.95	\$39.95	\$39.95
SCOTTISH INN	1001 W. MILITARY HWY	101	\$587.82	\$41.15	\$39.95	\$39.95	\$39.95	\$39.95	\$39.95	\$39.95	\$39.95	\$39.95	\$39.95
SEA ISLE	315 E. OCEAN VIEW	22	\$128.04	\$8.96	\$5.62	\$5.62	\$11.24	\$11.24	\$11.24	\$11.24	\$11.24	\$11.24	\$11.24
SEA KING MOTEL	4140 E. OCEAN VIEW	33	\$192.06	\$13.44	\$13.05	\$13.05	\$13.05	\$13.05	\$13.05	\$13.05	\$13.05	\$13.05	\$13.05
SEASIDE INN	1120 E. OCEAN VIEW	77	\$448.14	\$31.37	\$19.81	\$19.81	\$30.45	\$30.45	\$30.45	\$30.45	\$30.45	\$30.45	\$30.45
SILVER SANDS MOTEL	2801 E. OCEAN VIEW	29	\$176.03	\$12.32	\$7.55	\$7.55	\$11.47	\$11.47	\$11.47	\$11.47	\$11.47	\$11.47	\$11.47
SURF MOTEL	2918 E. OCEAN VIEW	41	\$238.62	\$16.70	\$10.62	\$16.22	\$16.22	\$16.22	\$16.22	\$16.22	\$16.22	\$16.22	\$16.22
SUPER 8	7940 SHORE DR	75	\$436.50	\$30.56	\$29.66	\$29.66	\$29.66	\$29.66	\$29.66	\$29.66	\$29.66	\$29.66	\$29.66
TWIN SAILS	930 E. OCEAN VIEW	72	\$419.04	\$29.33	\$14.24	\$28.48	\$28.48	\$28.48	\$28.48	\$28.48	\$28.48	\$28.48	\$28.48
WARM SANDS	9635 SHORE DR	46	\$267.72	\$18.74	\$18.19	\$18.19	\$18.19	\$18.19	\$18.19	\$18.19	\$18.19	\$18.19	\$18.19
ANCHORAGE MOTOR INN	929 E. OCEAN VIEW	97	\$564.54	\$39.52	\$24.36	\$24.36	\$38.36	\$38.36	\$38.36	\$38.36	\$38.36	\$38.36	\$38.36
ECONO LODGE	1850 E. LITTLE CREEK RD	62	\$360.84	\$25.26	\$15.84	\$15.84	\$15.84	\$24.52	\$24.52	\$24.52	\$24.52	\$24.52	\$24.52
ECONO LODGE	3343 N. MILITARY HWY	48	\$303.36	\$21.24	\$12.26	\$12.26	\$24.53	\$24.53	\$24.53	\$24.53	\$24.53	\$24.53	\$24.53
BEACHCOMBER MOTEL	2090 E. OCEAN VIEW	62	\$360.84	\$25.26	\$12.26	\$12.26	\$24.52	\$24.52	\$24.52	\$24.52	\$24.52	\$24.52	\$24.52
MacTHRIFT	1020 E. OCEAN VIEW	72	\$419.04	\$29.33	\$18.40	\$18.40	\$18.40	\$28.48	\$28.48	\$28.48	\$28.48	\$28.48	\$28.48
ALGONQUIN HOUSE	7320 GLENROIE AVE	124	\$744.00	\$52.08	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$52.08
ACHER'S WALK	300 YARMOUTH ST	72	\$720.00	\$50.40	\$0.00	\$0.00	\$0.00	\$25.20	\$50.40	\$50.40	\$50.40	\$50.40	\$50.40
DePAUL HOSPITAL	150 KINGSLEY LANE	180	\$450.00	\$31.50	\$31.50	\$31.50	\$31.50	\$31.50	\$31.50	\$31.50	\$31.50	\$31.50	\$31.50
FREMASON HARBOUR	401 COLLEGE PLACE	67	\$670.00	\$46.90	\$46.90	\$46.90	\$46.90	\$46.90	\$46.90	\$46.90	\$46.90	\$46.90	\$46.90
HARBOUR PLACE	215 BROOKS AVE	78	\$776.00	\$54.32	\$54.32	\$54.32	\$54.32	\$54.32	\$54.32	\$54.32	\$54.32	\$54.32	\$54.32

NAME	ADDRESS	UNITS	CURRENT RATE	CURRENT TAX	JAN 1991	FEB 1991	MARCH 1991	APRIL 1991	MAY 1991	JUNE 1991	JULY 1991	AUG 1991	SEPT 1991
NEW CALVARY TOWERS	850 E. OCEAN VIEW	114	\$684.00	\$47.88	\$47.88	\$47.88	\$47.88	\$47.88	\$47.88	\$47.88	\$47.88	\$47.88	\$47.88
PILOT HOUSE	421 W. BUTE ST	29	\$174.00	\$12.18	\$12.18	\$12.18	\$12.18	\$12.18	\$12.18	\$12.18	\$12.18	\$12.18	\$12.18
SUNDANCE APTS	815 E. OCEAN VIEW	26	\$156.00	\$10.92	\$0.00	\$0.00	\$10.92	\$10.92	\$10.92	\$10.92	\$10.92	\$10.92	\$10.92
TAYLORS LANDING MARINA	8172 SHORE DR	50	\$300.00	\$21.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$21.00	\$21.00	\$21.00	\$21.00
TUCKER HOUSE	770 ARMFIELD RD	57	\$342.00	\$23.94	\$23.94	\$23.94	\$23.94	\$23.94	\$23.94	\$23.94	\$23.94	\$23.94	\$23.94
EVELYN/KATHLEEN APTS	9644 MASON CREEK RD	18	\$108.00	\$7.56	\$7.56	\$7.56	\$7.56	\$7.56	\$7.56	\$7.56	\$7.56	\$7.56	\$7.56
ADMIRALTY MOTEL	N. MILITARY HWY	173	\$0.00	\$0.00	\$44.34	\$15.83	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
		5419	\$31,745	\$2,222									
			\$380,938	\$26,666									

NAME	ADDRESS	UNITS	CURRENT RATE	CURRENT TAX	OCT 1991	NOV 1991	DEC 1991	TOTAL 1991	JAN 1992	FEB 1992	MARCH 1992	APRIL 1992	MAY 1992	JUNE 1992
BAY ISLE MOTEL	2331 E. OCEAN VIEW	71	\$413.22	\$28.93	\$18.30	\$18.30	\$18.30	\$288.04	\$18.30	\$18.30	\$18.30	\$28.08	\$28.08	\$28.08
BLUE MILE	9655 NORFOLK AVE	72	\$198.00	\$13.86	\$13.86	\$13.86	\$13.86	\$166.32	\$13.86	\$13.86	\$13.86	\$7.85	\$0.00	\$0.00
BREAKERS MOTEL	3008 E. OCEAN VIEW	71	\$413.22	\$28.93	\$28.93	\$28.93	\$28.93	\$339.50	\$28.93	\$28.93	\$28.93	\$28.93	\$28.93	\$28.93
CHESA-BAY MOTEL	360 W. OCEAN VIEW	16	\$101.12	\$7.08	\$7.08	\$7.08	\$7.08	\$84.96	\$7.08	\$7.08	\$7.08	\$7.08	\$7.08	\$7.08
COMFORT INN	930 VA BEACH BLVD	171	\$995.22	\$69.67	\$69.67	\$69.67	\$69.67	\$817.67	\$69.67	\$69.67	\$69.67	\$69.67	\$69.67	\$69.67
DAYS INN	5701 CHAMBERS ST	163	\$948.66	\$66.41	\$66.41	\$66.41	\$66.41	\$779.42	\$66.41	\$66.41	\$66.41	\$66.41	\$66.41	\$66.41
DAYS INN	1631 BAYVILLE ST	117	\$914.94	\$64.05	\$64.05	\$64.05	\$64.05	\$756.02	\$64.05	\$64.05	\$64.05	\$64.05	\$64.05	\$64.05
DAYS INN	5708 NORTHAMPTON BLVD	160	\$931.20	\$65.18	\$65.18	\$65.18	\$65.18	\$765.07	\$65.18	\$65.18	\$65.18	\$65.18	\$65.18	\$65.18
ECONO LODGE	9601 4TH VIEW	71	\$413.22	\$28.93	\$28.93	\$28.93	\$28.93	\$339.50	\$28.93	\$28.93	\$28.93	\$28.93	\$28.93	\$28.93
ECONO LODGE	8901 HAMPTON BLVD	89	\$517.98	\$36.26	\$36.26	\$36.26	\$36.26	\$425.57	\$36.26	\$36.26	\$36.26	\$36.26	\$36.26	\$36.26
ECONO LODGE	5819 NORTHAMPTON BLVD	78	\$453.96	\$31.78	\$31.78	\$31.78	\$31.78	\$372.97	\$31.78	\$31.78	\$31.78	\$31.78	\$31.78	\$31.78
ECONO LODGE	1111 E. OCEAN VIEW	48	\$312.00	\$21.84	\$21.84	\$21.84	\$15.12	\$202.78	\$15.12	\$15.12	\$15.12	\$15.12	\$21.84	\$21.84
ECONO LODGE	865 N. MILITARY HWY	73	\$424.86	\$29.74	\$29.74	\$29.74	\$29.74	\$349.06	\$29.74	\$29.74	\$29.74	\$29.74	\$29.74	\$29.74
ECONO LODGE	1050 TIDEWATER DR	66	\$384.12	\$26.89	\$26.89	\$26.89	\$26.89	\$315.59	\$26.89	\$26.89	\$26.89	\$26.89	\$26.89	\$26.89
EXECUTIVE INN	717 S. MILITARY HWY	104	\$605.28	\$42.37	\$42.37	\$42.37	\$42.37	\$497.30	\$42.37	\$42.37	\$42.37	\$42.37	\$42.37	\$42.37
HAMPTON INN	1450 N. MILITARY HWY	130	\$845.00	\$59.15	\$59.15	\$59.15	\$59.15	\$640.19	\$59.15	\$59.15	\$59.15	\$59.15	\$59.15	\$59.15
HAMPTON INN	HAMPTON BLVD	121	\$704.22	\$49.30	\$49.30	\$49.30	\$49.30	\$578.59	\$49.30	\$49.30	\$49.30	\$49.30	\$49.30	\$49.30
HAVEN INN MOTEL	3812 E. OCEAN VIEW	32	\$186.24	\$13.04	\$13.04	\$13.04	\$13.04	\$153.01	\$13.04	\$13.04	\$13.04	\$13.04	\$13.04	\$13.04
AIRPORT HILTON	1500 N. MILITARY HWY	250	\$1,455.00	\$101.85	\$101.85	\$101.85	\$101.85	\$1,195.43	\$101.85	\$101.85	\$101.85	\$101.85	\$101.85	\$101.85
HOJO INN	515 N. MILITARY HWY	163	\$1,600.46	\$112.03	\$32.18	\$32.18	\$32.18	\$481.06	\$32.18	\$32.18	\$32.18	\$66.41	\$66.41	\$112.05
HOLLIDAY INN	1010 W. OCEAN VIEW	120	\$698.40	\$48.89	\$48.89	\$48.89	\$48.89	\$573.80	\$48.89	\$48.89	\$48.89	\$48.89	\$48.89	\$48.89
HOLIDAY SANDS	1330 E. OCEAN VIEW	105	\$611.10	\$42.78	\$42.78	\$28.22	\$28.22	\$429.28	\$28.22	\$28.22	\$28.22	\$42.78	\$42.78	\$42.78
LaFAYETTE MOTOR INN	4233 GRANBY ST	80	\$465.60	\$32.59	\$32.59	\$32.59	\$32.59	\$382.54	\$32.59	\$32.59	\$32.59	\$32.59	\$32.59	\$32.59
LAKE WRIGHT QUALITY INN	6280 NORTHAMPTON BLVD	308	\$1,792.56	\$125.48	\$125.48	\$125.48	\$125.48	\$1,472.76	\$125.48	\$125.48	\$125.48	\$125.48	\$125.48	\$125.48
LODGE AT LITTLE CREEK	7969 SHORE DR	48	\$303.36	\$21.24	\$21.24	\$12.84	\$12.84	\$199.28	\$12.84	\$12.84	\$12.84	\$12.84	\$21.24	\$21.24
MacTHRIFT INN	800 E. OCEAN VIEW	33	\$192.06	\$13.44	\$13.44	\$13.44	\$13.44	\$157.80	\$13.44	\$13.44	\$13.44	\$13.44	\$13.44	\$13.44
MOTEL 6	853 N. MILITARY HWY	152	\$988.00	\$69.16	\$69.16	\$69.16	\$69.16	\$764.76	\$69.16	\$69.16	\$69.16	\$69.16	\$69.16	\$69.16
OCEAN SHORE INN	3921 E. OCEAN VIEW	59	\$343.38	\$24.04	\$24.04	\$24.04	\$24.04	\$282.12	\$24.04	\$24.04	\$24.04	\$24.04	\$24.04	\$24.04
OLD DOMINION INN	4111 HAMPTON BLVD	60	\$229.20	\$16.04	\$16.04	\$16.04	\$16.04	\$186.10	\$16.04	\$16.04	\$16.04	\$16.04	\$16.04	\$16.04
OMNI NORFOLK	777 WATERSIDE DR	462	\$2,688.84	\$188.22	\$188.22	\$188.22	\$188.22	\$2,209.15	\$188.22	\$188.22	\$188.22	\$188.22	\$188.22	\$188.22
QUALITY INN	719 E. OCEAN VIEW	101	\$587.82	\$41.15	\$41.15	\$27.15	\$27.15	\$412.95	\$27.15	\$27.15	\$27.15	\$41.15	\$41.15	\$41.15
SCOTTISH INN	1001 N. MILITARY HWY	101	\$587.82	\$41.15	\$41.15	\$41.15	\$41.15	\$482.95	\$41.15	\$41.15	\$41.15	\$41.15	\$41.15	\$41.15
SEA ISLE	315 E. OCEAN VIEW	22	\$128.04	\$8.96	\$5.88	\$5.88	\$5.88	\$107.58	\$5.88	\$5.88	\$5.88	\$8.96	\$8.96	\$8.96
SEA KING MOTEL	4140 E. OCEAN VIEW	33	\$192.06	\$13.44	\$13.44	\$13.44	\$13.44	\$157.80	\$13.44	\$13.44	\$13.44	\$13.44	\$13.44	\$13.44
SEASIDE INN	1120 E. OCEAN VIEW	77	\$448.14	\$31.37	\$20.73	\$20.73	\$20.73	\$314.99	\$20.73	\$20.73	\$31.37	\$31.37	\$31.37	\$31.37
SILVER SANDS MOTEL	2801 E. OCEAN VIEW	29	\$176.03	\$12.32	\$7.89	\$7.89	\$6.84	\$118.01	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
SURF MOTEL	2918 E. OCEAN VIEW	41	\$238.62	\$16.70	\$11.10	\$11.10	\$11.10	\$168.05	\$11.10	\$11.10	\$16.70	\$16.70	\$16.70	\$16.70
SUPER 8	7940 SHORE DR	75	\$436.50	\$30.56	\$30.56	\$30.56	\$30.56	\$358.63	\$30.56	\$30.56	\$30.56	\$30.56	\$30.56	\$30.56
TWIN SAILS	930 E. OCEAN VIEW	72	\$419.04	\$29.33	\$14.67	\$14.67	\$14.67	\$271.81	\$14.67	\$14.67	\$29.33	\$29.33	\$29.33	\$29.33
WARM SANDS	9635 SHORE DR	46	\$267.72	\$18.74	\$18.74	\$18.74	\$18.74	\$219.96	\$18.74	\$18.74	\$18.74	\$18.74	\$18.74	\$18.74
ANCHORAGE MOTOR INN	929 E. OCEAN VIEW	97	\$564.54	\$39.52	\$25.52	\$25.52	\$25.52	\$393.82	\$25.52	\$25.52	\$25.52	\$25.52	\$25.52	\$25.52
ECONO LODGE	1850 E. LITTLE CREEK RD	62	\$360.84	\$25.26	\$25.26	\$16.58	\$16.58	\$253.07	\$16.58	\$16.58	\$16.58	\$25.26	\$25.26	\$25.26
ECONO LODGE	3343 N. MILITARY HWY	48	\$303.36	\$21.24	\$12.84	\$12.84	\$12.84	\$234.73	\$12.84	\$12.84	\$21.24	\$21.24	\$21.24	\$21.24
BEACHCOMBER MOTEL	2090 E. OCEAN VIEW	62	\$360.84	\$25.26	\$12.63	\$12.63	\$12.63	\$234.06	\$12.63	\$12.63	\$25.26	\$25.26	\$25.26	\$25.26
MacTHRIFT	1020 E. OCEAN VIEW	72	\$419.04	\$29.33	\$29.33	\$19.25	\$19.25	\$293.88	\$19.25	\$19.25	\$29.33	\$29.33	\$29.33	\$29.33
ALGOMQUIN HOUSE	7320 GLENROIE AVE	124	\$744.00	\$52.08	\$52.08	\$52.08	\$52.08	\$208.32	\$52.08	\$52.08	\$52.08	\$52.08	\$52.08	\$52.08
ACHER'S WALK	300 YARMOUTH ST	72	\$720.00	\$50.40	\$50.40	\$50.40	\$50.40	\$378.00	\$50.40	\$50.40	\$50.40	\$50.40	\$50.40	\$50.40
DePAUL HOSPITAL	150 KINGSLEY LANE	180	\$450.00	\$31.50	\$31.50	\$31.50	\$31.50	\$378.00	\$31.50	\$31.50	\$31.50	\$31.50	\$31.50	\$31.50
FREMASON HARBOUR	401 COLLEGE PLACE	67	\$670.00	\$46.90	\$46.90	\$46.90	\$46.90	\$562.80	\$46.90	\$46.90	\$46.90	\$46.90	\$46.90	\$46.90
HARBOUR PLACE	215 BROOKS AVE	78	\$776.00	\$54.32	\$54.32	\$54.32	\$54.32	\$651.86	\$54.32	\$54.32	\$54.32	\$54.32	\$54.32	\$54.32

NAME	ADDRESS	UNITS	CURRENT RATE	CURRENT TAX	OCT 1991	NOV 1991	DEC 1991	TOTAL 1991	JAN 1992	FEB 1992	MARCH 1992	APRIL 1992	MAY 1992	JUNE 1992
NEW CALVARY TOWERS	850 E. OCEAN VIEW	114	\$684.00	\$47.88	\$47.88	\$47.88	\$47.88	\$574.56	\$47.88	\$47.88	\$47.88	\$47.88	\$47.88	\$47.88
PILOT HOUSE	421 W. BUTE ST	29	\$174.00	\$12.18	\$12.18	\$12.18	\$12.18	\$146.16	\$12.18	\$12.18	\$12.18	\$12.18	\$12.18	\$12.18
SUNDANCE APTS	815 E. OCEAN VIEW	26	\$156.00	\$10.92	\$10.92	\$10.92	\$10.92	\$109.20	\$10.92	\$10.92	\$10.92	\$10.92	\$10.92	\$10.92
TAYLORS LANDING MARINA	8172 SHORE DR	50	\$300.00	\$21.00	\$21.00	\$21.00	\$21.00	\$147.00	\$21.00	\$21.00	\$21.00	\$21.00	\$21.00	\$21.00
TUCKER HOUSE	770 ARMFIELD RD	57	\$342.00	\$23.94	\$23.94	\$23.94	\$23.94	\$287.28	\$23.94	\$23.94	\$23.94	\$23.94	\$23.94	\$23.94
EVELYN/KATHLEEN APTS	9644 MASON CREEK RD	18	\$108.00	\$7.56	\$7.56	\$7.56	\$7.56	\$90.72	\$7.56	\$7.56	\$7.56	\$7.56	\$7.56	\$7.56
ADMIRALTY MOTEL	N. MILITARY HWY	173	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$60.17	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
		5419	\$31,745	\$2,222	\$23,822									
			\$380,938	\$26,666										

NAME	ADDRESS	UNITS	CURRENT RATE	CURRENT TAX	TOTAL 1992	TOTAL 1990-92
BAY ISLE MOTEL	2331 E. OCEAN VIEW	71	\$413.22	\$28.93	\$139.13	\$566.29
BLUE MILE	9655 NORFOLK AVE	72	\$198.00	\$13.86	\$49.43	\$298.91
BREAKERS MOTEL	3008 E. OCEAN VIEW	71	\$413.22	\$28.93	\$173.55	\$681.54
CHESA-BAY MOTEL	360 W. OCEAN VIEW	16	\$101.12	\$7.08	\$42.48	\$168.77
COMFORT INN	930 VA BEACH BLVD	171	\$995.22	\$69.67	\$417.99	\$1,641.45
DAYS INN	5701 CHAMBERS ST	163	\$948.66	\$66.41	\$398.44	\$1,564.65
DAYS INN	1631 BAYVILLE ST	117	\$914.94	\$64.05	\$384.27	\$1,516.21
DAYS INN	5708 NORTHAMPTON BLVD	160	\$931.20	\$65.18	\$391.10	\$1,535.86
ECOMO LODGE	9601 4TH VIEW	71	\$413.22	\$28.93	\$173.55	\$681.54
ECOMO LODGE	8901 HAMPTON BLVD	89	\$517.98	\$36.26	\$217.55	\$854.32
ECOMO LODGE	5819 NORTHAMPTON BLVD	78	\$453.96	\$31.78	\$190.66	\$748.73
ECOMO LODGE	1111 E. OCEAN VIEW	48	\$312.00	\$21.84	\$104.16	\$414.12
ECOMO LODGE	865 N. MILITARY HWY	73	\$424.86	\$29.74	\$178.44	\$700.73
ECOMO LODGE	1050 TIDEWATER DR	66	\$384.12	\$26.89	\$161.33	\$633.54
EXECUTIVE INN	717 S. MILITARY HWY	104	\$605.28	\$42.37	\$254.22	\$998.31
HAMPTON INN	1450 N. MILITARY HWY	130	\$845.00	\$59.15	\$354.90	\$1,303.58
HAMPTON INN	HAMPTON BLVD	121	\$704.22	\$49.30	\$295.77	\$1,161.49
HAVEN INN MOTEL	3812 E. OCEAN VIEW	32	\$186.24	\$13.04	\$78.22	\$307.17
AIRPORT HILTON	1500 N. MILITARY HWY	250	\$1,455.00	\$101.85	\$611.10	\$2,399.78
HOJO INN	515 N. MILITARY HWY	163	\$1,600.46	\$112.03	\$341.40	\$1,209.26
HOLLIDAY INN	1010 W. OCEAN VIEW	120	\$698.40	\$48.89	\$293.33	\$1,151.89
HOLIDAY SANDS	1330 E. OCEAN VIEW	105	\$611.10	\$42.78	\$212.99	\$862.31
LaFAYETTE MOTOR INN	4233 GRANBY ST	80	\$465.60	\$32.59	\$195.55	\$767.93
LAKE WRIGHT QUALITY INN	6280 NORTHAMPTON BLVD	308	\$1,792.56	\$125.48	\$752.88	\$2,956.52
LODGE AT LITTLE CREEK	7969 SHORE DR	48	\$303.36	\$21.24	\$93.82	\$400.29
MacTHRIFT INN	800 E. OCEAN VIEW	33	\$192.06	\$13.44	\$80.67	\$316.77
MOTEL 6	853 N. MILITARY HWY	152	\$988.00	\$69.16	\$414.96	\$1,540.42
OCEAN SHORE INN	3921 E. OCEAN VIEW	59	\$343.38	\$24.04	\$144.22	\$566.35
OLD DOMINION INN	4111 HAMPTON BLVD	60	\$229.20	\$16.04	\$96.26	\$399.55
OMNI NORFOLK	777 WATERSIDE DR	462	\$2,688.84	\$188.22	\$1,129.31	\$4,434.78
QUALITY INN	719 E. OCEAN VIEW	101	\$587.82	\$41.15	\$204.89	\$829.52
SCOTTISH INN	1001 N. MILITARY HWY	101	\$587.82	\$41.15	\$246.88	\$969.51
SEA ISLE	315 E. OCEAN VIEW	22	\$128.04	\$8.96	\$47.61	\$198.16
SEA KING MOTEL	4140 E. OCEAN VIEW	33	\$192.06	\$13.44	\$80.67	\$316.77
SEASIDE INN	1120 E. OCEAN VIEW	77	\$448.14	\$31.37	\$166.94	\$632.73
SILVER SANDS MOTEL	2801 E. OCEAN VIEW	29	\$176.03	\$12.32	\$0.00	\$175.07
SURF MOTEL	2918 E. OCEAN VIEW	41	\$238.62	\$16.70	\$89.01	\$331.95
SUPER 8	7940 SHORE DR	75	\$436.50	\$30.56	\$183.33	\$719.93
TWIN SAILS	930 E. OCEAN VIEW	72	\$419.04	\$29.33	\$146.65	\$531.99
WARM SANDS	9635 SHORE DR	46	\$267.72	\$18.74	\$112.44	\$441.56
ANCHORAGE MOTOR INN	929 E. OCEAN VIEW	97	\$564.54	\$39.52	\$153.11	\$735.11
ECOMO LODGE	1850 E. LITTLE CREEK RD	62	\$360.84	\$25.26	\$125.52	\$508.35
ECOMO LODGE	3343 N. MILITARY HWY	48	\$303.36	\$21.24	\$110.63	\$439.10
BEACHCOMBER MOTEL	2090 E. OCEAN VIEW	62	\$360.84	\$25.26	\$126.30	\$470.70
MacTHRIFT	1020 E. OCEAN VIEW	72	\$419.04	\$29.33	\$145.75	\$590.33
ALGONQUIN HOUSE	7320 GLENROIE AVE	124	\$744.00	\$52.08	\$312.48	\$520.80
ACHER'S WALK	300 YARMOUTH ST	72	\$720.00	\$50.40	\$302.40	\$680.40
DePAUL HOSPITAL	150 KINGSLEY LANE	180	\$450.00	\$31.50	\$189.00	\$756.00
FREMASON HARBOUR	401 COLLEGE PLACE	67	\$670.00	\$46.90	\$281.40	\$1,125.60
HARBOUR PLACE	215 BROOKS AVE	78	\$776.00	\$54.32	\$325.93	\$1,303.72

NAME	ADDRESS	UNITS	CURRENT RATE	CURRENT TAX	TOTAL 1992	TOTAL 1990-92
NEW CALVARY TOWERS	850 E. OCEAN VIEW	114	\$684.00	\$47.88	\$287.28	\$1,149.12
PILOT HOUSE	421 W. BUTE ST	29	\$174.00	\$12.18	\$73.08	\$292.32
SUNDANCE APTS	815 E. OCEAN VIEW	26	\$156.00	\$10.92	\$65.52	\$174.72
TAYLORS LANDING MARINA	8172 SHORE DR	50	\$300.00	\$21.00	\$126.00	\$273.00
TUCKER HOUSE	770 ARMFIELD RD	57	\$342.00	\$23.94	\$143.64	\$574.56
EVELYN/KATHLEEN APTS	9644 MASON CREEK RD	18	\$108.00	\$7.56	\$45.36	\$181.44
ADMIRALTY MOTEL	N. MILITARY HWY	173	\$0.00	\$0.00	\$0.00	\$398.46
		5419	\$31,745	\$2,222	\$12,464	\$48,103.95
			\$380,938	\$26,666		

COMPANY/DEPT 5410-00 HAMPTON ROADS

VENDOR NAME	VENDOR NUMBER	VENDOR INVOICE #	INVOICE DATE	CHECK NUMBER	CHECK DATE	P.O. #	QUANTITY OR JOB #	SUPPLEMENTAL DESCRIPTION	10 99	DISTRIBUTION AMOUNT

D#-ACCT#-SUB# 00-12020-0001	A/R-OTHER TRADE NORF UTIL TAX									

CITY TREASURER OF NORFOLK	030087	081080	8/10/90	638928	8/31/90			UTILITY TAX		96.032.82
								MONTH 08/90 TOTAL		96.032.82
JOSEPH T. FITZPATRICK	108838	081780	9/17/90	648016	9/18/90			UTILITY TAX		113.272.86
								MONTH 09/90 TOTAL		113.272.86
								ACCOUNT TOTAL		209.305.68
								DEPARTMENT 00 TOTAL		209.305.68
								COMPANY 5410 TOTAL		209.305.68

Channel Lineup

Cox Cable offers 40 cable services, including 5 premium and 1 pay-per-view service, to meet the viewing needs of everyone in your home. Certain areas may have different services from which to choose. The following is a brief description of each service. (Channel lineup effective December 1, 1991 and subject to change.)

About Programming. We try to provide a wide variety of programming choices on our channels, to serve the needs of our customers. If you have concerns or questions about the programming on any of our channels, we want to know about it. Please write or call us with your comments.

COMPLETE BASIC CHANNELS DESCRIPTION

- 1 **Prevue Guide.** Previews of upcoming programs, as well as highlights of exciting pay-per-view entertainment (available through a TOCOM or Scientific Atlanta converter).
- 2 **WTVZ.** Local Fox affiliate channel 33.+
- 3 **WTKR.** Local CBS affiliate channel 3.+
- () 4 **USA Network.** A wide variety of children's programs, movies, family entertainment, and outstanding sports coverage.
- () 5 **TNT.** Turner Network Television carries classic movies and children's programs, plus outstanding sports coverage, including NBA basketball and NFL football.
- () 6 **ESPN.** 24-hour sports, with NFL and college football, Major League Baseball, college basketball and baseball; plus golf, tennis, boxing, wrestling, auto racing, and much, much more.
- () 7 **TBS.** Atlanta's SuperStation brings family specials, movies, syndicated programming, Atlanta Braves baseball, and Hawks basketball.+
- 8 **CNN.** 24-hour coverage of national and world events, plus all the stories behind the news in programs with business, political, and other news-making leaders.
- () 9 **Nickelodeon.** Award-winning programming for kids, celebrated by educators, parents and kids themselves. After 8:00 pm, the channel becomes **Nick-at-Nite**, offering nostalgic programming like classic comedy series.
- () 10 **WAVY.** Local NBC affiliate channel 10.+
- 11 **WCOX.** A community programming channel reserved for local programming serving the greater Hampton Roads area.+
- 12 **Headline News.** Brief updates of the day's top stories in news, business, sports, and entertainment—in a 30-minute cycle, 24 hours a day.
- () 13 **WVEC.** Local ABC affiliate channel 13.+
- () 14 **WWOR.** A New York-area independent station that brings a popular lineup of favorite programming, plus New York Mets baseball, and Rangers and Islanders hockey.+
- () 15 **WHRO.** Local PBS affiliate channel 15.+
- () 16 **Discovery.** Documentary programming that explores the corners of the universe with features on science, nature, technology, history, and adventure.

(Cont'd)



- () 17 A&E Network.** The Arts & Entertainment Network brings comedy, drama, documentaries and the performing arts into your home 24 hours a day.
- () 18 Lifetime.** Covering the worlds of fashion, money, health and more, with a wide variety of entertainment programming as well, designed to appeal especially to women. On Sundays, Lifetime Medical Television offers updates for medical professionals in all fields.
- () 19 The Family Channel.** Wholesome programming for the family, with movies, game shows, and adventure and dramatic series.
- 20 WSBK.** A Boston-based SuperStation bringing coverage of the Red Sox baseball and Bruins hockey, along with comedy and drama series and outstanding movies. **NOTE:** Some programming may be subject to syndicated exclusivity blackouts. +
- () 22 MTV.** 24-hour music television, with the latest top rock videos and personalities, plus original comedy programming.
- () 23 TNN.** The Nashville Network offers family programming with a country flair.
- 24 The Weather Channel.** 24-hour updates on local, regional, national, and international weather.
- 25 CNBC.** Top business, financial, and consumer news and information, 24 hours a day.
- WGNT.** Local independent channel 27. +
- Education access.** Local access channel operated by your City School Board. +
- 29 Government access.** Local access channel operated by your City Government. +
- 30 QVC.** 24-hour shopping network. +
- 31 VTC-TV.** Education channel that offers viewers the opportunity to take college courses for credit through area institutions. +
- 32 C-SPAN.** Gavel-to-gavel coverage of the U.S. House of Representatives, plus extensive behind-the-scenes coverage of our nation's capital. +
- () 33 WGN.** The Chicago-area SuperStation that brings Cubs and White Sox baseball, Bulls basketball, plus other exciting sports, as well as popular series and movies. +
- 34 American Movie Classics.** Hollywood's best from the 1930s to the 1970s, with mysteries, romances, dramas and action thrillers—movies you missed the first time around, and favorites you'll love to see again.
- 35 HTS.** Home Team Sports carries live, exclusive coverage of the Baltimore Orioles, Washington Capitals, Washington Bullets, and regional college sports.
- 36 BET.** Black Entertainment Television carries the best in Black entertainment and sports programming.
- 44 E! Entertainment Television.** Bringing the world of entertainment home to you, with stories of all the top stars.
- () 45 VH-1.** Video Hits One is the music video station for "Baby-Boomers" everywhere.



260

Available in Norfolk,
Portsmouth &
Currituck County,
N.C. only

Available in Norfolk,
Portsmouth &
Currituck County,
N.C. only



- () 46 Comedy Central.** Where the hit TV comedy of yesterday comes from, the network provides original shows and the hottest names in stand-up comedy.
- Broadway Cable's** former national network provides performing arts specials in theater, jazz, dance, movies and more! (8am-11pm Mon.-Fri / 5pm-6am Sat. & Sun.)
- The Travel Channel.** Entertaining and informative travel programming. (6am-8pm Mon.-Fri / 6am-5pm Sat. & Sun.)
- 48 The Learning Channel.** Provides educational and instructional programming for people of all ages.
- 49 WJCB.** Local independent channel 49. +
- 51 VISN Network.** The new religious channel celebrating the life of faith through programs that appeal to the mind as well as to the heart.

PREMIUM CHANNELS

- () 21 HBO.** Home Box Office brings over 90 features each month, with Hollywood's biggest hits, exclusive HBO Premiere Films, award-winning family fare, top nightclub acts, World Championship boxing, music spectaculars, children's shows and much more. [E]
- () 26 Showtime.** From current blockbusters to newly rediscovered classics, Showtime means excitement and exclusive entertainment, with over 90 features each month. Showtime also offers stand-up comedy specials and made-for-TV movie series.
- () 37 The Disney Channel.** The classic magic of Disney, with classics, original films, newly created series, and animated cartoons - over 90 different features each month.
- () 38 Cinemax.** Cinemax offers over 130 features each month, including the newest superstars in film and music, movies of the month, classics, film festivals, award-winning foreign films, comedy specials, adult entertainment and many cable exclusives. [E]
- () 39 Encore.** Encore features movie hits from the 60's, 70's, and 80's; most are movies you've missed or want to see again. A large variety of movies means you have an even larger selection from which to choose. Encore is priced according to your existing level of premium service. Consult the rate listing for details.

PAY-PER-VIEW CHANNELS

- () 99 Viewer's Choice.** It's your chance to order the latest movie hits appearing for the first time ever on TV, at about the same time they become available in video stores. New movies are available every month, along with live sporting events like boxing and wrestling, and live concerts—and all can be ordered from your home telephone!
- () 42 Viewer's Choice 2.** Another opportunity for you to see outstanding blockbuster movies at about the same time they arrive in video stores. New features are available every month and can be ordered from your home telephone.
- 43 Pay-Per-View preview channel.**

Available in Norfolk,
Portsmouth &
Currituck County,
N.C. only

() Channels that broadcast some programming in stereo, available to customers whose TV is equipped with internal BTSC MTS stereo capability

Limited Basic service includes these channels. **Note:** Expanded Basic Service available only with purchase of Limited Basic Service. Premium Services, Digital Cable Radio and Pay Per View available only with purchase of Limited Basic Service plus Expanded Basic Service.

[E] Spanish language audio available on certain programming, if your TV is equipped with Second Audio Programming (SAP)

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HBO

abc

5

NBC

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ESPN

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HEADLINE NEWS

THE WEATHER CHANNEL

SHOWTIME

Family

CNN

Cinemax

SuperStation TBS

THE PLAYBOY CHANNEL

The Disney Channel

Lifetime

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Dedicated to Hollywood's finest films, from the 1930's to the 1970's! No commercials.

\$200
Per Month

VIDEO MUSIC
Video music services: MTV for the young at heart, VH-1 especially for the younger generation.

\$300
Per Month

NETLINK
Eastern time zone network programming, including ABC - New York, Chicago, NBC - Atlanta.

\$450
Per Month

SPORTS CONNECTION
Sports, sitcoms, movies, and specials on commercial Superstations: KTLA - Los Angeles, WISN - Boston, WWOR - New York.

\$325
Per Month

SATELLITE SPORTS NETWORK

The best of the best in sports: NFL, NBA, NHL, MLB, and more! Special events and pay-per-view.

\$895
Per Month

ARTS & ENTERTAINMENT NETWORK

The best of the past, present, and future, plus special events and more!

\$450
Per Month

THE NETLINK "DENVER 5"

Mountain time zone network programming including Denver ABC, CBS, NBC, FOX, and a Tribune Independent.

\$600
Per Month

TURNER NETWORK TELEVISION (TNT)

Movies, games, classic and original, plus special events and series.

\$200
Per Month

SUPERSTAR CONNECTION (WGN-TV)

Sports, sitcoms, movies, and specials on commercial Superstations: WGN - Chicago.

\$325
Per Month

DISNEY DEODON

Children's movies, plus "Mickey Mouse Club" and more!

\$200
Per Month

HBO™
STARION™
THE PLAYBOY CHANNEL

SHOWTIME®

cinemax®

THE MOVIE CHANNEL™


The Disney Channel

NETWORK PROGRAM PACKAGES

The VALUE PACK

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Chicago



Atlanta



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ONLY \$11.95 per month

The NET PACK

For dish owners who need WESTERN (Rocky Mountain time zone) networks

Our "Standard Pack" plus the Netlink "Denver 8" network, American Movie Classics and WGN SportsCenter

ONLY \$12.45 per month

IF YOU PREFER TO PAY FOR 1 YEAR IN ADVANCE, YOU GET ONE MONTH FREE!

Programming availability subject to programmer territory restrictions and network "white area" law. Prices do not include local taxes that may apply, and are subject to change. Ask your dish dealer or CSP representative for details. Options other than those shown may be available.

© 1990 Cox Satellite Programming

LET US ENTERTAIN YOU!

COX SATELLITE PROGRAMMING, in cooperation with your local satellite dish dealer, offers satellite dish owners the very best in home entertainment. Importantly, we provide a wide range of options that put **YOU** in control — **choose the services that YOU want, and all at affordable prices.** With over 30 years of T.V. programming experience nationwide, Cox can offer you the finest satellite programming available, with your choice of either annual or monthly billing.

CSP FEATURES...

- Convenient monthly billing, with the freedom to change options anytime!
- Discounted packages of the most popular satellite services, as low as \$7.95 per month!
- The most popular premium services, each as low as \$6.95 per month!
- "A La Carte" Services, to create your own custom package!
- True "One Stop" Shopping, with superstations, premium services, and "cable" channels all available!
- No deposits or advance payments required!

CALL US TOLL FREE AT 1-800-444-9293, OR ASK YOUR DISH DEALER FOR MORE DETAILS!



PRIMESTAR

Presented by Cox Cable
Hampton Roads, Inc.

PRIMESTAR® AT A GLANCE

WHAT:

PRIMESTAR is the nation's premier medium power Ku-band Direct Broadcast Satellite (DBS) service. Utilizing a small (one meter diameter), high performance satellite dish and a multi-function receiver, **PRIMESTAR** subscribers can access a full menu of affordable in-home entertainment.

PROGRAMMING:

PrimeTelevisionsm - 24 hour-a-day entertainment lineup featuring more than 500 movies each month plus major league baseball, pro basketball, college sports, news, sitcoms, family programming, popular talk shows and more from all parts of the country.

PrimeCinemasm - New-release hit movies, championship boxing and wrestling plus live concerts. It's like having a video store in your home, but with no rewinds, no returns and no hassles.

PrimeAudiosm - Six different music services with digital quality stereo sound. These choices include: Classical Collections, Soft Sounds, New Age of Jazz, Light 'n' Lively Rock, America's Country Favorites and Classic Hits.

PrimeAudio also presents In-Touch (a 24-hour newspaper and magazine reading service), Business Radio with late-breaking business and financial news, and Minnesota Public Radio, which features National Public Radio's fine mixture of news, analysis, interviews and more.

TV-JAPAN - An optional video/audio service offering a rich variety of Japanese language programs direct from Japan's premier network -- NHK.

SPECIAL FEATURES:

PRIMESTAR's Assist channels provide the viewer with information on PrimeCinema selections and schedules, PrimeTelevision programming both by time and genre, movie descriptions and choices, best bets and VCR hook-up and troubleshooting instructions, plus other subscriber-friendly services.

WHEN AVAILABLE:

PRIMESTAR was launched in 40 U.S. test markets on November 1, 1990. The launch of **PRIMESTAR** by Cox Cable Hampton Roads is part of a 24 month, staged national roll-out which began on July 1, 1991. Currently **PRIMESTAR** is providing service to thousands of families in hundreds of 100 counties all across the continental United States.

HOW SOLD:

In Hampton Roads and Northeastern North Carolina, **PRIMESTAR** is distributed and serviced by Cox Cable Hampton Roads, Inc.

PRIMESTAR AT A GLANCE (CONT'D)

SUBSCRIBER COST:

Distributors set the retail prices for **PRIMESTAR** in each market. In all cases, **PRIMESTAR** provides the receiver to subscribers as part of the monthly service fee. The receivers are not available for sale. The costs for **PRIMESTAR** are significantly less than traditional satellite services. Free site surveys are available for all families interested in learning more about **PRIMESTAR**.

TECHNICAL DATA:

- **SATELLITE:** G.E. American Communications, Inc.'s Satcom K1 medium power Ku-band satellite.
- **FOOTPRINT:** Continental United States.
- **EQUIPMENT:** Subscribers utilize a multi-function receiver and a small (approximately one-meter) satellite dish, both of which are installed and maintained by the **PRIMESTAR** distributor.

PARTNERS:

PRIMESTAR Partners is a joint venture of the subsidiaries of eight national cable television companies and G.E. American Communications, Inc., which owns the satellite used by **PRIMESTAR**. The nine cable television companies are: Cox Cable Communications, Comcast Cable, American Television and Communications (ATC), Viacom Cable, TeleCommunications, Inc. (TCI), Continental Cable, Newhouse Broadcasting and Warner Cable.

PRIMESTAR PARTNERS MANAGEMENT:

John Cusick, President and Chief Executive Officer
David Beddow, Executive Vice President and Chief Operating Officer
W. Brewster Mitchell, Vice President, Chief Financial Officer
Marcus O. Evans, Vice President and General Counsel
Jeffrey L. Smith, Vice President, Marketing
Thaddeus Mazurczyk, Vice President, Engineering
Kim Johnson, Vice President, Distributor Services
Gary E. Traver, Vice President, System Operations

100 North Presidential Boulevard, Bala Cynwyd, PA 19004
Phone: (215) 660-6100

COX CABLE HAMPTON ROADS, INC. MANAGEMENT:

Franklin C. Bowers, Vice President and General Manager
Larry Michel, Manager Sales and Marketing
Mike Slavik, **PRIMESTAR** Project Manager

4585 Village Avenue, Norfolk, VA 23502
Phone: (804) 853-3757 or (800) 825-2228



VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF NORFOLK

COX CABLE HAMPTON ROADS, INC.,

Plaintiff

v.

At Law No.: 90-3155

CITY OF NORFOLK, VIRGINIA,

Defendant

ANSWERS TO INTERROGATORIES

Defendant City of Norfolk, for its Answers to Interrogatories previously served, says as follows:

CITY OF NORFOLK

By 

Of Counsel

Jack E. Greer
M. Wayne Ringer
WILLIAMS KELLY & GREER, P.C.
600 Crestar Bank Building
500 East Main Street
Post Office Box 3416
Norfolk, Virginia 23514-3416
(804) 624-2600

Philip R. Trapani, Esq.
Norfolk City Attorney
City Attorney's Office
908 City Hall Building
Norfolk, VA 23510
(804) 441-2871

Daniel R. Hagemeister, Esq.
Deputy City Attorney
City Attorney's Office
908 City Hall Building
Norfolk, VA 23510
(804) 441-2871

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Answers to Interrogatories were Federal Expressed to Robert D. Seabolt, Esq., MAYS & VALENTINE, NationsBank Center, 1111 East Main, Richmond, Virginia 23219 this 9th day of July, 1992.



VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF NORFOLK

COX CABLE HAMPTON ROADS, INC.,)	
)	
Plaintiff,)	
)	
v.)	AT LAW NO. 90-3155
)	
CITY OF NORFOLK, VIRGINIA,)	
)	
Defendant.)	

COX CABLE HAMPTON ROADS, INC.'S FIRST REQUESTS
FOR ADMISSION, INTERROGATORIES, AND REQUEST FOR
PRODUCTION OF DOCUMENTS TO CITY OF NORFOLK, VIRGINIA

Cox Cable Hampton Roads, Inc. ("Cox Cable"), pursuant to the Rules of the Virginia Supreme Court, hereby propounds to City of Norfolk, Virginia, the following Requests for Admission, Interrogatories, and Request for Production of Documents, to be answered within twenty-one (21) days after service hereof.

For purposes of these discovery requests, Satellite Master Antenna Television ("SMATV") systems are defined in paragraph 19 of Plaintiff's Bill of Complaint.

I. REQUESTS FOR ADMISSION

1. The following motels, hotels or other institutions have SMATV systems in operation in the City of Norfolk (please respond to each separately):

- (a) Marriott Waterside
235 E. Main Street
Norfolk, VA 23510
- (b) Madison Hotel
345 Granby Street
Norfolk, VA 23510

PRINTER'S PAGE

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FOR PURPOSES OF PAGINATION)***

4. The City of Norfolk has collected no utility service tax for cable television service from any of the entities listed in the preceding Request.

5. Both SMATV operators and cable television systems such as Cox Cable provide satellite transmitted video programming such as HBO, ESPN, "superstations" such as WTBS and WGN, and local broadcast television signals such as WTKR, WAVY and WVEC.

II. INTERROGATORIES:

1. Identify the person answering these interrogatories by full name, title or position, business address and daytime telephone number.

ANSWER: Interrogatories are answered by defendant's counsel.

2. Identify all persons or entities in the City of Norfolk which the City considers to be subject to the City's utility service tax on cable television service pursuant to Ordinance No. 36,026, enacted by Norfolk City Council effective July 1, 1990.

ANSWER: At present, the only provider of "cable television service" to which the tax applies is the plaintiff.

3. State, on a monthly basis beginning with July 1990, the dollar amount of utility service tax for cable television service, as authorized by Ordinance 36,026, paid to the City of Norfolk and by whom it has been paid. Include in your answer (a) the name, address and daytime telephone number of persons with knowledge of facts responsive to this interrogatory; (b) a description of any documents responsive to this request.

ANSWER: Will be provided.

4. Describe any and all efforts by the City of Norfolk to identify providers of cable television service in the City of Norfolk other than Cox Cable. Include in your answer (a) the name, address and daytime telephone number of persons with knowledge of facts responsive to this interrogatory; (b) a description of any documents responsive to this request.

ANSWER: Objected to as privileged, as investigation has been conducted by counsel. Without waiving the objection, the following persons have been contacted with respect to SMATV Services identified by plaintiff:

Richard Petras, General Manager, Madison Hotel
Thomas Sadecki, Manager, Sheraton Military Circle Hotel
Lori Bartoloni, General Manager, Hotel Norfolk
Jack Kleistner, Marriott Waterside Hotel
John Dawes, Vice President, Sentara Norfolk General Hospital.

Produced herewith are copies of documents obtained from the Madison Hotel. Other documents have been subpoenaed and copies will be furnished when obtained.

5. Do you consider providers of satellite transmitted television programming via a Satellite Master Antenna Television system ("SMATV operators") to be subject to the City's tax on cable television service? State all of the bases, both factual and legal, for your answer. Include in your answer (a) the name, address and daytime telephone number of persons with knowledge of facts responsive to this interrogatory; (b) a description of any documents responsive to this request.

ANSWER: Objected to to the extent that it calls for legal conclusion.

Without waiving the foregoing, it appears generally that a purchase from an SMATV provider of the right to receive and retransmit satellite signals is not cable television service, nor is it a public utility. However, should the court hold otherwise, defendant will undertake to collect back taxes from such entities as the court holds are liable for them. See Answer to Interrogatory 4 and documents produced pursuant to it.

6. With respect to each Request for Admission that you are unable to admit or deny, state the reasons why you are unable to do so. Include in your answer (a) the name, address and daytime telephone number of persons with knowledge of facts responsive to this interrogatory; (b) a description of any documents responsive to this request.

ANSWER:

REQUEST FOR PRODUCTION

1. Produce all documents you identified in response to Interrogatories served herewith.

2. To the extent not covered by the preceding Request, produce all documents relating or pertaining to efforts by the City of Norfolk to collect utility service tax on cable television service from persons other than subscribers to Cox Cable's service.

COX CABLE HAMPTON ROADS, INC.

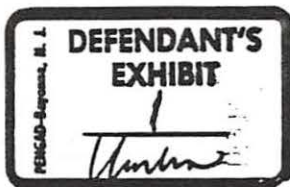
By Robert D. Seabolt
Of Counsel

James C. Roberts
Robert D. Seabolt
Eric W. Schwartz
MAYS & VALENTINE
Eighth Floor
Town Point Center
150 Boush Street
Norfolk, Virginia 23510
(804) 627-5500

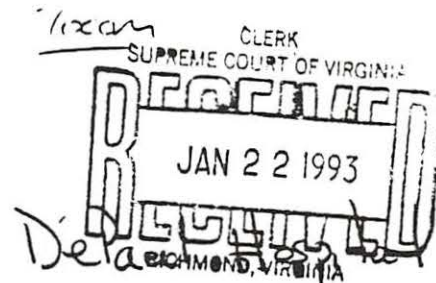
CERTIFICATE OF SERVICE

I certify that a true copy of the foregoing was sent by overnight courier, postage prepaid, this 5th day of June, 1992, to Wayne Ringer, Esquire, Williams, Worrell, Kelly, Greer & Frank, P.C., 600 Crestar Building, Norfolk, Virginia 23510, counsel for defendant City of Norfolk.

Robert M. Seabolt



MULTIPLE DWELLING
CABLE AGREEMENT



1. CONTRACTING PARTY: LEGAL NAME HT & T, Inc.
2. ADDRESS OF CONTRACTING PARTY: 5600 EXECUTIVE CENTER DRIVE # 305
CHARLOTTE, N.C.
ZIP 28212 TELEPHONE 704-535-6152 FRANCHISE AREA BOB RAINES
3. DATE 4-17-86
4. CONDO ASSOC. CORPORATION X PARTNERSHIP
INDIVIDUAL OTHER
- BILL TO: HT & T, Inc.
5600 EXECUTIVE CENTER DRIVE
CHARLOTTE, N.C. 28212
5. PROPERTY NAME AND ADDRESS: DEPAUL HOSPITAL, 150 KINGSLEY LN.
NORFOLK, VA. 23505
6. TYPE STRUCTURE: APARTMENT CONDO TRAILER
HOTEL/MOTEL OTHER X HOSPITAL
7. # OF UNITS 180 ADDITIONAL OUTLETS NONE
PRIMARY OUTLETS SAME AMOUNT DUE \$ NONE
SECONDARY OUTLETS -0-
8. INITIAL MONTHLY PER UNIT CATV SERVICE CHARGE \$2.50/UNIT/MONTH
9. INITIATION OF SERVICE FEE NONE
- PREWIRE POSTWIRE X - BY TREK COMMUNICATIONS CO.
10. SPECIAL INSTRUCTIONS
- * HT & T, INC. CONTRACTOR TO WIRE HOSPITAL TO OUR SPECIFICATIONS.
 - * ANY RATE INCREASE NOT TO EXCEED 5% ANNUALLY.
 - * CABLE READY SETS.
 - * HT & T, INC. TO MAINTAIN SERVICE AND DISTRIBUTION FROM INTERCONNECT POINT.

AGREEMENT, MADE THIS 17TH DAY OF APRIL 1986,
BY AND BETWEEN COX CABLE TIDEWATER ("COMPANY")
AND HT & T, INC. OF CHARLOTTE, N.C. ("OWNER").

WITNESSETH:

WHEREAS, COMPANY HAS BEEN GRANTED A CABLE TELEVISION
FRANCHISE BY CITY OF NORFOLK FOR A PERIOD OF
15 YEARS (THE "FRANCHISE"), AND IS OBLIGATED BY THE
FRANCHISE TO MAKE CABLE TELEVISION SERVICE AVAILABLE TO AREAS
OF THE MUNICIPALITY ON A NON-DISCRIMINATORY BASIS; AND

WHEREAS, COMPANY IS MEETING THIS OBLIGATION BY PRO-
VIDING AREAS OF THE CITY WITH ACCESS TO CABLE COMMUNICATION
SERVICE, INCLUDING CHANNELS OF COMMUNITY AND PUBLIC SERVICE
PROGRAMMING; AND

WHEREAS, OWNER WISHES TO ENSURE ITS TENNANTS ACCESS
TO THE COMPANY'S CABLE SERVICE, AS IT RECOGNIZES THE POTENTIAL
INCREASE IN BUILDING OCCUPANCY AND THE ACCOMPANYING INCREASE
IN RENTAL REVENUE RESULTING FROM THE AVAILABILITY OF THIS CABLE
SERVICE;

NOW THEREFORE, IN CONSIDERATION OF THE MUTUAL PROM-
ISES AND COVENANTS CONTAINED HEREIN, THE PARTIES, INTENDING
LEGALLY TO BE BOUND, AGREE AS FOLLOWS:

11. PREMISES. OWNER HOLDS TITLE TO THAT CERTAIN REAL PROP-
ERTY CONSISTING OF 180 ^{HOSPITAL} ~~APARTMENTS~~, CONDOMINIUM, MOBILE
HOME OR SIMILAR MULTIPLE DWELLING UNITS LOCATED IN NORFOLK
AT THE ADDRESS COMMONLY KNOWN AS 1500 KINGSLEY LANE.

12. PURPOSE AND TERM OF AGREEMENT. COMPANY AGREES TO MAKE
CABLE TELEVISION SERVICE AVAILABLE TO THE RESIDENTIAL DWELLING
UNITS OWNED BY OWNER FOR THE TERM OF THIS AGREEMENT. THIS
AGREEMENT SHALL BE EFFECTIVE UPON ITS EXECUTION BY THE PARTIES
AND SHALL REMAIN IN EFFECT DURING THE TERM OF THE FRANCHISE
AND ANY AND ALL RENEWALS OR EXTENTIONS THEREOF.

13. OWNERSHIP. ALL OF THE EQUIPMENT INSTALLED BY COMPANY
IS AND SHALL AT ALL TIMES REMAIN THE PROPERTY OF COMPANY, AND
SHALL BE USED EXCLUSIVELY FOR COMPANY OPERATIONS. ALL CONVERT-
ERS SUPPLIED BY COMPANY FOR THE USE OF VIEWERS SHALL REMAIN
THE PROPERTY OF COMPANY.

14. INITIATION OF SERVICE FEE. IN CONSIDERATION OF ENTERING INTO THIS AGREEMENT AND PROVIDING SUCH WIRING EQUIPMENT AND DESIGN AS COX CABLE TIDEWATER, INC. DEEMS NECESSARY TO PROVIDE CATV SERVICES TO THE PREMISES, CONTRACTING PARTY AGREES TO PAY OR CAUSE TO BE PAID TO COX CABLE TIDEWATER, INC. A ONE (1) TIME INITIATION OF SERVICE FEE, AS SET FORTH IN (9) ABOVE. SUCH FEE SHALL BE PAYABLE AS SPECIFIED IN (9) ABOVE.

15. ACCESS. OWNER GRANTS TO COMPANY THE RIGHT FOR THE TERM OF THIS AGREEMENT TO ENTER UPON AND OVER THE PREMISES DURING REASONABLE HOURS TO INSTALL, INSPECT, IMPROVE, MAINTAIN, SERVICE, REPAIR, REMOVE AND/OR REPLACE THE EQUIPMENT, AND TO DO ALL OTHER THINGS NECESSARY TO ENSURE ITS CONTINUED OPERATION. OWNER FURTHER GRANTS TO COMPANY THE RIGHT TO ENTER UPON THE PREMISES DURING REASONABLE HOURS FOR THE PURPOSE OF SOLICITING SUBSCRIPTIONS FROM OCCUPANTS FOR CABLE TELEVISION SERVICE ON AN INDIVIDUAL BASIS, AND FROM TIME TO TIME TO CONNECT, TRANSFER, AND DISCONNECT SUCH SERVICE. UPON TERMINATION OF SERVICE TO ANY RESIDENTIAL DWELLING UNIT, OR UPON TERMINATION OF THIS AGREEMENT FOR ANY REASON WHATSOEVER, COMPANY SHALL HAVE THE RIGHT TO ENTER THE PREMISES AND REMOVE ITS EQUIPMENT.

16. BULK BILLING. MONTHLY SERVICE FEE. BASIC CABLE SERVICE SHALL BE PROVIDED PURSUANT TO BULK BILLING. OWNER SHALL PAY TO COX FOR EVERY UNIT WIRED FOR BASIC CABLE SERVICE A MONTHLY SERVICE CHARGE OF \$2.50 AS SPECIFIED IN (8) ABOVE, PROVIDED THAT SUCH FEE MAY BE INCREASED BY COX UPON THIRTY (30) DAYS WRITTEN NOTICE SO LONG AS SUCH INCREASED SERVICE FEE DOES NOT EXCEED THE SERVICE RATE CHARGED BY COX PER THE FRANCHISE AGREEMENT. THIS FEE SHALL BE DUE AND PAYABLE ON THE FIRST DAY OF EACH MONTH AND FAILURE TO PAY BY THE TENTH (10TH) DAY OF THE MONTH SHALL GIVE COX THE RIGHT TO TERMINATE THIS AGREEMENT AND TO REMOVE ITS EQUIPMENT WITHOUT FURTHER NOTICE. SHOULD BOTH PARTIES AGREE TO TERMINATE BULK BILLING, COX SHALL HAVE THE RIGHT TO SERVICE OCCUPANTS OF INDIVIDUAL UNITS ON AN INDIVIDUAL UNIT BILLING BASIS.

17. INDIVIDUAL UNIT BILLING. CABLE SERVICE SHALL BE PROVIDED PURSUANT TO INDIVIDUAL UNIT BILLING AND COX SHALL CONTRACT DIRECTLY WITH THE OCCUPANTS OF THE INDIVIDUAL UNITS. OWNER HEREBY GRANTS COX THE RIGHT OF ACCESS TO THE PREMISES FOR THE

18. INSTALLATION AND MAINTENANCE. COMPANY WILL EXERCISE DUE CARE IN THE INSTALLATION AND MAINTENANCE OF THE SYSTEM AND WILL PERFORM ALL WORK IN A PROFESSIONAL MANNER AND IN ACCORDANCE WITH GOOD ENGINEERING PRACTICES. ANY DAMAGE CAUSED BY COMPANY DURING INSTALLATION, REPAIR, OR REMOVAL WILL BE REPAIRED TO THE REASONABLE SATISFACTION OF OWNER.

19. PROMOTIONAL MATERIAL. COMPANY SHALL HAVE THE RIGHT TO REQUEST, AND OWNER SHALL SUBMIT, ALL OF OWNER'S PROPOSED ADVERTISING AND PROMOTIONAL MATERIALS FOR OWNER'S RESIDENTIAL DWELLING SPACE OR UNITS REFERRING TO COMPANY'S SERVICE PRIOR TO ANY ACTUAL USE OF SAID MATERIALS BY OWNER. OWNER SHALL IDEMNIFY COMPANY FROM ANY LOSS, DAMAGE, OR EXPENSE, INCLUDING ATTORNEY FEES RESULTING FROM THE UNAUTHORIZED USE OF SAID MATERIAL.

20. INTERFERENCE. OWNER SHALL NOT USE ANY EQUIPMENT THAT CAUSES FREQUENCY INTERFERENCE OR IS OTHERWISE INCOMPATIBLE WITH COMPANY'S EQUIPMENT OR ITS OBLIGATION TO PROVIDE SERVICE PURSUANT TO THE FRANCHISE (INCLUDING ANY AND ALL RENEWALS THEREOF). IN ADDITION, OWNER SHALL NOT MOVE, DISTURB, ALTER, OR CHANGE ANY OF THE EQUIPMENT INSTALLED BY COMPANY ON THE PREMISES. OWNER SHALL NOT CONNECT OR ATTACH, DIRECTLY OR INDIRECTLY, ANY ADDITIONAL TELEVISION SETS OR OTHER DEVICES TO COMPANY'S EQUIPMENT. OWNER SHALL NOT AUTHORIZE OR PERMIT ANY PERSON TO COMMIT OR ENGAGE IN ANY OF THE FOREGOING ACTS.

21. INSURANCE. COMPANY AGREES TO MAINTAIN IN FORCE ADEQUATE PUBLIC LIABILITY AND PROPERTY DAMAGE INSURANCE TO PROTECT OWNER AGAINST LOSS OR DAMAGE RESULTING FROM SAID INSTALLATION OR MAINTENANCE UPON THE PREMISES.

22. NO AGENCY. IT IS EXPRESSLY UNDERSTOOD THAT COMPANY IS AN INDEPENDENT BUSINESS ORGANIZATION IN NO WAY ASSOCIATED WITH OWNER AND HAS NO AUTHORITY TO ACT FOR OR ON BEHALF OF OWNER OR TO BIND OWNER TO ANY CONTRACT OR IN ANY OTHER MANNER TO REPRESENT THAT IT HAS ANY OF THE FOREGOING AUTHORITY WITHOUT THE EXPRESS APPROVAL IN WRITING OF OWNER.

IT IS FURTHER UNDERSTOOD THAT OWNER IS AN INDEPENDENT BUSINESS ORGANIZATION IN NO WAY ASSOCIATED WITH COMPANY AND HAS NO AUTHORITY TO ACT FOR OR ON BEHALF OF COMPANY TO BIND COMPANY TO ANY CONTRACT OR IN ANY OTHER MANNER TO REPRESENT

23. RACEWAYS, CONDUIT AND POWER. CONTRACTING PARTY AGREES TO PROVIDE COX CABLE TIDEWATER, INC. WITHOUT CHARGE, ALL RACEWAYS, CONDUIT AND ELECTRICITY (A SEPARATELY FUSED 110 VOLT A.C. OUTLET) AND SUCH OTHER SPACE TO PROVIDE SERVICE(S) DESCRIBED ABOVE WHETHER IT BE WITHIN OR OUTSIDE THE BUILDING OR BUILDINGS TO BE SERVICED. THE AFOREMENTIONED SHALL BE ACCORDING TO COX CABLE TIDEWATER'S SPECIFICATIONS OR DESIGN.

24. UTILITY POLES. OWNER UNDERSTANDS AND AGREES THAT, IN PROVIDING CABLE TELEVISION SERVICE, COMPANY SHALL, WITH THE EXCEPTION OF UNDERGROUND UTILITIES, MAKE USE OF UTILITY POLES OWNED IN WHOLE OR IN PART BY TELEPHONE AND ELECTRIC POWER COMPANIES, OR BOTH, AS WELL AS EASEMENTS OVER AND UNDER BOTH PUBLIC AND PRIVATE PROPERTY, AND THAT THE CONTINUED USE OF SAID POLES AND EASEMENTS IS IN NO WAY GUARANTEED. IN THE EVENT THAT CONTINUED USE OF SAID POLES AND EASEMENTS IS DENIED TO COMPANY FOR ANY REASON, COMPANY WILL MAKE EVERY REASONABLE EFFORT TO PROVIDE SERVICE OVER ALTERNATE ROUTES. OWNER AGREES THAT IT WILL MAKE NO CLAIMS AND WILL NOT UNDERTAKE ANY ACTION AGAINST SAID LOCAL UTILITY COMPANIES AND/OR COMPANY AND/OR PUBLIC OR PRIVATE PROPERTY OWNERS, IF CABLE TELEVISION SERVICE PROVIDED HEREUNDER IS INTERRUPTED OR DISCONTINUED AS A RESULT OF THE USE OF SAID POLES AND/OR EASEMENTS BEING DENIED TO COMPANY FOR ANY REASON.

25. ACT OF GOD. COMPANY SHALL NOT BE RESPONSIBLE FOR DAMAGES BY REASON OF A FAILURE TO TRANSMIT AUDIO, VIDEO, OR DATA SIGNALS OR DELIVER ITS SIGNALS AT POINTS OF INTERCONNECT, NOR FOR FAILURE OTHERWISE TO MEET ITS OBLIGATIONS UNDER THIS AGREEMENT, WHERE SUCH FAILURE IS THE RESULT OF ANY LABOR DISPUTE, WAR, RIOT, INSURRECTION, VANDALISM, CIVIL COMMOTION, FIRE, FLOOD, ACCIDENT, STORM, OR ANY ACT OF GOD OR ANY OTHER CAUSE BEYOND THE REASONABLE CONTROL OF COMPANY.

26. OWNER'S WARRANTIES. OWNER WARRANTS THAT THERE ARE NO LEASES OR CONTRACTS, NOR WILL OWNER ENTER INTO ANY LEASES OR CONTRACTS, WITH TENANTS, LESSEES OR OTHER OCCUPANTS OF ITS PREMISES WHICH WOULD PREVENT COMPANY FROM PROVIDING CABLE SERVICE AND CHARGING AND RECEIVING ITS NORMAL RESIDENTIAL SUBSCRIBER RATES TO SUCH TENANTS, LESSEES AND/OR OCCUPANTS.

27. IDEMNIFICATION. COMPANY AGREES TO IDEMNIFY AND HOLD OWNER HARMLESS AND DEFEND OWNER FROM AND AGAINST ANY AND ALL CLAIMS, SUITS, PROCEEDINGS AT LAW OR IN EQUITY, AND ANY AND ALL OTHER CLAIMS, LIABILITIES, LOSS, COST, DAMAGE OR EXPENSES, INCLUDING REASONABLE ATTORNEY FEES, ARISING OUT OF OR IN CONNECTION WITH ANY CLAIM RESULTING FROM THE CONDUCT OF COMPANY'S BUSINESS.

OWNER AGREES TO INDEMNIFY AND HOLD COMPANY HARMLESS AND DEFEND COMPANY FROM AND AGAINST ANY AND ALL OTHER CLAIMS, LIABILITIES, LOSS, COST, DAMAGE, OR EXPENSES, INCLUDING REASONABLE ATTORNEY FEES, ARISING OUT OF OR IN CONNECTION WITH ANY CLAIM RESULTING FROM THE RENTING, LEASING OR PURCHASE OF OWNER'S RESIDENTIAL DWELLING UNITS OR THE CONDUCT OF OWNER'S BUSINESS.

28. SUCCESSORS AND ASSIGNS. THIS AGREEMENT SHALL BE BINDING UPON AND SHALL INURE TO THE BENEFIT OF COMPANY AND OWNER AND THEIR RESPECTIVE SUCCESSORS AND ASSIGNS.

29. AMENDMENTS. THIS INSTRUMENT MAY NOT BE AMENDED ORALLY BUT ONLY BY AN INSTRUMENT IN WRITING SIGNED BY THE PARTIES. THIS AGREEMENT CONTAINS THE ENTIRE AGREEMENT OF THE PARTIES AND SUPERCEDES ANY AND ALL OTHER AGREEMENTS OR UNDERSTANDINGS, ORAL OR WRITTEN, MADE BY THE PARTIES. IT IS THE UNDERTANDING OF BOTH PARTIES THAT COMPANY DOES NOT MAKE TO OWNER, OR ANY OTHER PERSON, ANY PARTICULAR OR GENERAL WARRANTIES, DIRECT OR INDIRECT, EXPRESS OR IMPLIED, OTHER THAN AS SPECIFICALLY SET FORTH IN THIS AGREEMENT OR ANY AMENDMENTS TO THIS AGREEMENT.

30. DISPUTES. IF ANY ACTION AT LAW OR IN EQUITY IS NECESSARY TO ENFORCE OR INTERPRET THE TERMS OF THIS AGREEMENT, THE PREVAILING PARTY SHALL BE ENTITLED TO REASONABLE ATTORNEY FEES, COSTS AND NECESSARY DISBURSEMENTS IN ADDITION TO ANY OTHER RELIEF TO WHICH SAID PARTY MAY BE ENTITLED.

31. GOVERNMENTAL RULES. THIS AGREEMENT SHALL BE GOVERNED BY THE LAWS OF THE STATE OF VIRGINIA, INCLUDING THE UNIFORM RESIDENTIAL LANDLORD AND TENANT ACT AS APPLICABLE (IF THERE ENACTED), EXCEPT WHERE THE LAWS OF THE UNITED STATES HAVE PRECEDENCE.

THIS AGREEMENT AND THE OBLIGATIONS OF THE PARTIES SHALL BE SUBJECT TO ALL APPLICABLE LAWS, RULES, REGULATIONS, FRANCHISE ORDINANCES, COURT RULINGS, ADMINISTRATIVE ORDERS, AND PRESIDENTIAL DECREES, INCLUDING, WITHOUT LIMITATION, THE COMMUNICATIONS ACT OF 1934 AND THE RULES AND REGULATIONS OF THE FEDERAL COMMUNICATIONS COMMISSION, AS THEY MAY BE AMENDED FROM TIME TO TIME. ANY ACTION TAKEN OR ANY FAILURE TO PERFORM ANY ACTION BY COMPANY IN ORDER TO COMPLY WITH AN APPLICABLE LAW, RULE, REGULATION, APPLICABLE FRANCHISE ORDINANCE, COURT RULING, ADMINISTRATIVE ORDER OR PRESIDENTIAL DECREE SHALL NOT CONSTITUTE A BREACH OF THIS AGREEMENT AND THE RESPONSIBILITIES OF THE PARTIES SHALL BE READJUSTED ACCORDINGLY.

32. EASEMENTS. OWNER GRANTS TO COMPANY AN EASEMENT FOR ACCESS TO THE PREMISES AT ALL TIMES FOR THE PURPOSE OF MAINTAINING, REPAIRING, REPLACING, IMPROVING, REMOVING, INSTALLING, CONNECTING, DISCONNECTING OR TRANSFERRING ITS EQUIPMENT AND FOR THE PURPOSE OF SOLICITING SUBSCRIPTIONS FROM THE OCCUPANTS OF THE PREMISES. THIS EASEMENT SHALL BE BINDING ON ANY AND ALL SUCCESSORS IN INTEREST OR ASSIGNS.

33. COOPERATION. OWNER AND COMPANY AGREE TO COOPERATE FULLY AND PROMPTLY IN CARRYING OUT THE TERMS OF THIS AGREEMENT. OWNER AGREES TO EXECUTE ANY AND ALL DOCUMENTS AS MAY REASONABLY BE REQUESTED BY COMPANY TO EVIDENCE AND EFFECTUATE THE RIGHTS GRANTED TO COMPANY HEREUNDER UNDER APPLICABLE LAW.

34. LAYOUT AND DESIGN. COX WILL REPRESENT TO OWNER A FINAL LAYOUT AND DESIGN INDICATING LOCATION OF THE WIRING AND OUTLETS. THIS LAYOUT AND DESIGN MUST BE ACCEPTABLE TO BOTH OWNER, AND COX, AND IF FOR ANY REASON, EITHER PARTY CANNOT AGREE UPON THIS ACCEPTANCE, THIS CONTRACT MAY BE TERMINATED. OWNER SHALL COMPLETE THE ENGINEERING REQUIREMENTS FORM ATTACHED AS ADDENDUM 1.

35. CONDOMINIUMS. IF THIS PROPERTY IS A CONDOMINIUM, THE ESSENCE OF THIS AGREEMENT SHALL BE INCLUDED AND MADE A PART OF THE CONDOMINIUM DOCUMENTS, IF APPLICABLE, COVERING THIS PROPERTY, AND BE ASSUMED BY THE CONDOMINIUM ASSOCIATION, WHICH OBLIGATIONS OF THE CONDOMINIUM ASSOCIATION MAY NOT BE ASSIGNED WITHOUT THE WRITTEN CONSENT OF COX CABLE TIDEWATER, INC. 286

36. ACCEPTANCE. OWNER AGREES THAT THE MUTUAL BENEFITS, PROMISES AND COVENANTS CONTAINED IN THIS AGREEMENT CONSTITUTE FULL AND ADEQUATE CONSIDERATION TO OWNER FOR THE RIGHTS GRANTED TO COMPANY HEREUNDER. OWNER AGREES TO WAIVE, AND HEREBY WAIVES, ITS RIGHT TO ALL CLAIMS WHICH IT MAY HAVE UNDER ANY ORDINANCE, STATUTE, OR CONSTITUTION, OR OTHERWISE AS A RESULT OF THIS AGREEMENT, FOR ANY ADDITIONAL COMPENSATION FROM COMPANY.

37. CHANNEL LINEUP. COX CABLE TIDEWATER, INC. RESERVES THE RIGHT TO CHANGE THE BASIC CABLE CHANNEL LINEUP AT ANY TIME AS ITS NEED MAY REQUIRE, OR ADD OR DELETE SPECIFIC PROGRAMMING WITHOUT NOTICE.

DATED: _____

COX CABLE _____

ACCEPTED BY *C. M. Prince*

TITLE _____

DATED: June 5, 1986

OWNER HEALTHCARE TELEVISION & TELEPHONE, INC.

ACCEPTED BY *Charles L. Doherty*

Charles L. Doherty

TITLE Executive Vice President

ADDENDUM I

ENGINEERING REQUIREMENTS

- 288

COMMERCIAL ACCOUNTS COMMENT SHEET TO BE ATTACHED TO ALL CONTRACTS

NAME OF PROJECT: DEPAUL HOSPITAL

DATE OF CONTRACT: 4/17/86

TYPE: BULK HOSPITAL

MARKET: RECEIVED () SIGNED (6/17/86) R. H. Rutledge

PLANT: RECEIVED () SIGNED (6/17/86) [Signature]

OPERATIONS: RECEIVED () SIGNED (6/20/86) [Signature]

--

Date of Agreement: 12/01/90

Owner: Econo Lodge

SUPREME COURT OF VIRGINIA

DEFENDANT'S
EXHIBIT
2

HOTEL/MOTEL
CABLE SERVICE AND ACCESS AGREEMENT

JAN 22 1993

AGREEMENT, made this 1st day of December, 1990, by
and between Cox Cable Hampton Roads, Inc. ("Company")
and Econo Lodge ("Owner").

W I T N E S S E T H:

WHEREAS, Company holds a cable television franchise (the "Franchise") from the appropriate governmental entity and is permitted by the Franchise to make cable television service (the "Service") available to residents in the Norfolk, Portsmouth, Virginia Beach, Chesapeake, Virginia; and Currituck County, North Carolina; franchise areas (the "Area"); and

WHEREAS, Owner holds title to, or is the landlord or authorized managing agent of the H&M ASSOCIATES, L.P., T/A Econo Lodge Hotel/Motel located at 8901 Hampton Blvd., Norfolk, VA (the "Premises"); and

WHEREAS, Owner wishes to ensure the occupants of its rental units have access to the Service, as it recognizes the potential increase in the desirability of the Premises resulting from the availability of the Services. Any damage caused by Company during installation, repair, or removal will be repaired by Company to the reasonable satisfaction of Owner;

NOW, THEREFORE, in consideration of the promises and covenants contained herein and other valuable consideration, the parties intending legally to be bound, agree as follows:

1. PURPOSE AND TERM OF AGREEMENT. The purpose of this Agreement is to state the terms and conditions under which Company will make the cable television services, as set forth in Exhibit "A", available to Owner, on a bulk rate basis, to provide same to persons renting or leasing hotel/motel rooms from Owner at the Premises.

2. CABLE TELEVISION SERVICE. The bulk rate cable television services provided for under this Agreement shall commence on December 15, 1990, or as soon as thereafter reasonably practicable, and remain in effect until December 15, 1992, (the "Term").

At the end of the Term and any renewal term, this Agreement shall be automatically renewed for additional one-year terms unless either party gives the other at least ninety (90) days' prior written notice of termination.

Compensation for said bulk rate cable television services shall be as set forth in Exhibit "B."

3. DISTRIBUTION SYSTEM. Company will further provide, or has provided, to Owner an internal distribution system within the Premises, capable of providing the Service to Owner's hotel/motel rooms, in compliance with current federal, state and local regulations. Internal Distribution System includes all the material necessary to transmit the Service to the unit; including but not limited to internal wiring, taps, amplifier, electronic equipment, drops, splitters and connectors; but not including converters. During the Term of this Agreement, Company will maintain the distribution system in a workmanlike manner. Owner agrees to mark all underground facilities, gas, electric and water lines owned by Owner. The internal distribution system shall not become a fixture, but shall remain the property of Company and shall be used exclusively for Company operations.
- In consideration for payment of the amount set forth in Exhibit "B," at the end of the Term, the internal distribution system installed by Company shall become the property of Owner.
- During any renewal term or otherwise subsequent to expiration of the Term, Company agrees to maintain the internal distribution system in Owner's Premises upon payment of Company's then existing monthly maintenance fee.
4. PAYMENT FOR CABLE TELEVISION SERVICE AND DISTRIBUTION SYSTEM. Any service, maintenance, installation and other charges for which Owner is obligated are payable monthly in advance. The first month's payment is due and payable on execution of this Agreement. If Owner requires services or installation other than those specified in this Agreement, such additional service or installation will be furnished at Company's established rates then in effect or, in the absence of established rates, at a reasonable charge to be determined by Company.
- In the event cable television service is disconnected for nonpayment, Owner agrees to pay Company a reconnect fee in accordance with Company's most recent schedule. Service will not be reconnected until all past due accounts are paid in full.
5. ACCESS. Owner gives Company the permanent right to enter the Premises during reasonable hours to install, connect, disconnect, transfer, inspect, improve, maintain, service, repair, remove and/or replace the equipment and distribution system necessary to provide the Service, and to do all other things necessary to ensure its continued operation. Upon default or

Date of Agreement: 12/01/90

Owner: Econo Lodge

termination of the Service by Owner prior to expiration of the Term, Company may enter the Premises and remove its equipment and distribution system.

Owner grants to Company an easement for access to the Premises at all times, in order that Company may exercise its rights hereunder. This easement and the rights of Company under this Agreement shall be binding on any and all successors in interest or assigns; and Owner agrees to require his successors in interest or assigns to abide by same and to hold harmless and indemnify Company in the event such successors in interest or assigns fail to abide by this Agreement or the easement.

6. RACEWAYS, CONDUIT AND POWER. Owner agrees to provide Company without charge, all raceways, conduit and electricity (a separately fused 110 volt A.C. outlet, when necessary) and such other space, whether it be within or outside the project to be serviced, in order to run cable to project to be serviced. The aforementioned shall be according to Company specifications or design. Layout to be submitted to Owner for approval prior to construction commencement.
7. UTILITY POLES. Owner understands and agrees that, in providing cable television service, Company shall, with the exception of underground utilities, make use of utility poles owned in sole or in part by telephone and electric power companies, or both, as well as, easements over and under both public and private property, and that the continued use of said poles and easements is in no way guaranteed. In the event that continued use of said poles and easements is denied to Company, for any reason, Company will make every reasonable effort to provide service over alternate routes. Owner agrees that it will make no claims and will not undertake any action against said local utility companies and/or Company and/or public or private property owners, if cable television service provided hereunder is interrupted or discontinued as a result of the use of said poles and/or easements being denied to Company for any reason.
8. INTERFERENCE. Owner will not use or permit others to use any equipment that causes interference or is otherwise incompatible with the distribution system or Company's obligation to provide Service under this Agreement. Prior to expiration of the Term of this Agreement, Owner shall not move, disturb, alter, or change the distribution system or connect any device to any of the distribution system, shall not authorize or permit anyone to do so, and shall safeguard such distribution system against others.

Date of Agreement: 12/01/90

Owner: Econo Lodge

9. INSURANCE. Prior to the expiration of the Term of this Agreement, Company shall maintain public liability and property damage insurance to protect Owner against a loss or damage resulting from the installation, operation or maintenance of the distribution system on the Premises.
10. NO AGENCY. Company and Owner are independent business entities and each has no authority to act for, or on behalf of, or bind the other to, any contract, without the other's written approval.
11. ACT OF GOD. Company shall have no liability to any person for failure to meet any of its obligations under this Agreement, where such failure is the result, in whole or part, of any labor dispute, failure of usual sources of supply, war, riot, insurrection, vandalism, commotion, fire, flood, earthquake, accident, storm, Act of God or government, or any other cause beyond Company's reasonable control. If Service is interrupted for any other reason, within the reasonable control of the Company, for a continuous period of thirty (30) days, Owner shall have, as his sole remedy, the right to terminate this Agreement if Company fails to restore such service within ten (10) days of Owner's demand.
12. OWNER'S WARRANTIES. Owner, or his managing agent on the Owner's behalf, warrants that (i) it holds all rights and has full authority to execute this Agreement and to grant the rights herein granted; and (ii) there are no existing agreements, nor will there be any such agreements during the Term that would prevent, or be violated by, Company's providing the Service to the Premises.
13. INDEMNIFICATION. Owner agrees to indemnify and hold Company harmless and defend Company from and against all claims, suits, proceedings at law or in equity, and any and all claims, liabilities, loss, cost, damage or expense, including reasonable attorney fees, arising out of or in connection with any claim resulting from the renting or leasing of Owner's rooms, or from the installation of Company's equipment.
14. SUCCESSORS AND ASSIGNS. This Agreement shall bind and benefit the parties and their respective successors and assigns, regardless of whether such successors and assigns expressly agree to be bound by the Agreement.

Date of Agreement: 12/01/90

Owner: Econo Lodge

15. AMENDMENTS. This Agreement contains the entire agreements or understandings made by the parties concerning this subject matter, superseding any oral or prior written promises, and may be amended only by a writing signed by both parties.
16. DISPUTES. The prevailing party in any action brought under this Agreement shall be entitled to recover from the other party reasonable attorneys' fees, costs and necessary disbursements.
17. NO INCREMENTAL CHARGES. The cable television service is to be made available to Owner's rooms on a free-to-the-guest basis with no itemized incremental charge for cable television service appearing on a guest's bill or statement.
18. NO PREMIUM PROGRAMS IN PUBLIC PLACES. Premium services, as designated in Exhibit "A", shall not be provided to places of public access such as bars, lobbies, night clubs, lounges, halls, restaurants, etc.
19. GOVERNMENTAL RULES. This Agreement shall be governed by the laws of the State of Virginia except where the laws of the United States have precedence. This Agreement and the obligations of the parties shall be subject to all applicable laws, regulations, court rulings, administrative orders, and presidential decrees, as they may be amended from time-to-time.
20. COOPERATION. Owner and Company agree to cooperate fully and promptly in carrying out this Agreement. Owner agrees to execute any and all documents as may reasonably be requested by Company to evidence and effectuate the rights granted to Company under this Agreement.
21. ACCEPTANCE. Owner agrees that the mutual benefits, promises and covenants contained in this Agreement constitute full and adequate consideration to Owner for the rights granted to Company hereunder and hereby waives any rights which it may have to any additional consideration or compensation from Company.
22. ADDITIONAL FACILITIES. In the event the Owner adds rooms to or adjacent to the Premises, this Agreement shall extend to all such rooms added, and Owner shall so notify Company of such additions within thirty (30) days.
23. NOTICES. Any consent, election or notice required or permitted to be given under this Agreement shall be in

Date of Agreement: 12/01/90

Owner: Econo Lodge

writing and sent by certified or registered mail or telegram addressed to the address included at the end of this Agreement, or to such other address or addresses as shall, from time-to-time, be furnished in writing by the party to receive such notice to the other party.

24. DEFAULT. In the event that: (a) Owner shall fail to make any payment to be made by it hereunder on or before its due date; or (b) Owner shall fail to perform or observe any of the other covenants, conditions or agreements to be performed or observed by it hereunder, which failure shall not be remedied within ten (10) days after notice thereof by Company to Owner; or (c) Owner shall dissolve or become insolvent (however evidenced), or make an assignment for the benefit of creditors, or any proceeding under any bankruptcy or insolvency statute or any laws relating to the relief of debtors be commenced by or against Owner, or a receiver, trustee or liquidator shall be appointed of Owner or of all or a substantial part of Owner's assets, or any order, judgment or decree shall be entered by a court of competent jurisdiction and shall continue unpaid and in effect for a period of sixty (60) consecutive days without a stay of execution, or any execution or writ of process shall be issued under any action or proceeding against Owner whereby any property and in the foregoing events set forth in clause (a), (b) or (c) of this paragraph, Company may, without notice or demand (i) immediately terminate this Agreement and Owner's rights hereunder and/or (ii) declare immediately due and payable all the payments and other sums due forthwith as liquidated damages, and/or (iii) proceed by appropriate court action or actions at law or in equity to enforce performance by Owner of applicable covenants of this Agreement or to recover damages for breach thereof, and/or (iv) terminate video and audio transmission rights to Owner's premises, and/or (v) enter the Premises and remove the distribution system. No extension of time, delay or omission in the exercise of any power or remedy provided or otherwise available to Company shall impair or affect Company's right hereafter to exercise same.

25. CHANNEL LINEUP. Owner acknowledges that Company's performance of this Agreement may be subject to the rules and regulations of federal, state or local regulatory powers and that Company is not guaranteeing the provision or availability of any particular program or channel. Company agrees that the cable television service it will provide to the Premises will

Date of Agreement: 12/01/90

Owner: Econo Lodge

consist of its standard channel lineup and programming thereon as modified from time-to-time. The makeup of the Company's channel lineup is solely within the Company's discretion. The Company's channel lineup may not be changed or altered by Owner or others without Company's written permission.

26. CONVERTERS. The Company's agreement to provide cable television service does not include any duty to provide converter boxes, and Owner does not request that any converters be supplied.
27. COUNTERPARTS. This Agreement may be executed in counter parts.
28. CONTRACT CONSTRUCTION. Should any term or provision of this Agreement be held invalid and unenforceable, the remaining provisions in this Agreement shall remain and continue in full force and effect.

IN WITNESS WHEREOF, the parties have entered into this Agreement on the day and year first above written.

COMPANY

OWNER

Cox Cable Hampton Roads, Inc.


HBM Associates, L.P.
t/a Econo Lodge Naval Base

Address: 5200 Cleveland St.

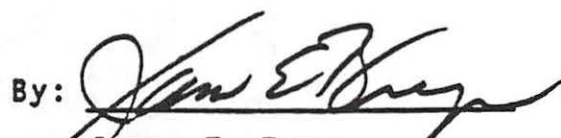
Box 8545
Virginia Beach, VA 23450

Virginia Beach, VA 23462

By:

 1/30/91
Franklin R. Bowers

By:


James E. Bryan

Vice President/General Manager

Title

MANAGEMENT Agent

Title

Form of Business (check one)

Corporation

Partnership X

Individual

Date of Agreement: 12/01/90

Owner: Econo Lodge

EXHIBIT "A"

(Exhibit "A" is the Channel Lineup, with premium programming noted as such).

- 1 PREVUE GUIDE PREVIEW CHANNEL
- 2 WGN - Chicago SuperStation *
- 3 WTKR - Local CBS Channel 3
- 4 USA - 24-Hour Entertainment Network *
- 5 TNT - 24-Hour Movies & Sports/Turner Network Television *
- 6 ESPN - 24-Hour Sports & Information *
- 7 WTBS - Atlanta SuperStation *
- 8 CNN - 24-Hour News
- 9 NICKELODEON - Children & Family Programming *
- 10 WAVY - Local NBC Channel 10 *
- 11 WCOX - Community Programming from Cox Cable
- 12 CNN HEADLINE NEWS - 24 Hours
- 13 WVEC - Local ABC Channel 13 *
- 14 WOR - New York SuperStation *
- 15 WHRO - Local PBS Channel 15 *
- 16 DISCOVERY - 24-Hour Nature - Science - History *
- 17 A&E NETWORK - Arts & Entertainment *
- 18 LIFETIME - The Lifestyle Channel *
- 19 THE FAMILY CHANNEL *
- 20 WDCA - Washington D.C. Independent *
- 21 HBO - Movies & Specials - 24 Hours *
- 22 MTV- 24-Hour Music Television *
- 23 TNN - The Nashville Network *
- 24 THE WEATHER CHANNEL - 24 Hours
- 25 CNBC -Consumer News and Business Channel
- 26 SHOWTIME - 24-Hour Movies and Specials *
- 27 WGNT - Local Independent Station
- 28 EDUCATIONAL CHANNEL
- 29 GOVERNMENT CHANNEL
- 30 QVC - 24-Hour Shopping
- 31 VTC-TV - Tidewater Educational Channel
- 32 C-SPAN - U.S. Congress Coverage
- 33 WTVZ - Local Independent Station
- 34 AMC - American Movie Classics
- 35 E! Entertainment Television *
- HTS - Homes Team Sports
- 36 BET - Black Entertainment Television *
- 37 THE DISNEY CHANNEL - Family Programming *
- 38 CINEMAX - 24-hour Movies and Specials *
- 99 VC - Viewer's Choice (Pay-Per-View) *

*Channels that broadcast some programming in stereo, available to customers whose TV is equipped with internal BTSC-MTS stereo capability.

Note: Premium Channels are in Bold.

Date of Agreement: 12/01/90

Owner: Econo Lodge

EXHIBIT "B"

Bulk Rate Per Unit Per Month

Basic Cable	\$ <u>1.65</u> *
Premium Services	
<u>HBO</u>	\$ <u>4.00</u>
_____	_____
_____	_____
_____	_____
Other	
<u>Maintenance Fee</u>	\$ <u>.30</u>
_____	_____
_____	_____
_____	_____
Internal Distribution System	\$ <u>.00</u> **
Total/Room/Month	\$ <u>5.95</u>
# of Rooms <u>89</u>	
Monthly Rate = No. of rooms x room rate (excludes applicable federal, state, and local fees and taxes.)	\$ <u>529.55</u>

*Basic Cable rate applicable to customer ordering basic service and a premium service (HBO, SHOWTIME, CINEMAX, or DISNEY).

Monthly Service Rates are subject to adjustment from time-to-time, not to exceed 10% annually.

**Owner agrees to pay Company the sum of n/a Dollars (\$ _____) for the internal distribution system installed in Owner's Premises by Company.

n/a1. \$ _____ (\$ _____/room/month for the term of the Agreement.

n/a2. \$ _____ Upon execution of this Agreement.

(Check appropriate box)

HOTEL/MOTEL
CABLE SERVICE AND ACCESS AGREEMENT

AGREEMENT, made this 5th day of October, 1988, by and between Cox Cable Hampton Roads, Inc. ("Company") and Econo Lodge 8901 Hampton Bv. ("Owner").

W I T N E S S E T H:

WHEREAS, Company holds a cable television franchise (the "Franchise") from the appropriate governmental entity and is permitted by the Franchise to make cable television service (the "Service") available to residents in the Norfolk, Portsmouth and Virginia Beach franchise areas (the "Area"); and

WHEREAS, Owner holds title to, or is the landlord or authorized managing agent of the Econo Lodge Hampton Bv. Hotel/Motel located at 8901 Hampton Bv. NK (the "Premises"); and

NOW, THEREFORE, in consideration of the promises and covenants contained herein and other valuable consideration, the parties intending legally to be bound, agree as follows:

1. PURPOSE AND TERM OF AGREEMENT. The purpose of this Agreement is to state the terms and conditions under which Company will make the cable television services, as set forth in Exhibit "A", available to Owner, on a bulk rate basis, to provide same to persons renting or leasing hotel/motel rooms from Owner, at the Premises.

2. CABLE TELEVISION SERVICE. The bulk rate cable television services provided for under this Agreement shall commence on November 1, 1988, or as soon as thereafter reasonably practicable, and remain in effect until November 1, 1989, (the "Term").

At the end of the Term and any renewal term, this Agreement shall be automatically renewed for additional one year terms unless either party gives the other at least ninety (90) days prior written notice of termination.

Compensation for said bulk rate cable television services shall be as set forth in Exhibit "B".

3. DISTRIBUTION SYSTEM. Company will further provide to Owner an internal distribution system within the Premises, capable of providing the service to Owner's hotel/motel rooms, in compliance with current federal, state and local regulations. During the Term of this Agreement, Company will maintain the distribution system in a workmanlike manner, the internal distribution system shall remain the property of Company and shall be used exclusively for Company operations.

In consideration for payment of the amount set forth in Exhibit "B", at the end of the Term, the internal distribution system installed by Company shall become the property of Owner.

During any renewal term or otherwise subsequent to expiration of the Term, Company agrees to maintain the internal distribution system in Owner's Premises upon payment of Company's then existing monthly maintenance fee.

4. PAYMENT FOR CABLE TELEVISION SERVICE AND DISTRIBUTION SYSTEM. Any service, maintenance, installation and other charges for which Owner is obligated are payable monthly in advance. The first month's payment is due and payable on execution of this Agreement. If Owner requires services or installation other than those specified in this Agreement, such additional service or installation will be furnished at Company's established rates then in effect or, in the absence of established rates, at a reasonable charge to be determined by Company.

In the event cable television service is disconnected for nonpayment, Owner agrees to pay Company a reconnect fee in accordance with Company's most recent schedule. Service will not be reconnected until all past due accounts are paid in full.

5. ACCESS. Owner gives Company the permanent right to enter the Premises during reasonable hours to install, connect, disconnect, transfer, inspect, improve, maintain, service, repair, remove and/or replace the equipment and distribution system necessary to provide the Service, and to do all other things necessary to ensure its continued operation. Upon default or termination of the Service by Owner prior to expiration of the Term, Company may enter the Premises and remove its equipment and distribution system.

Owner grants to Company an easement for access to the Premises at all times, in order that Company may exercise its rights hereunder. This easement and the rights of Company under this Agreement shall be binding on any and all successors in interest or assigns; and Owner agrees to require his successors in interest or assigns to abide by same and to hold harmless and indemnify Company in the event such successors in interest or assigns fail to abide by this Agreement or the easement.

6. INTERFERENCE. Owner will not use or permit others to use any equipment that causes interference or is otherwise incompatible with the distribution system or Company's obligation to provide Service under this Agreement. Prior to expiration of the Term of this Agreement, Owner shall not move, disturb, alter or change the distribution system or connect any device to any of the distribution system, shall not authorize or permit anyone to do so, and shall safeguard such Distribution System against others.
7. INSURANCE. Prior to the expiration of the Term of this Agreement, Company shall maintain public liability and property damage insurance to protect Owner against a loss or damage resulting from the Installation, operation or maintenance of the distribution system on the Premises.
8. NO AGENCY. Company and Owner are independent business entities and each has no authority to act for, or on behalf of, or bind the other to, any contract, without the other's written approval.
9. ACT OF GOD. Company shall have no liability to any person for failure to meet any of its obligations under this Agreement, where such failure is the result, in whole or part, of any labor dispute, failure of usual sources of supply, war, riot, insurrection, vandalism, commotion, fire flood, earthquake, accident, storm, Act of God or government, or any other cause beyond Company's reasonable control. If service is interrupted for any other reason, within the reasonable control of the Company, for a continuous period of thirty (30) days, Owner shall have, as his sole remedy, the right to terminate this Agreement if Company fails to restore such service within ten (10) days of Owner's demand.

10. OWNER'S WARRANTIES. Owner, or his managing agent on the Owner's behalf, warrants that (i) it holds all rights and has full authority to execute this Agreement and to grant the rights herein granted; and (ii) there are no existing agreements, nor will there be any such agreements during the Term that would prevent, or be violated by, Company's providing the Service to the Premises.
11. INDEMNIFICATION. Owner agrees to indemnify and hold Company harmless and defend Company from and against all claims, suits, proceedings at law or in equity, and any and all claims, liabilities, loss, cost, damage or expense, including reasonable attorney's fees, arising out of or in connection with any claim resulting from the renting or leasing of Owner's rooms or from the installation of Company's Equipment.
12. SUCCESSORS AND ASSIGNS. This Agreement shall bind and benefit the parties and their respective successors and assigns, regardless of whether such successors and assigns expressly agree to be bound by the Agreement.
13. AMENDMENTS. This Agreement contains the entire agreements or understandings made by the parties concerning this subject matter, superseding any oral or prior written promises, and may be amended only by a writing signed by both parties.
14. INCREMENTAL CHARGES. The cable television service is to be made available to Owner's rooms on a free to the guest basis with no itemized incremental charge for cable television service appearing on a guest's bill or statement.
15. NO PREMIUM PROGRAMS IN PUBLIC PLACES. - Premium services as designated in Exhibit "A" shall not be provided to places of access such as bars, lobbies, night clubs, lounges, halls, restaurants, etc.
16. GOVERNMENTAL RULES. This Agreement shall be governed by the laws of the State of Virginia except where the laws of the United States have precedence. This Agreement and the obligations of the parties shall be subject to all applicable laws, regulations, court rulings, administrative orders, and presidential decrees, as they may be amended from time to time.

17. COOPERATION. Owner and Company agree to cooperate fully and promptly in carrying out this Agreement. Owner agrees to execute any and all documents as may reasonably be requested by Company to evidence and effectuate the rights granted to Company under this Agreement.
18. ACCEPTANCE. Owner agrees that the mutual benefits, promises and covenants contained in this Agreement constitute full and adequate consideration to Owner for the rights granted to Company hereunder and hereby waives any rights which it may have to any additional consideration or compensation from Company.
19. ADDITIONAL FACILITES. In the event the Owner adds rooms to or adjacent to the Premises, this Agreement shall extend to all such rooms added, and Owner shall so notify Company or such additions within thirty (30) days.
20. NOTICES. Any consent, election or notice required or permitted to be given under this Agreement shall be in writing and sent by certified or registered mail or telegram addressed to the address included at the end of this Agreement, or to such other address or addresses as shall, from time to time, be furnished in wrioting by the party to receive such notice to the other party.
21. DEFAULT. In the event that: (a) Owner shall fail to make any payment to be made by it hereunder on or before its due date; or (b) Owner shall fail to perform or observe any of the other covenants, conditions or agreements to be performed or observed by it hereunder, which failure shall not be remedied within ten (10) days after notice thereof by Company to Owner; or (c) Owner shall dissolve or become insolvent (however evidenced), or make an assignment for the benefit of creditors, or any proceeding under any bankruptcy or insolvency statute or any laws relating to the relief of debtors be commenced by or against Owner, or a receiver, trustee or liquidator shall be appointed of Owner or of all or a substantial part of Owner's assets, or any order, judgment or decree shall be entered by a court of competent jurisdiction and shall continue unpaid and in effect

for a period of sixty (60) consecutive days without a stay of execution, or any execution or writ of process shall be issued under any action or proceeding against Owner whereby any property and in the foregoing events set forth in clause (a), (b) or (c) of this paragraph, Company may, without notice or demand (i) immediately terminate this Agreement and Owner's rights hereunder and/or (ii) declare immediately due and payable all the payments and other sums due forthwith as liquidated damages of the distribution system, and/or (iii) proceed by appropriate court action or actions at law or in equity to enforce performance by Owner of applicable covenants of this Agreement or to recover damages for breach thereof, and/or (iv) terminate video and audio transmission rights to Owner's premises, and/or (v) enter the Premises and remove the distribution system. No extension of time, delay or omission in the exercise of any power or remedy provided or otherwise available to company shall impair or affect Company's right hereafter to exercise same.

22. CHANNEL LINE-UP. Owner acknowledges that Company's performance of this Agreement may be subject to the rules and regulations of federal, state or local regulatory powers and that Company is not guaranteeing the provision or availability of any particular program or channel. Company agrees that the cable television service it will provide to the premises will consist of its standard channel lineup and programming thereon as modified from time to time. The make up of the Company's channel lineup is solely within the Company's discretion. The Company's channel lineup up may not be changed or altered by Owner or others without Company's written permission.
23. CONVERTERS. The Company's agreement to provide cable television service does not include any duty to provide converter boxes, and Owner does not request that any converters be supplied.
24. COUNTERPARTS. This Agreement may be executed in counter parts.

IN WITNESS WHEREOF, the parties have entered into this Agreement on the day and year first above written.

COMPANY

OWNER

Cox Cable Hampton Roads, Inc.

Econo Lodge Hamton Bv. 10-5-

Address: 5200 Cleveland St.

Virginia Beach, Va. 23462

By: *Franklin R. Bowers* 10/24/88
Franklin R. Bowers

Vice President/General Manager
Title

By: *Clu Padgett*
General Partner
Title

Form of Business (check one)

Corporation ☐

Partnership ☒

Individual ☐

EXHIBIT "A"

(Exhibit "A" is the channel lineup, with premium programming noted as such).

- 2 AMERICA'S SHOPPING CHANNEL
- 3 WTKR - Local CBS Channel 3
- 4 USA - All Entertainment Network
- 5 WTTG - Washington, D.C. Channel 5
- 6 ESPN - Sports & Entertainment
- 7 TBS - Atlanta SuperStation
- 8 MTV - Music Television
- 9 NICKELODEON - Children's Programming
- 10 WAVY - Local NBC Channel 10
- 11 WCOX - Community Programming
- 12 CNN HEADLINE NEWS - 24 Hours
- 13 WVEC - Local ABC Channel 13
- 14 CNN - 24 Hour News Network
- 15 WHRO - Local PBS Channel 15
- 16 DISCOVERY - Nature - Science - History
- 17 A&E CABLE NETWORK
- 18 LIFETIME - The Lifestyle Channel
- 19 WWOR - New York SuperStation
- 20 WDCA - Washington D.C. Channel 20
- *21 HBO - Movies & Specials - 24 Hours
- 22 C-SPAN - House of Representatives
- 23 TNN - The Nashville Network
- 24 THE WEATHER CHANNEL - 24 Hours
- *25 THE DISNEY CHANNEL
- 26 CBN - The Family Entertainer
- 27 WYAH - Local Independent Channel 27
- 28 EDUCATIONAL CHANNEL
- 29 GOVERNMENT CHANNEL
- *30 CINEMAX - Movies & Specials - 24 Hours
- 31 VTC-TV - Tidewater Educational Channel
- *32 SHOWTIME - Movies & Specials - 24 Hours
- 33 WTVZ - Local Channel 33
- *34 AMC - American Movie Classics/The Travel Channel
- 35 FNN - Financial News Newtwork/Homes Team Sports
- 36 BET - Black Entertainment Television
- *99 HOME PREMIERE TELEVISION

*Designates Premium Service except The Travel Channel, which is a part of Basic Service.

Econo Lodge Hamnton Bv. 10-5-88

Exhibit "B"

Basic Cable	\$ 1.50	*
HBO	\$ 4.00	
Internal Distribution System	\$ 0.41	**
Total/Room/Month	\$ 5.91	
No. of Rooms <u>89</u>		
Monthly Rate = No. rooms x room rate	\$ <u>525.99</u>	

* Basic Cable rate applicable to customer ordering basic service and a premium service (HBO, SHOWTIME or DISNEY).

Basic cable rates are subject to adjustment from time-to-time, not to exceed 10% annually.

Premium programming/guide rates (HBO, SHOWTIME or DISNEY) are subject to adjustment only upon adjustment of the price charged Company by the programmer, and then only in an amount equal to any percentage price increase by said programmer.

** Owner agrees to pay Company the sum of Four Hundred Thirty-Two & 10/100----- Dollars (\$432.10) for the internal distribution system installed in Owner's premises by Company.

X 1. \$ 432.10 (\$ 0.41 /room/month for the term of the agreement.

n/a 2. \$ n/a Upon execution of this agreement.

(Check appropriate box)

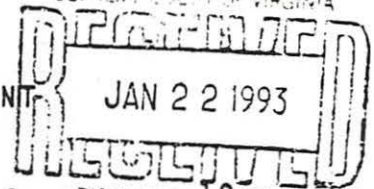
133.50
356.00
30.49

Date of Agreement: January 15, 1991

Owner: Buddy Swank



MULTIPLE DWELLING UNIT BULK
CABLE SERVICE AND ACCESS AGREEMENT



AGREEMENT, made this 15th day of January, 1991, by
and between Cox Cable Hampton Roads, Inc. ("Company")
and Buddy Swank (Sundance Associates) ("Owner").

W I T N E S S E T H:

WHEREAS, Company holds a cable television franchise (the "Franchise") from the appropriate governmental entity and is permitted by the Franchise to make cable television service (the "Service") available to residents in the Norfolk, Portsmouth, Virginia Beach, Chesapeake, Virginia; and Currituck County, North Carolina; franchise areas (the "Area"); and

WHEREAS, Owner holds title to, or is the landlord or authorized managing agent of Sundance Apartments located at 815 East Ocean View Ave, Norfolk, VA 23503 consisting of 26 residential dwelling units, (the "Premises"); and

WHEREAS, Owner wishes to ensure the occupants of its dwelling units have access to the Service, as it recognizes the potential increase in the desirability of the Premises resulting from the availability of the Services. Any damage caused by Company during installation, repair, or removal will be repaired by Company to the reasonable satisfaction of Owner;

NOW, THEREFORE, in consideration of the promises and covenants contained herein and other valuable consideration, the parties intending legally to be bound, agree as follows:

1. PURPOSE AND TERM OF AGREEMENT. The purpose of this Agreement is to state the terms and conditions under which Company will make the cable television services, as set forth in Exhibit "A", available to the persons renting or leasing residential dwelling units of Owner. It is understood that monthly charges for additional services not set forth in Exhibit "B" shall remain the responsibility of tenants.

2. CABLE TELEVISION SERVICE. The bulk rate cable television services provided for under this Agreement shall commence on March 1, 1991, or as soon as thereafter reasonably practicable, and remain in effect until March 1, 1992, (the "Term"). At the end of the Term and any renewal term, this Agreement shall be automatically renewed for additional one-year terms unless either party gives the other at least ninety (90) days' prior written notice of termination.

Compensation for said bulk rate cable television services shall be as set forth in Exhibit "B."

3. DISTRIBUTION SYSTEM. Company will further provide, or has provided, to Owner an internal distribution system within the Premises, capable of providing the Service to Owner's residential dwelling units, in compliance with current federal, state and local regulations. Internal Distribution System includes all the material necessary to transmit the Service to the unit; including but not limited to internal wiring, taps, amplifier, electronic equipment, drops, splitters and connectors; but not including converters. During the Term of this Agreement, Company will maintain the distribution system in a workmanlike manner. Owner agrees to mark all underground facilities, gas, electric and water lines owned by Owner. The internal distribution system shall not become a fixture, but shall remain the property of Company and shall be used exclusively for Company operations.

Upon termination of this Agreement for any reason whatsoever, Company shall have the right to enter the Premises and remove the internal distribution system.

4. PAYMENT FOR CABLE TELEVISION SERVICE. Any service, and other charges for which Owner is obligated are payable monthly in advance. The first month's payment is due and payable on execution of this Agreement. If Owner requires services other than those specified in this Agreement, such additional service will be furnished at Company's established rates then in effect or, in the absence of established rates, at a reasonable charge to be determined by Company.

In the event cable television service is disconnected for nonpayment, Owner agrees to pay Company a reconnect fee in accordance with Company's most recent schedule. Service will not be reconnected until all past due accounts are paid in full.

5. INDIVIDUAL UNIT BILLING. In addition to the Service provided under this Agreement, Company may contract with the occupants of the individual units of the Premises to provide additional cable television services, including additional premium services and Pay-Per-View services. Owner hereby grants Cox the right of access to the Premises for the purpose of soliciting subscribers.

6. ACCESS. Owner gives Company the permanent right to enter the Premises during reasonable hours to install, connect, disconnect, transfer, inspect, improve,

maintain, service, repair, remove and/or replace converter and/or the distribution system necessary to provide the Service, and to do all other things necessary to ensure its continued operation. Upon default or termination of the Service by Owner Company may enter the Premises and remove its equipment and distribution system.

Owner grants to Company an easement for access to the Premises at all times, in order that Company may exercise its rights hereunder. This easement and the rights of Company under this Agreement shall be binding on any and all successors in interest or assigns; and Owner agrees to require his successors in interest or assigns to abide by same and to hold harmless and indemnify Company in the event such successors in interest or assigns fail to abide by this Agreement or the license.

7. RACEWAYS, CONDUIT AND POWER. Owner agrees to provide Company without charge, all raceways, conduit and electricity (a separately fused 110 volt A.C. outlet, when necessary) and such other space, whether it be within or outside the project to be serviced, in order to run cable to project to be serviced. The aforementioned shall be according to Company specifications or design. Layout to be submitted to Owner for approval prior to construction commencement.
8. UTILITY POLES. Owner understands and agrees that, in providing cable television service, Company shall, with the exception of underground utilities, make use of utility poles owned in sole or in part by telephone and electric power companies, or both, as well as, easements over and under both public and private property, and that the continued use of said poles and easements is in no way guaranteed. In the event that continued use of said poles and easements is denied to Company, for any reason, Company will make every reasonable effort to provide service over alternate routes. Owner agrees that it will make no claims and will not undertake any action against said local utility companies and/or Company and/or public or private property owners, if cable television service provided hereunder is interrupted or discontinued as a result of the use of said poles and/or easements being denied to Company for any reason.
9. INTERFERENCE. Owner will not use or permit others to use any equipment that causes interference or is otherwise incompatible with the distribution system or Company's obligation to provide Service under this

Agreement. Owner shall not move, disturb, alter or change the distribution system or connect any device to any of the distribution system, shall not authorize or permit anyone to do so, and shall safeguard such distribution system against others.

10. INSURANCE. Company shall maintain public liability and property damage insurance to protect Owner against a loss or damage resulting from the installation, operation or maintenance of the distribution system on the Premises.
11. NO AGENCY. Company and Owner are independent business entities and each has no authority to act for, or on behalf of, or bind the other to, any contract, without the other's written approval.
12. ACT OF GOD. Company shall have no liability to any person for failure to meet any of its obligations under this Agreement, where such failure is the result, in whole or part, of any labor dispute, failure of usual sources of supply, war, riot, insurrection, vandalism, commotion, fire, flood, earthquake, accident, storm, Act of God or government, or any other cause beyond Company's reasonable control. If Service is interrupted for any other reason, within the reasonable control of the Company, for a continuous period of thirty (30) days, Owner shall have, as his sole remedy, the right to terminate this Agreement if Company fails to restore such service within ten (10) days of Owner's demand.
13. OWNER'S WARRANTIES. Owner, or his managing agent on the Owner's behalf, warrants that (i) it holds all rights and has full authority to execute this Agreement and to grant the rights herein granted; and (ii) there are no existing agreements, nor will there be any such agreements during the Term that would prevent, or be violated by, Company's providing the Service to the Premises.
14. INDEMNIFICATION. Owner agrees to indemnify and hold Company harmless and defend Company from and against all claims, suits, proceedings at law or in equity, and any and all claims, liabilities, loss, cost, damage or expense, including reasonable attorney fees, arising out of or in connection with any claim resulting from the occupancy of Owner's dwelling units or from the installation of Company's equipment.
15. SUCCESSORS AND ASSIGNS. This Agreement shall bind and benefit the parties and their respective successors and assigns, regardless of whether such successors and assigns expressly agree to be bound by the Agreement.

Date of Agreement: January 15, 1991

Owner: Buddy Swank

16. AMENDMENTS. This Agreement contains the entire agreements or understandings made by the parties concerning this subject matter, superseding any oral or prior written promises, and may be amended only by a writing signed by both parties.
17. DISPUTES. The prevailing party in any action brought under this Agreement shall be entitled to recover from the other party reasonable attorneys' fees, costs and necessary disbursements.
18. NO PREMIUM PROGRAMS IN PUBLIC PLACES. Premium services, as designated in Exhibit "A", shall not be provided to places of public access such as bars, lobbies, night clubs, lounges, halls, restaurants, etc.
19. GOVERNMENTAL RULES. This Agreement shall be governed by the laws of the State of Virginia except where the laws of the United States have precedence. This Agreement and the obligations of the parties shall be subject to all applicable laws, regulations, court rulings, administrative orders, and presidential decrees, as they may be amended from time-to-time.
20. COOPERATION. Owner and Company agree to cooperate fully and promptly in carrying out this Agreement. Owner agrees to execute any and all documents as may reasonably be requested by Company to evidence and effectuate the rights granted to Company under this Agreement.
21. ACCEPTANCE. Owner agrees that the mutual benefits, promises and covenants contained in this Agreement constitute full and adequate consideration to Owner for the rights granted to Company hereunder and hereby waives any rights which it may have to any additional consideration or compensation from Company.
22. ADDITIONAL FACILITIES. In the event the Owner adds dwelling units to or adjacent to the Premises, this Agreement shall extend to all such units added, and Owner shall so notify Company of such additions within thirty (30) days.
23. CONDOMINIUMS. If this property is a condominium, this Agreement shall be included in and be made a part of the condominium documents covering the Premises, and shall specifically be assumed by the Condominium Association.
24. NOTICES. Any consent, election or notice required or permitted to be given under this Agreement shall be in

Date of Agreement: January 15, 1991

Owner: Buddy Swank

writing and sent by certified or registered mail or telegram addressed to the address included at the end of this Agreement, or to such other address or addresses as shall, from time-to-time, be furnished in writing by the party to receive such notice to the other party.

25. DEFAULT. In the event that: (a) Owner shall fail to make any payment to be made by it hereunder on or before its due date; or (b) Owner shall fail to perform or observe any of the other covenants, conditions or agreements to be performed or observed by it hereunder, which failure shall not be remedied within ten (10) days after notice thereof by Company to Owner; or (c) Owner shall dissolve or become insolvent (however evidenced), or make an assignment for the benefit of creditors, or any proceeding under any bankruptcy or insolvency statute or any laws relating to the relief of debtors be commenced by or against Owner, or a receiver, trustee or liquidator shall be appointed of Owner or of all or a substantial part of Owner's assets, or any order, judgment or decree shall be entered by a court of competent jurisdiction and shall continue unpaid and in effect for a period of sixty (60) consecutive days without a stay of execution, or any execution or writ of process shall be issued under any action or proceeding against Owner whereby any property and in the foregoing events set forth in clause (a), (b) or (c) of this paragraph, Company may, without notice or demand (i) immediately terminate this Agreement and Owner's rights hereunder and/or (ii) declare immediately due and payable all the payments and other sums due forthwith as liquidated damages, and/or (iii) proceed by appropriate court action or actions at law or in equity to enforce performance by Owner of applicable covenants of this Agreement or to recover damages for breach thereof, and/or (iv) terminate video and audio transmission rights to Owner's premises, and/or (v) enter the Premises and remove the distribution system. No extension of time, delay or omission in the exercise of any power or remedy provided or otherwise available to Company shall impair or affect Company's right hereafter to exercise same.

26. CHANNEL LINEUP. Owner acknowledges that Company's performance of this Agreement may be subject to the rules and regulations of federal, state or local regulatory powers and that Company is not guaranteeing the provision or availability of any particular program or channel. Company agrees that the cable television service it will provide to the Premises

Date of Agreement: January 15, 1991

Owner: Buddy Swank

will consist of its standard channel lineup and programming thereon as modified from time-to-time. The makeup of the Company's channel lineup is solely within the Company's discretion. The Company's channel lineup up may not be changed or altered by Owner or others without Company's written permission.

27. CONVERTERS. The Company's agreement to provide cable television service does not include any duty to provide converter boxes, and Owner does not request that any converters be supplied.
28. COUNTERPARTS. This Agreement may be executed in counter parts.
29. CONTRACT CONSTRUCTION. Should any term or provision of this Agreement be held invalid and unenforceable, the remaining provisions in this Agreement shall remain and continue in full force and effect.

IN WITNESS WHEREOF, the parties have entered into this Agreement on the day and year first above written.

COMPANY

OWNER

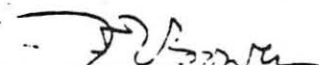
Cox Cable Hampton Roads, Inc.


SUNDANCE ASSOCIATES

Address: 5200 Cleveland St.

815 E. OCEAN VIEW AVE
NORFOLK VA 23503

Virginia Beach, VA 23462

By:  2/1/91
Franklin R. Bowers

By: 

Vice President/General Manager
Title

OWNER/OPERATOR
Title

Form of Business (check one): Corporation ☐
Partnership ☒
Individual ☐

EXHIBIT "A"

(Exhibit "A" is the Channel Lineup, with premium programming noted as such).

- 1 PREVUE GUIDE PREVIEW CHANNEL
- 2 WGN - Chicago SuperStation *
- 3 WTKR - Local CBS Channel 3
- 4 USA - 24-Hour Entertainment Network *
- 5 TNT - 24-Hour Movies & Sports/Turner Network Television *
- 6 ESPN - 24-Hour Sports & Information *
- 7 WTBS - Atlanta SuperStation *
- 8 CNN - 24-Hour News
- 9 NICKELODEON - Children & Family Programming *
- 10 WAVY - Local NBC Channel 10 *
- 11 WCOX - Community Programming from Cox Cable
- 12 CNN HEADLINE NEWS - 24 Hours
- 13 WVEC - Local ABC Channel 13 *
- 14 WOR - New York SuperStation *
- 15 WHRO - Local PBS Channel 15 *
- 16 DISCOVERY - 24-Hour Nature - Science - History *
- 17 A&E NETWORK - Arts & Entertainment *
- 18 LIFETIME - The Lifestyle Channel *
- 19 THE FAMILY CHANNEL *
- 20 WDCA - Washington D.C. Independent *
- 21 HBO - Movies & Specials - 24 Hours *
- 22 MTV - 24-Hour Music Television *
- 23 TNN - The Nashville Network *
- 24 THE WEATHER CHANNEL - 24 Hours
- 25 CNBC - Consumer News and Business Channel
- 26 SHOWTIME - 24-Hour Movies and Specials *
- 27 WGNT - Local Independent Station
- 28 EDUCATIONAL CHANNEL
- 29 GOVERNMENT CHANNEL
- 30 QVC - 24-Hour Shopping
- 31 VTC-TV - Tidewater Educational Channel
- 32 C-SPAN - U.S. Congress Coverage
- 33 WTVZ - Local Independent Station
- 34 AMC - American Movie Classics
- 35 E! Entertainment Television *
- HTS - Homes Team Sports
- 36 BET - Black Entertainment Television *
- 37 THE DISNEY CHANNEL - Family Programming *
- 38 CINEMAX - 24-hour Movies and Specials *
- 99 VC - Viewer's Choice (Pay-Per-View) *

*Channels that broadcast some programming in stereo, available to customers whose TV is equipped with internal BTSC-MTS stereo capability.

Note: Premium Channels are in Bold.

Date of Agreement: January 15, 1991

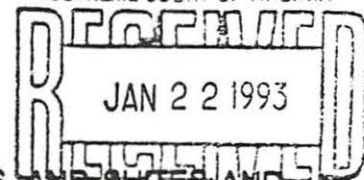
Owner: Buddy Swank

EXHIBIT "B"

Bulk Rate Per Unit Per Month

Basic Cable	\$ <u>6.00</u>
Premium Services	
<u>HBO</u>	\$ <u>4.00</u>
_____	_____
_____	_____
_____	_____
Other	
Franchise fee-City of Norfolk	\$ <u>.30</u>
Utility Tax City of Norfolk	<u>.42</u>
Copyright fee	_____
<u>Total Monthly Rate</u>	<u>10.84</u>
Total/Unit/Month Rate	\$ <u>281.84</u>
# of Units <u>26</u>	
Monthly Rate = No. of units x unit rate (excludes applicable federal, state and local fees and taxes.)	\$ <u>260.00</u>

Monthly Service Rates are subject to adjustment from time-to-time,
not to exceed 10% annually.



Contract Summary

MASTER AGREEMENT BETWEEN MARRIOTT HOTELS, RESORTS, AND SUITES AND SPECTRADYNE INCORPORATED FOR SATELLITE TELEVISION SERVICE

DEFINITION OF TERMS

- FTG Service** The package of equipment, installation, maintenance, and programming for "Free-to-Guest" satellite delivered TV provided by Spectradyne.
- FTG Channel** A single network such as HBO or ESPN.
- MATV** A network of cables, wall taps, antennas and radio frequency processing components, which receive, process, amplify and distribute video and audio television signals from a central location to a number of televisions within a Hotel building or group of buildings.

FREE-TO-GUEST PROGRAMMING

- (a) Spectradyne will provide the following free-to-guest channels:

Home Box Office ("HBO") – Guest rooms only
Entertainment and Sports Programming Network ("ESPN") – Guest rooms & public areas
Turner Network Television ("TNT") – Guest rooms & public areas
CNN Headline News ("CNN") – Guest rooms & public areas
The Disney Channel ("Disney") – Guest rooms only

- (b) Several Hotels already receive FTG Service via microwave systems capable of supporting only four channels. Those Hotels shall continue to operate with only the existing four channels with all other provisions of this Agreement in full force. If Spectradyne is unable to deliver to any Hotel the full programming package listed above, then Spectradyne and Marriott shall mutually agree upon a reduced rate reflecting the actual FTG Channels delivered to that Hotel. Disney can only be delivered to Hotels at which a satellite dish antenna ("Downlink") is installed. For Hotels without a Downlink, Disney may not be available. In the event that Disney is not available, there shall be no Fee reduction.
- (c) Spectradyne agrees not to broadcast on the MATV any commercial or marketing message, information, or service promoting Spectradyne or any other entity, service, or product without the prior written consent of Marriott. Marriott agrees that the format and operation of the pay-movie preview channel as provided by Spectradyne prior to the execution of this Agreement is generally acceptable for the term of this Agreement. Marriott shall have the right to review, veto, and prohibit the display of any material on the preview channel which Marriott finds to be inappropriate.
- (d) Marriott recognizes that ESPN reserves the right to require that ESPN programming be blacked-out during certain events. Spectradyne shall be responsible for installing and maintaining equipment sufficient to automate the blackout process without intervention by Hotel staff.

- (e) Hotels receiving WTBS shall be converted to receive TNT. Conversion of Hotels' current WTBS channel to TNT shall be completed by Spectradyné within sixty (60) days after the execution of this Agreement except for Hotels served by microwave networks which Spectradyné is unable to convert from WTBS. Any Hotel may elect to continue WTBS or elect in the future to begin receiving WTBS where available.
- (f) No fee shall be charged by Marriott or any Hotel to any guest for the privilege of watching FTG Channels.

FEES AND PAYMENT TERMS

- (a) The daily fee ("Fee") charged per hotel room to each Hotel shall be determined as set forth below. Fee increases are based on a government inflation index.
 - 1) From September 1, 1991 to December 31, 1992, the Fee shall be \$ 0.1848.
 - 2) On January 1, 1993 the Fee shall be increased by 1.833% plus half the inflation rate. Example: if inflation is 4%, the Fee would be increased by 3.833% to \$ 0.1919.
 - 3) On January 1, 1994 the Fee shall be increased by half the inflation rate.
 - 4) On January 1, 1995 the Fee shall be increased by half the inflation rate.
- (b) In the case of a price increase from the FTG Channels, Spectradyné shall be entitled to pass through to Marriott any increased price subject to the following provisions.
 - Spectradyné must provide at least 30-day's notice.
 - Spectradyné must prove to Marriott that Spectradyné's price has increased.
 - Increases cannot exceed 4.5% at one time.
 - Increases cannot exceed 4.5% in a twelve month period.
 - Marriott may cancel channels which increase their price.
- (c) The Fee for FTG Service and any taxes for each Hotel shall be payable by that Hotel on a monthly basis, due on the first day of each month, in advance.
- (d) If for any reason, FTG Services are not adequately received or able to be distributed by a Hotel for more than forty-eight (48) hours after notification to Spectradyné of a system failure, Spectradyné shall rebate to the Hotel a sum equal to the daily Fee for each room which does not receive FTG Service.
- (e) Hotel agrees to pay any and all sales or other taxes associated with receiving FTG Service.
- (f) Subject to the written approval of Marriott, individual Hotels may contract with Spectradyné to have Spectradyné provide additional FTG Channels ("Extra Channel(s)") to the Hotel. Such contracts shall be for a term of one year, after which the Hotel may extend the term of the contract on a month-to-month basis which extension may be cancelled by either party with sixty (60) day's written notice. Spectradyné shall be responsible for the purchase, installation, and

maintenance of equipment or services required to provide the Extra Channels in accordance with the terms of this Agreement. The charge for Extra Channels shall be payable by each Hotel on a monthly basis, due on the first day of each month, in advance.

The charge for Extra Channels shall be on a per guest room per day basis as follows:

<u>Extra Channel</u>	<u>Price per room per day</u>
WOR	\$ 0.0202
TNN, The Nashville Network	\$ 0.0202
CNN (Non-Headline)	\$ 0.0333
WGN Superstation	\$ 0.0202
USA Network	\$ 0.0202
WTBS Superstation	\$ 0.0202
C-SPAN Government Network	\$ 0.0101

Spectradyne may amend the above pricing schedule with thirty days written notice to Marriott but may not change the price charged any Hotel for the above Extra Channels if that Hotel is within the first year of service for the Extra Channel whose price is increased. Hotels may request that Spectradyne install Extra Channels by submitting to Spectradyne the order form attached as Exhibit H.

TERM

This Agreement and the Fee schedule herein shall become effective September 1, 1991. The term of service for all Hotels receiving FTG Service under this Agreement shall expire on December 31, 1995.

MAINTENANCE AND PERFORMANCE STANDARDS

- (a) Spectradyne shall maintain the FTG Equipment in good operational condition and make all necessary repairs and replacements at Spectradyne's expense. Spectradyne agrees to maintain a good quality signal through the MATV system.
- (b) Spectradyne's access to FTG Equipment in each Hotel shall not be unreasonably limited and shall be in accordance with procedures agreed to by each Hotel. Marriott shall allow authorized personnel of Spectradyne to have access to the FTG Equipment in order to conduct routine maintenance, observation and monitoring of the FTG Equipment, to ensure suitable operating conditions and to implement improvements in the FTG Equipment. Under no circumstances shall Spectradyne enter a guest room without the prior approval of the Hotel's management.
- (c) If, during the term of the Agreement, Spectradyne desires to change any FTG Equipment component or software to improve service or to take advantage of technological advancements, Spectradyne shall use equipment or components which provide the same minimum level of service as existing components and shall use reasonable efforts to ensure that changes are made without disruption of Hotel televisions or MATV service and with minimum interruption of FTG Service.

- (d) Spectradyne shall install, operate, and maintain FTG Equipment and any other equipment, video service, or MATV components provided by Spectradyne in accordance with the technical specifications detailed in Exhibit E.
- (e) For all Hotels that have commenced FTG Service within one year prior to the commencement of this Agreement, Spectradyne shall, at its expense, be responsible for all maintenance and warranty work required on the MATV system and equipment including off-air broadcast reception equipment for a period of one year after the commencement of Hotel's FTG Service. (NOTE: Please call the Vice President of MHRS Rooms Operations prior to contacting Spectradyne if you believe this provision applies to a problem at your Hotel.)
- (f) Upon being notified by Marriott that repairs are required to any equipment, video service, or MATV components installed, modified, or serviced by Spectradyne at a Hotel, Spectradyne shall immediately dispatch repair representative(s) to the designated Hotel and Spectradyne shall ensure that these representatives arrive at the Hotel within twenty-four (24) hours of the time Spectradyne is notified of the repair requirement.
- (g) Upon arrival at the Hotel, Spectradyne's repair representatives shall immediately undertake necessary repairs to return the entire system to the performance standards required under this Agreement. Said repair services shall be completed within forty-eight (48) hours of the time Spectradyne is initially notified of the system breakdown.

RIGHTS OF THE PARTIES

- (a) Hotels have no right to redistribute any Free-to-Guest programming outside Hotel premises or to any television set for which Marriott has not paid the Fee to Spectradyne.
- (b) Spectradyne agrees that FTG Channels shall be delivered to each Hotel and to all rooms in each Hotel with no deletions, interruptions, or additions unless agreed to in writing by Marriott.
- (c) Marriott acknowledges that the Free-to-Guest programming is proprietary to Spectradyne. Marriott will not knowingly allow any copying or taping of the programming in any manner.
- (d) Marriott has the right, in its sole discretion, to carry any other programming on the MATV and to present such programming on Hotel televisions. Spectradyne shall not prevent or use equipment or technology that prevents Marriott from making such additional programming available to Hotel guest rooms or through Spectradyne television converter boxes.
- (e) Marriott has the right, on a limited basis, to use Spectradyne's FTG Equipment, satellite dishes, and cabling for special events or other services. (NOTE: Please call the Vice President of MHRS Rooms Operations prior to contacting Spectradyne regarding this provision.)
- (f) No Hotel contracts for any service or product provided by Spectradyne shall be extended or renewed for any reason except on a month-to-month basis without prior consent by the Vice President of MHRS Rooms Operations.
- (g) Marriott shall have the right to carry on the MATV and to present on Hotel television sets promotional or advertising messages and to implement those or other revenue-generating

services or offerings independently from Spectradyne or in partnership with companies other than Spectradyne.

ADDITIONAL RESPONSIBILITIES OF SPECTRADYNE

- (a) Spectradyne shall ensure that all electronic equipment used is listed by the Underwriters Laboratory, Inc. or is built to their standards and that all design, equipment, and installation is in strict compliance with the National Electrical Code Handbook as published by the National Fire Protection Association and as amended periodically, Federal Communications Commission requirements, and other governing codes.
- (b) Spectradyne guarantees that the equipment installed and/or the connections to the existing television antenna or cable system, amplifiers and receivers will not impair in any way the ordinary reception or transmission of broadcast programs or other services on the MATV.
- (c) Spectradyne will provide each Hotel with a quantity of program guides designating program selections on FTG Channels on a monthly basis equal to 110% of the number of rooms in the Hotel. Marriott may veto the distribution of any materials it finds to be inappropriate for its Hotels. The general format for these guides shall be subject to Marriott's approval. To help minimize the costs associated with the production of program guides, Marriott agrees to allow Spectradyne to carry advertising in the program guides. Such advertising must follow guidelines mutually agreed to by Marriott and Spectradyne.
- (d) Spectradyne will, at its own expense, provide each Hotel with remote control decals or printed material in a format approved by Hotel and Marriott which details the MATV channel lineup including: MATV channel number, network affiliation, and network call letters for each network or FTG Channel carried on the MATV. Spectradyne will provide this material including sufficient spares for every guest room in each Hotel only when the FTG Service is initiated or the channel lineup is changed by Spectradyne in accordance with Spectradyne's obligations herein. In all other cases, Marriott shall provide this material.
- (e) Spectradyne shall not be responsible for paying for channel lineup decals or printed materials which become needed due to a change in the channel lineup for which change Spectradyne was not responsible.
- (f) Spectradyne regional field offices shall coordinate ordering and delivery of remote control decals or channel lineup materials in a format approved by the Hotel with the Engineering staff at each Hotel. Spectradyne shall ensure these materials are received by each Hotel prior to the channel lineup being changed. In no case shall a Hotel's channel lineup change before the Hotel has received the decals.
- (g) Spectradyne shall, at its expense, repair any damage to any Hotel caused by the installation, removal, repair, servicing, or replacement of any equipment, product or service provided by Spectradyne.
- (h) Spectradyne shall be responsible, at its expense, for repositioning, reconfiguring, or replacing FTG Channel reception equipment that ceases to function as provided herein.

ADDITIONAL RESPONSIBILITIES OF MARRIOTT

- (a) Marriott agrees to provide and maintain the MATV system and all television receivers in the Hotels.
- (b) Marriott shall, at no cost to Spectradyme, provide the electrical power necessary to operate the FTG Equipment.
- (c) Marriott shall not remove the FTG Equipment and shall use reasonable efforts to prevent its removal from the Hotel and shall not abuse the equipment.
- (d) Any repairs or replacements made necessary by the willful or grossly negligent act of any Hotel, its employees, contractors, or agents will be made by Spectradyme at its cost. The Hotel will reimburse Spectradyme for those costs.

INSURANCE

Spectradyme shall obtain and maintain, at its sole cost and expense throughout the term of the Agreement, Workman's Compensation Insurance, comprehensive general liability insurance, and automobile liability insurance policies sufficient to cover any and all claims made by Spectradyme employees, agents, or subcontractors. Neither Marriott nor any Hotel shall be responsible for any such claims.

FORCE MAJEURE

Neither party shall have any liability for the failure to perform or a delay in performing any of its obligations under this Agreement if that failure or delay is the result of any legal restriction, labor dispute, strike, boycott, flood, fire, public emergency, revolution, insurrection, riot, war, unavoidable mechanical failure, electricity interruption or any other cause beyond the control of either party whether similar or dissimilar to the causes enumerated here.

INDEMNITY.

Spectradyme shall comply with and observe on a continuing basis all applicable federal, state, and local laws and regulations and shall secure any and all licenses and permits required to provide FTG Service at each Hotel. Spectradyme further agrees to indemnify and hold Marriott and each Hotel served harmless and blameless for and against any infringement, claims of any kind, patents, royalties, violations and expenses associated therewith.

SYSTEM REMOVAL

Once the Agreement is terminated for any reason, additions or modifications which have been made by Spectradyme to any part of the MATV system, cabling, amplifiers, wall taps, or any other equipment shall at Marriott's option either (1) be removed and the Hotel restored to

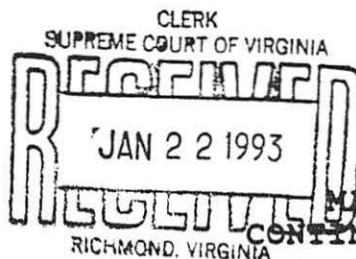
original condition using equipment equal to or better in quality than that modified, or (2) be left in place, in which case, ownership of said addition or modification shall transfer to Hotel. Spectradyne shall provide written documentation to Hotel detailing changes to Hotel MATV system including the brand name and model of any equipment removed.

DEFAULT

- (a) Events of default by Spectradyne shall be handled by MHRS Vice President of Rooms Operations. Contact that office to discuss any potential default.
- (b) Any copying or unauthorized exhibition of the Free-to-Guest programming by a Hotel shall constitute a material default in Marriott's obligations under this Agreement. As a result of such default, the Agreement with Marriott may be terminated by Spectradyne for that Hotel.
- (c) In the event that this Agreement is terminated with respect to any Hotel due to a default by Marriott or the Hotel, the Hotel shall pay to Spectradyne liquidated damages plus the costs of removing the FTG Equipment provided such costs not exceed one thousand five hundred dollars (\$1,500).
- (d) Bankruptcy, insolvency, or reorganization by a Hotel shall not be cause for Spectradyne to declare this Agreement in default; however, to the extent that any such Hotel does not immediately elect to continue this Agreement and pay any amounts due to Spectradyne under this or any agreement, then Spectradyne may immediately terminate any and all Spectradyne-provided services at that Hotel.

GENERAL PROVISIONS

- (a) **Notices.** All notices shall be given in writing and shall be deemed given when deposited in the U.S. Mail with postage prepaid. All notices to and approvals by Marriott shall be directed to or obtained from Marriott's Vice President, Rooms Operations at Marriott Corporation. All notices to and approvals by Spectradyne shall be directed to or obtained from Spectradyne's Vice President, Marketing at Spectradyne Incorporated, 1501 North Plano Road, Richardson, Texas, 75083. Emergency notices concerning blackout requirements for FTG Channels or any other matter may be given by telephone, or telegraph, or in person but must then be followed by written notification.
- (b) **Assignability.** This Agreement and the obligations hereunder may not be assigned by either party hereto without written approval of the other party, but which approval will not be unreasonably withheld.
- (c) **Applicable Law.** This Agreement is made in Maryland and shall be governed in all respects by the laws of the State of Maryland.
- (d) **Modification.** This Agreement and any provision of the attached Exhibits shall not be modified or amended except by an instrument in writing signed by the parties. Both parties agree to execute any other documents reasonably necessary to accomplish the purposes of this Agreement.



MAY 24, 1988
CONTINENTAL COMPANIES

FULL SERVICE-SERVICE AGREEMENT

THIS SERVICE AGREEMENT is dated as of August 1, 1988,
between The Rouse Co. d/b/a Sheraton Military Circle, a joint venture
corporation/partnership (circle one), (the "Affiliate"), and COMSAT
Video Enterprises, a Tennessee general partnership ("COMSAT"), with
offices at 3728 Lamar Avenue, Memphis, Tennessee 38118.

W I T N E S S E T H

WHEREAS, the Affiliate desires to receive both free-to-guest television programming ("Free-to-Guest Programming") and guest-pay television programming ("Pay TV Programming") (together "Programming") for reception in its hotel(s) as an additional guest service; and

WHEREAS, COMSAT desires to provide the Programming to the Affiliate and its guests on the terms and conditions hereinafter set forth;

NOW, THEREFORE, in consideration of the mutual promises herein contained, it is agreed by the parties that:

1. Service. COMSAT agrees to provide, and the Affiliate agrees to receive, a service consisting of the Programming, all satellite earth station and pay television equipment (the "Equipment") and maintenance of the Equipment necessary to receive the Programming (the Programming, the Equipment and maintenance being hereinafter collectively referred to as the "Service"). COMSAT shall have the sole discretion to determine the content of the Programming and shall provide the Service to the Affiliate at each location ("Location") designated on Exhibit "A" attached hereto. Further:

a) COMSAT shall exercise reasonable and diligent efforts to provide programming substantially similar in quality to the Programming described in Exhibit "B" attached hereto.

b) The Affiliate agrees that during the term of this Service Agreement COMSAT shall be the exclusive supplier of both free-to-guest and guest-pay television programming services delivered by satellite, in-room tape players or otherwise to each Location, provided, however, that the Affiliate may contract with third parties to receive locally originated service channels, the national "superstations" (e.g. WGN, and WOR) or an improved local television reception so long as such services are compatible with the Equipment.

c) The Affiliate shall at all times provide the Programming to all available guest rooms at each Location, but shall not provide any premium movie channel or guest-pay channel in any location which is not a guest room, including without limitation, locations where an admission fee is charged, or places of public access, such as bars, lounges, restaurants, lobbies or hallways.

d) From time to time COMSAT may, (i) delete specific programs, or portions thereof, from the Programming, for the purposes of conducting videoteleconferences, (ii) add or substitute specific programs for the Programming at no additional cost to the Affiliate, and (iii) offer additional programming and other services utilizing the Equipment at prices and on terms to be mutually agreed upon by the parties. Additional or substituted programming offered by COMSAT may have limited distribution and the Affiliate shall have no right or privilege to receive such programming solely because such programming may be offered to others, however, COMSAT will make best efforts to offer the additional program or other services to the Affiliate should they be generally offered to all other Affiliates.

2. Price/Billing. The Affiliate agrees to pay COMSAT for the Service and remit Pay T.V. revenues to COMSAT as follows:

a) Service Charge and Pay T.V. revenues

i) The Affiliate shall pay a monthly charge for the Service received at each Location (the "Service Charge") calculated by multiplying the number of available rooms at each Location (as set forth in Exhibit "A") by the monthly per available room charge set forth in Exhibit "E" attached hereto. The Service Charge may be prorated, where appropriate, and adjusted by a revenue sharing credit in accordance with Section 2(a)(iii).

ii) The Equipment at each Location will record the number of Pay T.V. views ("Views"). "Gross Pay T.V. Revenues" will be calculated from that record by multiplying the number of Views times the Pay T.V. charge specified in Exhibit "C", attached hereto, and shall also include all applicable federal, state and local sales and similar taxes. The Affiliate shall pay to COMSAT the "Net Pay T.V. Revenues" (Gross Pay T.V. Revenues less Pay T.V. guest refunds substantiated by the Affiliate in accordance with COMSAT's standard refund policies and procedures) for each Location.

iii) The Affiliate shall receive a revenue sharing credit against the Service Charge in an amount equal to the Net Pay T.V. Revenue (less applicable federal, state and local sales and similar taxes) times the percentage credit applicable to such Revenue, based on the monthly net PAR Buy Rate for each Location, all in accordance with Exhibit "E". Each Location's monthly Net PAR Buy Rate shall be determined by dividing the number of Views recorded by the Equipment at each Location (net of any adjustments for guest refunds), by the number of available room nights at each Location.

b) Payment by the Affiliate for receipt of the service shall be based upon the number of guest rooms available at each Location to the public for occupancy, as indicated on Exhibit "A". This number may be modified upon notice to COMSAT by the Affiliate to reflect any permanent change in the number of available rooms at a Location.

c) The Service Charge to the Affiliate shall be subject to increase by COMSAT from time to time, provided, that the Service Charge designated on Exhibit "E" shall be in effect for at least six months from the date Service is first received by the Affiliate, and provided further that in no event shall any increase of the Service Charge in any calendar year exceed 10% of the Service Charge in effect at the beginning of such year. It being understood that any short term introductory discounts i.e., less than 12 months in duration, are not to be construed as permanent reductions to the service charge. In the event of any increase to the service charge, the Affiliate shall receive no less favorable treatment than any other COMSAT Affiliate.

d) COMSAT shall invoice the Affiliate within 10 days after the end of each month for an amount equal to the Service Charge for each Location and the Gross Pay T.V. Revenues recorded by the Equipment at each Location. Within 30 days of the invoice date the Affiliate shall pay COMSAT an amount calculated in accordance with Section 2(a). Any amounts payable for the Service not paid when due shall be subject to a late charge equal to 1 1/2% of the unpaid balance, provided, that such late charge shall not exceed the maximum charge permitted by applicable law.

e) If the Affiliate does not receive the Free-to-Guest premium movies Programming for more than 48 consecutive hours during any month at a Location, and the Affiliate is in compliance with Section 5 of this Agreement, it shall receive a Service Charge credit for the time after the initial 48-hour period that such Programming is not received.

3. Conditions to Service.

a) The parties recognize that delivery of the Service may not be technically or economically feasible. If COMSAT determines, after conducting a site survey of a Location at COMSAT'S sole expense, that delivery of the Service would not be technically feasible, would not meet COMSAT'S standards of quality or would require an uneconomical roof-mounted installation, COMSAT shall notify the Affiliate of its intention to terminate this Service Agreement as to such Location within 30 days of the completion of the site survey.

b) The parties recognize that Master Antenna T.V. (MATV) system improvements may be required at certain Locations as set forth in Section 4(a)(iii). If COMSAT determines, after conducting a site survey of a Location, that the cost of such required improvements at a Location exceeds \$2,000, COMSAT shall communicate

such fact to the Affiliate within 30 days of the completion of the site survey. If the Affiliate fails to agree to pay the excess amount within 60 days of such communication, this Service Agreement will automatically terminate as to such Location without any further action on the part of either party.

c) The parties recognize that delivery of the Service is conditioned upon receipt by COMSAT of an approval for each Location from certain suppliers of the Programming. If COMSAT does not receive approval as to a specific Location, then COMSAT shall notify the Affiliate of such fact and COMSAT or Affiliate shall have the option to terminate this Service Agreement as to such Location within 30 days of such notice.

d) The parties recognize that delivery of the Service is conditioned upon the Affiliate's completion of the credit application form attached hereto as Exhibit "D" providing a current financial statement, and COMSAT's subsequent approval of the Affiliate's credit rating. If COMSAT does not receive the credit application and current financial statement within a reasonable period of time or does not approve the Affiliate's credit rating in its sole discretion at any time before delivery of the Service, COMSAT shall have the option to immediately terminate this Service Agreement as to any Location.

e) The parties agree that delivery of the Service to each Location is conditioned upon the Affiliate's compliance with Section 10(j). If the Affiliate fails to comply with such Section as to a Location, COMSAT shall have the right to immediately terminate this Service Agreement as to such Location upon written notice to the Affiliate.

f) The parties agree that in the event the Service shall not have been delivered to a Location, for whatever reason, within 2 years from the date of credit approval, this Service Agreement shall automatically terminate as to such Location.

g) In the event of a termination of this Service Agreement as to a Location, this Service Agreement shall be void as to such Location and neither COMSAT nor the Affiliate shall have any further rights, duties or obligations under this Service Agreement as to such Location. This Service Agreement shall, however, remain in full force and effect as to each Location not terminated pursuant to this Section 3.

4. Equipment.

a) To facilitate receipt of the Service, COMSAT shall:

- 1) In cooperation with the Affiliate, cause a site survey to be made of each Location at COMSAT'S sole expense;

- ii) Upon satisfaction of the conditions set forth in Section 3, cause the installation of the Equipment at each Location in accordance with the COMSAT manuals and handbooks distributed to the Affiliate and the Locations. The Equipment shall have the general characteristics as set forth in the Site Survey and Installation Handbook delivered with this Service Agreement. Provided however, selection of the Equipment shall at all times remain within the sole and reasonable discretion of COMSAT and the brands of equipment used to provide the Service may be changed from time to time in COMSAT's sole and reasonable discretion and provided the selection of the Equipment shall be based upon the suitability of the site, including aesthetic qualities;
- iii) Upgrade the Affiliate's MATV system up to a cost of \$2,000 per Location if, in COMSAT's judgment, the system must be improved to receive a quality television signal. If the cost exceeds \$2,000, the Affiliate shall pay the excess costs in accordance with Section 3(b); and
- iv) Subject to Section 5(1), maintain the Equipment in satisfactory operational condition and make all necessary repairs and replacements thereto.

b) Upon satisfaction of the conditions set forth in Section 3, the Affiliate shall comply with all pre installation and installation requirements as set forth in the Site Survey and Installation Handbook delivered with this Service Agreement, provided all work will be performed with a minimum of interference with the Affiliate's operations.

c) The Equipment shall at all times remain the personal property of COMSAT or its designee regardless of the manner in which it is affixed to a Location. COMSAT may display notice of ownership by affixing any plate, stencil, or other indicia of ownership on each item of the Equipment.

5. The Affiliate Covenants. The Affiliate covenants and agrees with COMSAT that during the term of this Service Agreement it will:

a) Maintain MATV system quality standards which shall satisfy the specifications and standards set forth in COMSAT's Master Antenna T.V. System Standards (a copy of which is available upon request), which specifications and standards may be reasonably amended from time to time by COMSAT for the purpose of offering additional services utilizing the Equipment; provided, however, that

the Affiliate shall not be required to satisfy and amended standards unless it elects to receive such additional services;

b) Not knowingly allow any person to copy, tape, or otherwise reproduce any part of the Programming. If the Affiliate becomes aware that any person is copying, taping, or reproducing any part of the Service, the Affiliate shall use its best efforts to cause the cessation of such reproduction, shall promptly notify COMSAT, and shall cooperate with COMSAT in taking steps to prevent such reproduction;

c) Except as otherwise provided in Section 5(r), not impose any charge or fee for the privilege of receiving the Programming at any Location; provided, however, that this prohibition will not limit the Affiliate's right to determine the usual fee or charge for other hotel services, facilities or accommodations;

d) Notify COMSAT within 12 hours of any interruption of the Service which continues for more than 20 minutes;

e) Not tune or otherwise change the frequency setting of the Equipment without the express authorization of COMSAT;

f) Allow COMSAT, or its representatives, reasonable access to each Location for the purpose of conducting site surveys and marketing tests, installing, maintaining and modifying the Equipment and for any other purposes related to the Service; provided, however, that the exercise of COMSAT's right of access shall not unreasonably disturb the normal operations of the Affiliate and COMSAT shall obtain written approval from Affiliate prior to conducting any marketing test/surveys.

g) Indemnify COMSAT, hold it harmless from, and promptly reimburse it for, liabilities, obligations, losses, damages, penalties, claims, costs, charges, judgments and expenses, including reasonable attorneys' fees, which may be imposed upon, incurred by or assessed against COMSAT by reason of any material breach or violation of this Service Agreement by the Affiliate or any gross negligence or willful misconduct of the Affiliate, or any agents, contractors, employees, licensees or invitees of the Affiliate, to the extent not caused by the gross negligence or willful acts of COMSAT. At the election of COMSAT, the Affiliate will also defend COMSAT against same. In any event, COMSAT will have the right, through counsel of its choice, to control any such matters to the extent it could directly or indirectly affect COMSAT financially;

h) Maintain in full force and effect during the term of this Service Agreement, or any extension hereof, comprehensive general liability insurance, with insurance carriers qualified to do business in each state where the Equipment is located or the Service is received, on an occurrence basis, naming COMSAT as an additional insured, with limits of liability for bodily injury and property damage of not less than \$3,000,000 for each occurrence;

i) Maintain during the term of this Service Agreement fire, extended coverage, vandalism and malicious mischief and theft insurance on the Equipment in an amount not less than the market value of the Equipment at the time of occurrence, with insurance carriers qualified to do business in each state where the Equipment is located, and naming COMSAT as an additional insured;

j) At least ten days prior to delivery of the Equipment to the Affiliate and whenever a change is made in any insurance coverage or insurance carrier, furnish a certificate of the insurance coverages required by this Service Agreement. Said certificate shall state terms coverages, persons insured, and the fact that said coverages may not be cancelled, altered or permitted to lapse or expire without 30 days' advance written notice to COMSAT.

k) Notify COMSAT within 12 hours of discovery of any loss, theft, destruction or damage to the Equipment;

l) In the performance of maintenance services, COMSAT shall operate a control center 24 hours a day, to respond to and process requests for maintenance or repair service immediately when received. COMSAT will, via a telephone conversation with the Location, determine if the problem is Equipment related, COMSAT will dispatch a trained service technician to the Location as soon as reasonably possible, but no later than 24 hours after notice from the Location. The Location will not be billed for service calls provided the problem is Equipment related.

m) Not allow any lien, encumbrance, mortgage, claim, or security interest to attach to, or be made against, the Equipment; and to take all necessary and sufficient action to cause any such lien, encumbrance, mortgage, claim or security interest to be promptly removed from the Equipment;

n) Direct the local assessor or tax collector to include the Equipment in any assessment of the real estate or personal property of the Affiliate and to pay any taxes that are assessed;

o) Reimburse COMSAT on demand for any payment made by COMSAT to third parties resulting from the Affiliate's failure to make any payment to third parties required by this Service Agreement including, but not limited to, payments for insurance, taxes, local permit fees or other assessments relating to the Service. COMSAT is hereby authorized to make such payment on behalf of the Affiliate and the Affiliate agrees to immediately reimburse COMSAT in such event after fifteen (15) days written notice of such intention to advance such payment;

p) Except for the Program Selector Unit which may be moved as authorized by COMSAT for maintenance or repair, not move or modify the Equipment (including the disabling of the Pay T.V. Equipment for any reason other than parental control) without

COMSAT's prior written approval unless required for emergency purposes;

g) Not permit nor cause an interconnection of the Equipment so that the Service is received at any site other than a Location;

r) At no cost to COMSAT, bill and collect from hotel guests the monies due from guests at each Location for Pay T.V. Programming at the rate (which rate is subject to change from time to time at the sole discretion of COMSAT) set forth in Exhibit "C", together with all applicable federal, state and local sales and similar taxes. Such billing shall be made on a daily basis in the same manner as other charges are billed to hotel guests. All Pay T.V. Revenues collected by the Affiliate shall be held in trust for COMSAT and shall remain the property of COMSAT. The Affiliate shall pay the Net Pay T.V. Revenues to COMSAT in accordance with Section 2(a)(ii); and

s) In a manner agreeable to COMSAT, prepare on a current basis (and preserve for no less than 2 years) complete and accurate books and records of the Affiliate concerning Net Pay T.V. Revenues. The books and records of the Affiliate, to the extent and only to the extent they are pertinent to the calculation of the Net Pay T.V. Revenues during the term of this Service Agreement, shall, during normal business hours and upon reasonable notice to the Affiliate, be open to inspection and audit by COMSAT. COMSAT shall have the right to so inspect and audit during the term of this Service Agreement and for two years thereafter.

6. Promotion and Advertising.

a) COMSAT shall deliver program guides monthly to the Affiliate for use in available guest rooms at each Location. The Affiliate shall display a program guide in each such guest room and in such other places which the Affiliate believes will promote the Service; provided, however, that any program guides provided the Affiliate at its request in excess of 110% (monthly) of available guest rooms for a Location may be billed to the Affiliate at cost.

b) COMSAT may provide posters and other forms of advertising of the Service which the Affiliate, in the exercise of its reasonable business judgment and in Affiliate's sole discretion, may use in its lobby, hallways, and other places of public access to advise its guests of the availability of the Service.

c) The Affiliate shall comply with instructions from COMSAT as to all advertising, promotional, and other usage of names, trademarks, service marks, copyrights or tradenames hereunder.

d) The Affiliate recognizes that certain names and marks of COMSAT and the suppliers of the Service are, and will be, the exclusive property of COMSAT or such suppliers. The Affiliate shall

not, except as provided herein and as hereinafter instructed in writing by COMSAT, publish or disseminate any material which contains any such name or mark without the prior written permission of COMSAT, nor which violates or infringes upon any trademark, service mark, or copyright of such supplier of COMSAT. The Affiliate shall indemnify, save, and hold harmless COMSAT from and against any losses, costs, damages or expenses, including without limitation, attorney's fees, incurred by COMSAT as a consequence of any action or inaction by the Affiliate which violates this Service Agreement and which infringes, or is claimed to infringe, any trademark, service mark, or copyright of COMSAT or any third party. COMSAT agrees to secure and maintain all necessary rights and consents for the use of of such marks, to use reasonable efforts to inform the Affiliate of any restrictions on the use of any such marks and to save, hold harmless and indemnify the Affiliate from and against any losses, costs, damages or expenses, including without limitation, attorneys' fees, incurred by the Affiliate as a consequence of any action or inaction by COMSAT which violates this Service Agreement and which infringes, or is claimed to infringe, any trademark, service mark or copyright of any third party.

7. Term. Subject to Section 9 and unless terminated as provided below, the term of this Service Agreement as to each Location shall commence on the date hereof and terminate on the seventh anniversary of the date on which the Service is first received by the Affiliate at each Location.

a) This Service Agreement shall, at the option of COMSAT, terminate as to an individual Location prior to the end of the term set forth above upon the occurrence of either of the following events:

i) The Affiliate sells the hotel at such Location, provided however, that the new owner of such hotel shall have the option to continue to receive the Service by entering into an agreement with COMSAT under terms and conditions similar to this Service Agreement;

ii) The Affiliate fails to pay to COMSAT the Service Charge or the Net Pay T.V. Revenue for such Location as set forth in Section 2 within 30 days of notice from COMSAT.

b) This Service Agreement shall, at the option of COMSAT, terminate as to all Locations prior to the end of the term set forth above upon the occurrence of either of the following events:

i) The Affiliate or COMSAT files any petition under any bankruptcy law or consents to the institution under any bankruptcy law or consents to the institution of any bankruptcy or insolvency proceedings against it, or files a petition, answer, consent or other proceeding under Title 11 of the United States Code, or seeks reorganization or relief under federal bankruptcy laws or any other applicable federal or state law dealing with the relief or

debtors, or makes an assignment for the benefit of creditors, or admits in writing its inability to pay its debts as they become due; or

ii) The Affiliate or COMSAT breaches any non-monetary obligation, covenant or representation contained herein and such breach is not remedied by the Affiliate or COMSAT within 30 days of notice from the other party.

c) If this Service Agreement is terminated after the commencement of a site survey of a Location by COMSAT or its representatives but prior to the Affiliate's initial receipt of Service at such Location, the Affiliate shall pay on demand to COMSAT all costs and expenses incurred by COMSAT or its representatives in conducting the site survey and, if applicable, the site preparation, roof mount and installation. If this Service Agreement is terminated after the Affiliate's initial receipt of the Service but prior to the expiration of the term hereof for any reason set forth in Sections 7(a) and 7(b), except should COMSAT file any petition under bankruptcy or breach any nonmonetary obligation, the Affiliate shall pay on demand to COMSAT compensatory damages for the losses and costs incurred by COMSAT as the result of such termination as follows:

i) In the event this Service Agreement is terminated and in COMSAT's reasonable judgment, the Equipment may be used at another mutually agreeable location within a reasonable period, the Affiliate shall pay for the costs of the original installation of the Equipment at such Location, the removal of the Equipment from such Location and the transportation of the Equipment from such Location to the mutually designated location; and

ii) In the event this Service Agreement is terminated and, in COMSAT's reasonable judgment, the Equipment may not be used at another COMSAT location within a reasonable period, the Affiliate shall pay for the undepreciated cost of the Equipment (including original installation), the cost of removal of the Equipment and the cost of transportation of the Equipment to a mutually agreeable location designated by COMSAT less any proceeds received from a sale of the Equipment.

iii) In the event this Service Agreement is terminated, COMSAT will provide the Affiliate the option to pay COMSAT a one time fee of \$100.00 per room, up to a maximum charge of \$20,000.00 to cover removal, storage and reinstallation of Equipment at a new Location, provided however, that in year six (6) of this Agreement the fee shall be reduced to a maximum of \$12,500.00 and in year seven (7) a maximum of \$7,500.00.

d) This Service Agreement shall, at the option of COMSAT and without penalty to the Affiliate (provided the Affiliate is in compliance with Section 5(p)), terminate as to an individual Location prior to the expiration of the term hereof if, after twelve months from the date the Service is first received by the Affiliate

or at any time thereafter during the term of this Service Agreement, the annual Pay T.V. PAR Buy Rate fails to exceed 5% for such Location. If COMSAT elects to exercise its option, it will give the Affiliate 90 days written notice of the termination and will offer the Affiliate an option to receive only the Free-to-Guest Programming on terms and conditions specified and made generally available at that time by COMSAT.

e) In the event of the sale or lease of any one or more of the locations by the Affiliate to a third party, it is agreed by COMSAT that the Affiliate shall deliver to COMSAT a new Service Agreement as set forth in Exhibit F signed by the third party for COMSAT's review and approval. The new Service Agreement as set forth in Exhibit F will be in effect for the remainder of the term of the Agreement for that Location, and at the price in effect for the Agreement at the time the Service Agreement is submitted by the Affiliate. In the event the Affiliate fails to deliver a Service Agreement properly signed by the third party and in accordance with the above terms and conditions, the Affiliate will pay to COMSAT the termination charges as specified in Section 7 Subsection c (i), c (ii), c (iii). The Affiliate further agrees to pay to COMSAT all net pay T.V. revenues and other amounts, if any, due or owed including service charges under this Agreement under the termination date.

8. Termination of Service, Return of Equipment. Upon termination or expiration of this Service Agreement as to a Location, the right of the Affiliate to receive the Service at such Location shall immediately cease, and the Affiliate shall stop receiving, mentioning, advertising, or describing the Service at such Location. The Affiliate shall dispose of all materials which advertise, promote, or otherwise mention the Service at such Location. Should Affiliate breach this agreement, the Affiliate shall take all necessary steps, at its own reasonable expense and at the direction of COMSAT, to make the Equipment at such Location available for removal by COMSAT. If the Affiliate fails or refuses to make the Equipment so available, COMSAT shall have the right to enter the premises where the Equipment may be found, cause cessation of receipt of the Service and take possession of and remove the Equipment without legal process. The Affiliate hereby releases any claim or right of action for trespass or damages caused by such entry or removal except damages resulting from the gross negligence or willful misconduct of COMSAT. The Affiliate agrees that COMSAT may not be fully compensated by damages due to the Affiliate's failure to make the Equipment available or to dispose of such materials and as a consequence, COMSAT, in addition to its remedies under this Service Agreement and at law, may proceed in equity to enjoin the Affiliate from actions prohibited by this Service Agreement.

~~9. Extension of Term. This Agreement shall be automatically extended for an additional three year period unless either party~~

INITIALS
[Signature]

~~elects to terminate this Service Agreement by giving written notice of such termination at least 60 days prior to the end of the initial term of this Service Agreement.~~

9. a) Notwithstanding, the Affiliate shall have the right at the conclusion of the ~~seventh~~ ^{fifth} year of the Service to terminate the Service Agreement without cost or penalty if, at such times, the Service is not provided using generally acceptable comparable technology to services generally being offered by other companies providing satellite delivered television programming services to the hotel industry provided, however, that the Affiliate shall exercise such right within 20 days of the conclusion of years five, ~~or seven of the Service Agreement.~~

10. Miscellaneous.

a) All notices relating to this Service Agreement must be delivered in person to an officer of COMSAT or the Affiliate or mailed, certified or registered to the respective party at the addresses set forth herein;

b) No waiver by COMSAT or Affiliate of any specific default or of any provision herein shall constitute a waiver as to any subsequent default or any other matter. Any waiver must be in writing and executed by an officer of COMSAT or Affiliate. Any failure on the part of COMSAT or Affiliate to exercise, or delay in exercising, any right or remedy hereunder shall not constitute a waiver;

c) This Service Agreement constitutes the entire agreement between the parties as to the Service, and may not be modified except by a written instrument executed by both parties. Any written or oral representation or statement made by COMSAT or the Affiliate not stated herein shall not be binding on such party;

d) If a provision of this Service Agreement is deemed prohibited by applicable law such prohibition shall not invalidate the remaining provisions of this Service Agreement. This Service Agreement shall be governed by and construed in accordance with the laws of the State of Tennessee. The Affiliate represents that the Service will be received for business purposes and agrees that under no circumstances shall this Service Agreement be deemed or construed as a consumer contract;

e) This Service Agreement, the right to receive the Service and all other rights, privileges, duties or obligations of the Affiliate may not be assigned, pledged, transferred, or delegated in whole or in part without the prior written approval of COMSAT, provided, however, that the Affiliate may, upon reasonable notice to COMSAT, assign this Service Agreement to a subsidiary of the Affiliate of which the Affiliate maintains effective control. COMSAT consents that the Affiliate may assign the Service Agreement

to a company or partnership which is wholly owned (directly or indirectly) by the Affiliate or in which the Affiliate has controlling ownership, or which is owned and/or managed by the Affiliate under a Management Agreement, the term of which equals or exceeds the remaining term of this Agreement as related to such location.

f) COMSAT's rights, privileges, duties, and obligations under this Service Agreement are freely transferable;

g) The Affiliate recognizes that COMSAT distributes private programming under license from other parties which own copyrights to or have licenses from the copyright owners of television programs distributed hereunder. As a consequence, its programming signals are private and limited to the use for which they are licensed. The Affiliate agrees to save, hold harmless, and indemnify COMSAT from and against any losses, costs, damages or expenses including, but not limited to, attorney's fees, incurred by COMSAT as a consequence of any use by the Affiliate of the Programming or any portion thereof in violation of this Service Agreement or of any license of which it has been given notice by COMSAT. COMSAT agrees (i) to secure and maintain all licenses, rights and consents necessary to provide the Service and (ii) to save, hold harmless, and indemnify the Affiliate from and against any losses, costs, damages, or expenses including, but not limited to, attorney's fees, incurred by the Affiliate as a consequence of the failure by COMSAT to secure and maintain such licenses, rights and consents;

h) COMSAT shall indemnify the Affiliate, hold it harmless from, and promptly reimburse it for, liabilities, losses, obligations, damages, penalties, claims, costs, charges, judgments and expenses, including reasonable attorneys' fees, which may be imposed upon, incurred by or assessed against the Affiliate by reason of any material breach or violation of this Service Agreement by COMSAT or any gross negligence or willful misconduct of COMSAT, or any agents, contractors, employees, licensees or invitees of COMSAT, to the extent not caused by the gross negligence or willful acts of the Affiliate. At the election of the Affiliate, COMSAT will also defend the Affiliate against same. In any event, the Affiliate will have the right, through counsel of its choice, to control any such matters to the extent it could directly or indirectly affect the Affiliate financially;

i) The Affiliate acknowledges that COMSAT may be prevented from installation of the Equipment or delivery of the Service due to equipment, satellite and transmission failure, legal restriction, labor dispute, strike, boycott, flood, fire, public emergency, civil strife, riot, war, mechanical failure, interruption in suppliers, or any other similar or dissimilar causes. The Affiliate agrees that its sole and exclusive remedy for any failure by COMSAT to provide the Service shall be a reduction in the Service Charge as set forth in Section 2(e). COMSAT shall, however, use best efforts to overcome conditions or situations which negatively affect the

Installation of the Equipment or delivery of the Service. The Affiliate hereby waives any claim it may have against COMSAT for incidental, indirect, exemplary or consequential damages arising from any failure by COMSAT to provide the Service, provided however, COMSAT has used its best efforts to overcome such situations as described here and above.

j) The Affiliate represents and warrants that it owns, and will own at all times relevant hereto, the M.A.T.V. system at each Location, and that its performance under this Service Agreement does not, and will not at any time relevant hereto, violate any contract, mortgage, indenture or instrument to which the Affiliate is a party or by which the Affiliate is bound;

k) Subject to Section 5(r), neither party is the legal representative or agent of, or has the power to obligate, or the right to direct or supervise the daily affairs of, the other, for any purpose whatsoever, and no partnership is intended or created by reason of this Service Agreement;

l) COMSAT shall contribute \$500.00 toward the construction of a security fence whenever constructed by Affiliate to satisfy Affiliate's desire to protect the Earth Station;

m) COMSAT shall, at its own expense, interface the System Manager computer with the Affiliate hotel property management computer; and

n) COMSAT shall use best efforts to insure that installation of Equipment is executed in a workman like manner and that physical changes to the property required to install the equipment are restored as close to the original cosmetic appearance as possible.

o) It is understood and agreed that some hotels are limited partnerships registered and filed in various states and that the partners of hotel shall not be personally liable for any payments or for the performance of any of the terms, covenants or conditions of the agreement to be kept and performed by the hotel; it being the intent of the parties that in the event of default by the hotel hereunder, COMSAT or any of its agents or assigns shall look solely to the Equipment included herein and to the assets of

the hotel, but in no way shall COMSAT be entitled to a judgment in the personam for any damages enforceable against the general or limited partners of the hotel.

IN WITNESS WHEREOF, the parties have duly executed and delivered this Service Agreement as of the date first above written.

COMSAT VIDEO ENTERPRISES

By: COMSAT Video Enterprises
a General Partner

By: _____
Richard A. Swift

Title: Vice President, Sales

- * This agreement may only be signed by a person who owns the hotel as an individual or by an authorized officer of an organization which owns the hotel.

AFFILIATE

The Rouse Company, d/b/a
~~Sheraton Military Circle~~

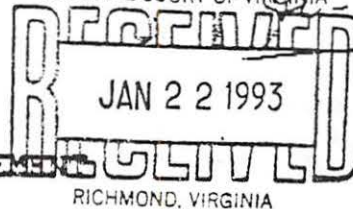
By: _____

Title: Executive V.P. *

Address: _____



CLERK
SUPREME COURT OF VIRGINIA



SERVICE AGREEMENT

This Service Agreement dated as of February 5, 1985 between IMC Airport Inns, Inc. (the "Affiliate"), and HI-NET Communications, Inc., a Delaware corporation ("HI-NET"), with offices at 3796 Lamar Avenue, Memphis, Tennessee 38195.

WITNESSETH

WHEREAS, the Affiliate desires to receive both Free-to-Guest and Pay T.V. premium television programming services (hereinafter collectively referred to as the "Programming") for reception in its hotel(s) as an additional guest service;

WHEREAS, HI-NET desires to provide Free-to-Guest and Pay T.V. premium television programming services to the Affiliate and its guests on the terms and conditions hereinafter set forth; and

WHEREAS, if the Affiliate has previously purchased a C-Band satellite earth station from HI-NET, HI-NET intends to dismantle such C-Band satellite earth station and replace it with KU-Band equipment in order to form a technologically homogeneous data, video and voice network.

NOW THEREFORE, in consideration of the mutual promises herein contained, it is agreed by the parties that:

1. Service. Subject to the terms and conditions hereinafter set forth, HI-NET agrees to provide, and the Affiliate agrees to receive the Programming. The service to be provided by HI-NET will include the Programming and all satellite earth station and Pay T.V. system equipment (the "Equipment") and maintenance of the Equipment necessary to receive the Programming (the Programming, the Equipment and maintenance being hereinafter collectively referred to as the "Service"). HI-NET shall have sole discretion to determine the content of the Programming and shall provide the Service to the Affiliate at each location (the "Location") designated on Exhibit A attached hereto and made a part hereof. Further:

a) HI-NET shall exercise reasonable and diligent efforts to include in the Programming, programming substantially similar in quality to that described in Exhibit B attached hereto and made a part hereof.

b) The Affiliate shall provide the Programming to all available guest rooms at each Location. Except with respect to the Cable News Network and the Entertainment and Sports Programming Network and such other portions of the Programming specifically authorized in writing by HI-NET, the

Affiliate shall not provide the Programming in any location which is not a guest room, including without limitation, locations where an admission fee is charged, or places of public access, such as bars, lounges, restaurants, lobbies or hallways.

c) From time to time, HI-NET may add to or delete from the Free-to-Guest Programming specific programs. Any such additions or deletions from the Free-to-Guest Programming may not exceed 220 hours per calendar year for each Location. Additional Programming offered by HI-NET may have limited distribution and the Affiliate may be excluded by HI-NET from receiving such programs.

d) HI-NET may from time to time, at its option, offer additional Programming and other services utilizing the aforesaid KU-Band equipment on prices and terms to be mutually agreed upon between the parties.

2. Condition to Effectiveness of this Service Agreement. This Service Agreement is expressly conditioned upon execution of agreements between HI-NET and other HI-NET affiliates to provide the Service covering in aggregate total of at least 600 Holiday Inn hotels; otherwise, HI-NET shall have the option to terminate this Service Agreement. HI-NET shall notify the Affiliate within 45 days after delivery of this Service Agreement properly executed by the Affiliate to HI-NET, whether such express condition has been satisfied, and whether HI-NET elects to exercise its option to terminate this Service Agreement.

3. Price/Billing. The Affiliate agrees to pay HI-NET for the Service and remit Pay T.V. revenues to HI-NET as follows:

a) Service Charge and Pay T.V. revenues:

i) With respect to each month in which the Affiliate receives the Service, the Affiliate shall pay a monthly charge, or the appropriate prorated portion thereof, for the Service received at each Location (the "Service Charge") calculated by multiplying the number of available rooms at each Location by the monthly per available room charge as set forth in Exhibit C attached hereto and made a part hereof. The Service Charge may be adjusted by a revenue sharing credit in accordance with Section 3(a)(iii).

(ii) A Subscriber Service Authorization Computer at each Location will record the number of Pay T.V. views ("Views"). "Gross Pay T.V. Revenues" will be calculated from that record by multiplying the number of Views times the Pay T.V. charge specified in Exhibit D, attached hereto and made a part hereof, and shall also include all applicable federal,

state and local sales and similar taxes. The Affiliate shall pay to HI-NET the "Net Pay T.V. Revenues" (Gross Pay T.V. Revenues less Pay T.V. consumer refunds made in accordance with HI-NET's standard refund policies and procedures, but including all applicable federal, state and local sales and similar taxes) for each Location. The Affiliate shall submit with its payment all documentation of any such customer refunds as reasonably required by HI-NET to substantiate same.

(iii) The Affiliate shall receive a revenue sharing credit against the Service Charge in an amount equal to the Net Pay T.V. Revenue (less applicable federal, state and local sales and similar taxes) times the percentage credit applicable to such Revenue, based on the PAR Buy Rate for each Location, all in accordance with Exhibit C. Each Location's PAR Buy Rate for the applicable HI-NET accounting period shall be determined by dividing the number of available rooms buying the Pay T.V. Service, as recorded by the Subscriber Service Authorization Computer at each Location, by the number of available room nights at each Location.

b) Payment by the Affiliate for receipt of the Service shall be in accordance with the schedule of available rooms indicated on Exhibit A in accordance with Holiday Inns, Inc.'s current policy of determining available rooms, or as later modified in accordance with Holiday Inns, Inc.'s then current policy of determining available rooms.

c) The Service Charge to the Affiliate shall be subject to increase by HI-NET from time to time in its discretion subject to the following provisions:

i) The Service Charge designated on Exhibit C shall be in effect for at least six months from the date Service is first received by the Affiliate;

ii) The Introductory Service Charge designated on Exhibit C for hotels with 150 rooms or more will revert to the initial service charge six months from the date the service is first received by the affiliate; and thereafter

iii) Any Service Charge as increased hereunder shall not exceed the greater of (a) 110% of the Service Charge in effect at the beginning of any calendar year following the year the Service is first received by the Affiliate, or (b) the initial Service Charge plus, such Service Charge multiplied by the difference between the Consumer Price Index for All Urban Consumers ("CPI") 60 days prior to the effective date of the Service Charge increase and the CPI as of January 1, 1985.

d) HI-NET shall invoice the Affiliate within 10 days after the end of each HI-NET accounting period for the Affiliate's receipt of the Service at each Location for an

amount equal to the Service Charge for each Location and the Gross Pay T.V. Revenues as recorded on the Subscriber Service Authorization Computer at each Location. The Affiliate shall pay HI-NET within 15 days of the invoice date an amount calculated in accordance with Section 3(a). Any amounts payable for the Service not paid when due shall be subject, until paid, to a late charge equal to 1 1/2% of the unpaid balance, provided, however, that such late charge shall not exceed the maximum charge permitted by applicable law.

e) If the Affiliate does not receive at a Location that portion of the Free-to-Guest Programming consisting primarily of movies (currently Showtime) for more than 48 consecutive hours during any month, and such failure to receive the Service is not attributable to the Affiliate's failure to observe and perform any covenant set forth in Section 6, the Service Charge for such Location shall be prorated so as to credit the Affiliate for the time that the Service is not received, such credit beginning 48 hours after HI-NET is notified that the Service is not being received.

4. Conditions to Service.

a) It is recognized by the parties that even with Ku-Band equipment, there is a possibility that receipt of the Service may not be technically feasible or practical because of site configuration, electronic or structural interference, or other technical reasons all as determined by a survey of each Location by HI-NET's electronic communication consultants. HI-NET may decide, in its sole and exclusive judgment, that receipt of the Service by the Affiliate is not technically feasible or would not result in receipt of quality Service at a Location, which decision shall be communicated to the Affiliate within 90 days after a site survey of such Location has been conducted. In such an event, either party may, at its option, upon notice to the other party within 30 days of HI-NET's notice of such decision, terminate this Service Agreement as to such Location and neither HI-NET nor the Affiliate shall have any rights, duties or obligations under this Agreement as to such Location.

b) It is recognized by the parties that providing the Service may be subject to and conditioned upon receipt by HI-NET of a site registration for a Location from the Federal Communications Commission. If the Federal Communications Commission does not issue such registration as to a Location in accordance with the rules and regulations of the Federal Communications Commission then in effect, then HI-NET shall notify the Affiliate of such fact and HI-NET shall have the option to terminate this Service Agreement as to such Location within 30 days of such notice, provided, however, that such option to terminate may not be exercised after the Equipment has been installed at such Location. In the event of such a termination, this Service Agreement shall be void as to such

Location and neither HI-NET nor the Affiliate shall have any further rights, duties or obligations under this Service Agreement as to such Location.

c) It is recognized by the parties that certain Locations may require roof-mounted equipment. If HI-NET, after reviewing engineering reports, structural plans and costs, determines that as to a Location a roof-mounted installation is not feasible, all in HI-NET's sole and exclusive judgment, HI-NET shall communicate such fact to the Affiliate within 90 days after a site survey of such Location has been conducted. HI-NET shall have the option to terminate this Service Agreement as to such Location upon notice to the Affiliate within 30 days of HI-NET's prior communication, in which event, this Service Agreement shall be void as to such Location and neither HI-NET nor the Affiliate shall have any further rights, duties or obligations under this Service Agreement as to such Location.

d) The parties recognize that Master Antenna T.V. (MATV) system improvements may be required at certain Locations as set forth in Section 5(a)(iii). Should the cost of such required improvements at a Location exceed \$2,000, HI-NET shall communicate such fact to the Affiliate within 30 days after a site survey of such Location has been conducted. Within 60 days of such communication, the Affiliate shall either agree to pay HI-NET such excess amount or terminate this Service Agreement as to such Location upon notice to HI-NET. In the event of such termination, this Service Agreement shall be void as to such Location and neither HI-NET nor the Affiliate shall have any further rights, duties or obligations under this Service Agreement as to such Location.

e) The exercise of an option under this Section 4 by either party shall be made in writing, the effect of which shall be to delete such Location from Exhibit A. Notwithstanding such an election, this Service Agreement shall remain in full force and effect as to each Location not deleted pursuant to this Section 4.

5. Equipment.

a) To facilitate receipt of the Service, HI-NET shall:

- i) In cooperation with the Affiliate, cause a survey to be made of each Location to facilitate satisfaction of the conditions set forth in Section 4;
- ii) Upon satisfaction of the conditions set forth in Section 4, cause the installation of the Equipment at each Location. The Equipment shall have the general

characteristics as set forth in Exhibit E attached hereto and made a part hereof; provided, however, that selection of the Equipment shall at all times remain within the sole discretion of HI-NET and the brands of equipment used to provide the Service may be changed from time to time in HI-NET's sole discretion; and

- iii) Where in the sole and exclusive judgment of HI-NET, the Affiliate's MATV system must be improved in order to receive and distribute a quality T.V. signal, HI-NET shall cause such improvements to be made up to a maximum cost of \$2,000 per Location. Should the cost exceed \$2,000, such improvement shall only be made if the Affiliate agrees in writing to pay such excess costs in accordance with Section 4(d).

b) Upon satisfaction of the conditions set forth in Section 4, the Affiliate shall comply with all installation-related requirements as set forth in Exhibit F, attached hereto and made a part hereof.

c) The Equipment shall at all times remain the property of HI-NET or its designee. HI-NET may display notice of ownership by affixing any plate, stencil, or other indicia of ownership on each item of the Equipment. The Equipment shall at all times remain personal property regardless of the manner in which it is affixed to a Location.

6. The Affiliate Covenants. The Affiliate covenants and agrees with HI-NET that during the term of this Service Agreement it will:

a) Maintain its MATV system at each Location in good working order so as to cause high quality reception of the Programming on the television set in each guest room, to protect the reputation and integrity of the Service, and to maintain MATV system quality standards which shall at least satisfy the specifications and standards set forth in HI-NET's Master Antenna T.V. System Standards, which specifications and standards may be amended from time to time by HI-NET;

b) Not allow any person to copy, tape, or otherwise reproduce any part of the Service. If the Affiliate becomes aware that any person is copying, taping, or reproducing any part of the Service, the Affiliate shall use its best efforts to cause the cessation of such reproduction, shall promptly notify HI-NET, and shall cooperate with HI-NET in taking steps to prevent such reproduction;

c) Except as provided in Section 6(s), not impose any charge or fee for the privilege of receiving the Programming at any location; provided, however, that this prohibition will not limit the Affiliate's right to determine the usual fee or charge for other hotel services, facilities or accommodations;

d) Allow access by HI-NET or its agents to the Equipment during reasonable hours for the purpose of maintenance of the Equipment and for other purposes related to performance of this Service Agreement; provided, however, that exercise of HI-NET's right of access will not unreasonably disturb the normal operations of the Affiliate;

e) Notify HI-NET within 12 hours of any interruption of the Service which continues for more than 20 minutes;

f) Not tune or otherwise change the frequency setting of the Equipment without the express written authority or direction of HI-NET;

g) Allow HI-NET, or its representatives, reasonable access to the premises of the Affiliate for the purpose of conducting site surveys and marketing tests/surveys related to the Service; provided, however, that exercise of HI-NET's right of access shall not unreasonably disturb the normal operations of the Affiliate;

h) Indemnify HI-NET, hold it harmless from, and promptly reimburse it for, any and all payments of money including judgments, fines, damages, legal fees and expenses, by reason of any claim, demand, tax, penalty or judicial or administrative investigation or proceeding (even where HI-NET's negligence is alleged) arising out of the Affiliate's receipt of the Service or use of the Equipment, or any act, omission or obligation of the Affiliate's or breach of this Service Agreement by the Affiliate or anyone associated or affiliated with the Affiliate. At the election of HI-NET, the Affiliate will also defend HI-NET against same. In any event, HI-NET will have the right, through counsel of its choice, to control any such matters to the extent it could directly or indirectly affect HI-NET financially. The Affiliate will also reimburse HI-NET for all expenses reasonably incurred by HI-NET to protect itself from, or to remedy, defaults under this Service Agreement.

i) Maintain in full force and effect during the effective period of this Service Agreement, or any extension thereof, comprehensive general liability insurance, with insurance carriers qualified to do business in each state where the Equipment is located or the Service is received, on an occurrence basis, naming HI-NET as an additional insured.

with limits of liability for bodily injury and property damage of not less than \$5,000,000 for each occurrence.

j) Maintain during the term of this Service Agreement fire, extended coverage, vandalism and malicious mischief and theft insurance on the Equipment in an amount not less than the market value of the Equipment, with insurance carriers qualified to do business in each state where the Equipment is located, and naming HI-NET as an additional insured.

k) At least ten days prior to delivery to the Affiliate of the Equipment under this Service Agreement and whenever a change is made in any insurance coverage or insurance carrier, furnish a certificate of the insurance coverages required by this Service Agreement. Said certificate shall state terms, coverages, persons insured, and the fact that said coverages may not be cancelled, altered or permitted to lapse or expire without 30 days advance written notice to HI-NET.

l) If any part of the Equipment is lost, stolen, destroyed or damaged, notify HI-NET within 12 hours of discovery of such loss, theft, destruction or damage.

m) Reimburse HI-NET for any costs incurred by HI-NET for any service or maintenance calls made by HI-NET, or any party with which HI-NET has an agreement to provide maintenance service, if, in the reasonable judgment of HI-NET, any defect in reception of the Service was not due to a defect or malfunction in the Equipment;

n) Not allow any lien, encumbrance, mortgage, claim, or security interest to attach to, or be made against, the Equipment which shall remain the sole property of HI-NET or its designee; and to take all necessary and sufficient action to cause any such lien, encumbrance, mortgage, claim or security interest to be promptly removed from the Equipment;

o) Direct the local assessor or tax collector to include the Equipment in any assessment of the real estate or personal property of the Affiliate and to pay such taxes as are assessed;

p) Reimburse HI-NET on demand for any payment made by HI-NET to third parties resulting from the Affiliate's failure to make any payment to third parties required by this Service Agreement including, but not limited to, payments for insurance, taxes, license fees, or assessments relating to the Service. HI-NET is hereby authorized to make such payment on behalf of the Affiliate and the Affiliate agrees to immediately reimburse HI-NET in such event;

q) Except for the Program Selector Unit which may be moved as required by HI-NET for maintenance or repair, not move the Equipment without HI-NET's prior written approval;

r) Not permit, allow, nor cause an interconnection of the Equipment so that the Service is received at any location other than a Location;

s) At no cost to HI-NET, bill and collect from hotel guests the amounts due from guests at each Location for Pay T.V. Programming at the rate (which rate is subject to change from time to time at the sole discretion of HI-NET) set forth in Exhibit D, together with all applicable federal, state and local sales and similar taxes. Such billing shall be made on a daily basis in the same manner as other charges are billed to hotel guests. All revenues collected by the Affiliate in respect of such billing shall be held in trust for HI-NET and shall remain the property of HI-NET. The Affiliate shall pay the Net Pay T.V. Revenues to HI-NET in accordance with Section 3(a)(ii); and

t) In a manner satisfactory to HI-NET, prepare on a current basis (and preserve for no less than 4 years) complete and accurate books and records concerning Net Pay T.V. Revenues. The books and records of the Affiliate, to the extent and only to the extent they are pertinent to the calculation of the Net Pay T.V. Revenues during the term of this Service Agreement, shall, during normal business hours and upon reasonable notice to the Affiliate, be open to inspection and audit by HI-NET. HI-NET shall have the right to so inspect and audit during the term of this Service Agreement and for two years thereafter.

7. Promotion and Advertising. The parties recognize that advising the public and the Affiliate's guests of the availability of the Service will benefit both the interests of HI-NET and the Affiliate. In furtherance of the benefit of such interests, HI-NET and the Affiliate agree that:

a) HI-NET shall deliver to the Affiliate program guides for use in available guest rooms at each Location. The Affiliate shall display a program guide in each such guest room and shall display program guides in such other places as the Affiliate believes will promote the Service; provided, however, that any program guides provided the Affiliate in excess of 110% of available guest rooms for a Location shall be billed to the Affiliate at HI-NET's cost;

b) HI-NET shall purchase and deliver to the Affiliate a program guideholder to be displayed in each available guest room at each Location; provided, however, that any additional program guideholders shall be billed to the Affiliate at HI-NET's cost;

c) HI-NET shall provide posters and other graphic forms of advertising of the Service which the Affiliate, in the exercise of its reasonable business judgment, shall use in its lobby, hallways, and other places of public access to advise its guests of the availability of the Service; provided, however, that use of such posters or graphic materials shall not conflict with the Holiday Inns, Inc. Standards Manual in effect at such time;

d) The Affiliate recognizes that certain names and marks of HI-NET and the suppliers of the Service to HI-NET are, and will be, the exclusive property of HI-NET or such suppliers, and the Affiliate shall not, except as provided herein, publish or disseminate any material which contains any such name or mark without the prior written permission of HI-NET, nor which violates or infringes upon any trademark, service mark, or copyright of such supplier or HI-NET. The Affiliate shall indemnify, save, and hold harmless HI-NET against any costs, expenses, legal fees or damages incurred by HI-NET because of any action of the Affiliate which infringes, or is claimed to infringe, any trademark, service mark, or copyright of HI-NET or any third party. HI-NET agrees to use reasonable efforts to inform the Affiliate of any restrictions on the use of any such marks; and

e) The Affiliate shall comply with all requests of HI-NET as to all advertising, promotional, and other usage of names, trademarks, service marks, copyrights or tradenames hereunder.

8. Term. Subject to Section 11 and unless earlier terminated as provided below, the term of the Service Agreement as to each Location shall commence on the date hereof and terminate as to each Location on the seventh anniversary of the date on which the Service is first received by the Affiliate at each such Location. This Service Agreement shall, at the option of HI-NET:

a) Terminate as to a Location prior to the end of the term set forth above upon the occurrence of any of the following events:

i) Such Location ceases to be a "Holiday Inn" hotel; provided however, that the operator of such hotel shall have the option to continue to receive the Service by entering into an agreement with HI-NET under terms and conditions similar to this Service Agreement;

ii) The Affiliate fails to pay to HI-NET the Service Charge or the Net Pay T.V. Revenue for such Location as set forth in Section 3 when due, and such nonpayment continues for 30 days thereafter;

iii) If after twelve months from the date the Service is first received by the Affiliate or at any time thereafter during the term of this Service Agreement, the annual Pay T.V. PAR Buy Rate fails to exceed 5% for such Location, HI-NET shall have the option in such event to give the Affiliate 90 days' written notice of the termination of this Service Agreement as to such Location. Such notice may offer the Affiliate an option to receive the Free-to-Guest Programming only on terms and conditions specified and made generally available at that time by HI-NET; and

b) Terminate as to each Location prior to the end of the term set forth above upon the occurrence of either of the following events:

i) The Affiliate files any petition under any bankruptcy law or consents to the institution of any bankruptcy or insolvency proceedings against it, or files a petition, answer, consent or other proceeding under Title 11 of the United States Code, or seeks reorganization or relief under the Federal bankruptcy laws or any other applicable Federal or state law dealing with the relief of debtors, or makes an assignment for the benefit of creditors, or admits in writing its inability to pay its debts as they become due;

ii) The Affiliate breaches any covenant, representation or warranty contained herein, or if any such covenant, representation, or warranty becomes untrue through the passage of time or the occurrence of any subsequent event and such covenant, representation or warranty is not fulfilled or remedied by the Affiliate within 30 days after notice by HI-NET to the Affiliate.

If this Service Agreement is terminated prior to the expiration of its term for any reason as set forth in this Section 8 other than Section 8(a)(iii), the Affiliate shall pay on demand to HI-NET compensatory damages for losses and costs incurred by HI-NET as the result of such termination, including, but not limited to, the unamortized cost of the Equipment (including installation and removal costs) and an amount which compensates HI-NET for all other incidental, indirect and consequential damages, which amount the Affiliate agrees shall constitute a compensatory and not a punitive amount.

9. Termination of Service, Return of Equipment. Upon termination of this Service Agreement as to a Location, the right of the Affiliate to receive the Service at such Location shall thereupon cease, and the Affiliate shall stop receiving, mentioning, advertising, or describing the Service at such Location. The Affiliate shall return to HI-NET all materials advertising, promoting, or otherwise mentioning the Service at such Location. The Affiliate shall take all necessary steps.

at its own expense and at the direction of HI-NET, to return the Equipment at such Location to HI-NET. If the Affiliate fails or refuses to return and deliver the Equipment, HI-NET shall have the right to enter the premises where the Equipment may be found, cause cessation of receipt of the Service and take possession of and remove the Equipment without legal process. The Affiliate hereby releases any claim or right of action for trespass or damages caused by such entry or removal. The Equipment shall be in good working order and condition. The Affiliate agrees that HI-NET may not be fully compensated by damages due to the Affiliate's failure to return the Equipment or such materials and in consequence, HI-NET, in addition to its remedies at law, may proceed in equity to enjoin the Affiliate from actions prohibited by this Service Agreement.

10. Grant of Right of Entry. The Affiliate hereby grants to HI-NET or its representatives permission to enter upon the premises of the Affiliate for the placement, maintenance, and modification of the Equipment for the purpose of providing the Service.

11. Extension of Term. At any time preceding the seventh anniversary of the date on which the Affiliate first received Service as to a Location, the Affiliate may apply to HI-NET for an extension of the term of this Service Agreement. HI-NET shall process the application in good faith and in accordance with its then current procedures and criteria concerning equipment, fees, service charges, and standards of reception. Extension of the term will be subject to the Affiliate's fulfillment of the conditions set forth in this Service Agreement. In the event of such an extension, the parties' rights and obligations with respect to the Service will remain governed by this Service Agreement.

12. Existing C-Band Equipment. In the event the Affiliate purchased a C-Band satellite earth station from HI-NET in order to receive satellite-delivered television programming under a previous agreement, the Affiliate shall have the option to either sell such earth station and associated electronics to any third party or sell the same to HI-NET for an amount equal to the book value on the date the Service is first received by the Affiliate hereunder. For purposes of this Service Agreement, book value shall be an amount based upon actual equipment cost only, depreciated on a straight line basis over an eight year life, with a half-year of depreciation being taken in the year of acquisition as well as in the year of disposal. As a condition to such repurchase, the Affiliate shall cause good and marketable title, free and clear of all liens, mortgages, security interests and encumbrances, to vest in HI-NET and at the request of HI-NET, the Affiliate shall execute and deliver to HI-NET such documents as HI-NET shall deem necessary or

desirable for the purpose of transferring or recording title to such equipment. In the event of such repurchase, HI-NET shall remove such equipment at its own expense, provided, however, that HI-NET shall not be liable for any damages caused by its removal of such equipment.

13. Existing Agreements. This Service Agreement shall terminate any existing agreement between the Affiliate and HI-NET for satellite-delivered television programming effective as of the date when the Programming is first received by the Affiliate hereunder.

14. Miscellaneous.

a) All notices relating to this Service Agreement must be delivered in person to an officer of HI-NET or the Affiliate or mailed, certified or registered to the respective party at the address set forth herein. A waiver of a specific default shall not be a waiver of any other or subsequent default. No waiver by HI-NET of any provision hereof shall constitute a waiver as to any other matter and any waiver must be in writing and executed by an officer of HI-NET. No failure on the part of HI-NET to exercise, and no delay in exercising, any right or remedy hereunder shall operate as a waiver thereof;

b) This Service Agreement constitutes the entire agreement between the parties as to the Service, and may not be modified except by a written instrument executed by the parties. Any written or oral representation or statement made by HI-NET or the Affiliate not stated herein shall not be binding on such party;

c) Any provision of this Service Agreement prohibited by applicable law shall be ineffective to the extent of such prohibition without invalidating the remaining provisions of this Service Agreement. This Service Agreement shall be governed by and construed in accordance with the laws of the State of Tennessee. The Affiliate represents that the Service will be received for business purposes and agrees that under no circumstances shall this Service Agreement be deemed or construed as a consumer contract;

d) This Service Agreement, the right to receive the Service and all other rights, privileges, duties or obligations of the Affiliate may not be assigned, pledged, transferred, or delegated in whole or in part without the prior written approval of HI-NET;

e) HI-NET's rights, privileges, duties, and obligations under this Service Agreement are freely transferable;

f) HI-NET may from time to time offer to the affiliate at HI-NET's sole discretion other or additional services utilizing the Equipment. The Affiliate shall have no claim to any right or privilege to receive any such services solely because such services are, or may be, offered to others;

g) The Affiliate recognizes that HI-NET distributes private programming under license from other parties which own copyrights to or have licenses from the copyright owners of television programs distributed hereunder. As a consequence, its programming signals are private and limited to the use for which they are licensed. The Affiliate agrees to save, hold harmless, and indemnify HI-NET from and against any loss, cost, damage or expense including, but not limited to, attorneys' fees caused by any unauthorized use of the Programming or any portion thereof; and

h) The Affiliate acknowledges that HI-NET may be prevented from installation of the Equipment or delivery of the Service due to equipment, satellite and transmission failure, legal restriction, labor dispute, strike, boycott, flood, fire, public emergency, civil strife, riot, war, mechanical failure, interruption in supplies, or any other similar or dissimilar causes. The Affiliate agrees that its sole and exclusive remedy for failure of HI-NET to provide the Service shall be a reduction in the Service Charge as set forth in Section 3(e) and the Affiliate hereby waives any claim it may have against HI-NET for incidental, indirect, exemplary or consequential damages arising from any failure by HI-NET to provide the Service. HI-NET MAKES NO WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, WITH RESPECT TO THE SERVICE.

i) The Affiliate is an independent contractor. Subject to Section 6(s), neither party is the legal representative or agent of, or has the power to obligate (or has the right to direct or supervise the daily affairs of) the other for any purpose whatsoever, and no partnership, joint venture, agency, fiduciary or employment relationship is intended or created by reason of this Service Agreement.

15) See Addenda Attached.

IN WITNESS WHEREOF, the parties have duly executed and delivered this Service Agreement as of the date first above written.

HI-NET Communications, Inc.

AFFILIATE:

By: _____

MHC Airport Inns, Inc. _____

Its: _____

By: Luis O. Gonzalez _____

Its: Secretary _____

Address: 8401 Connecticut Ave. ---
Chevy Chase, MD 20815...

EXHIBIT A TO HI-NET CONTRACT

AFFILIATE HOTELS

Hotel locations to be served: Attach for each property either a) latitude and longitude of property, or b) a hand-drawn plot plan showing buildings and nearest street intersection with distances marked = 20 feet, or c) topographical map with property marked.

<u>Hotel name</u>	<u># Available Rooms</u>	<u>Address</u>	<u>Holidex No.</u>
Holiday Inn Dulles Airport	122	1000 Sully Road Sterling, VA 22170	WASDA
Holiday Inn Gaithersburg	214	Two Montgomery Village Ave. Gaithersburg, MD 20879	WASRV
Holiday Inn Pueblo	193	4001 North Elizabeth Pueblo, CO 81002	PUBCO
Holiday Inn Rochester	226	911 Brooks Avenue Rochester, NY 14624	ROCAP
Holiday Inn Tysons Corner	244	1960 Chain Bridge Road McLean, VA 22101	WASTY
Holiday Inn Waterside	344	700 Monticello Ave. Norfolk, VA 23510	ORFDT

EXHIBIT D TO HI-NET CONTRACT

INITIAL GUEST CHARGES FOR PREMIUM PAY TV PROGRAMMING

<u>Early Show</u>	\$5.75 *
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<u>Late Show</u>	\$5.75 *
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- * The affiliate shall collect from the guests and remit to HI-NET all applicable federal, state & local sales and similar taxes.

EXHIBIT E TO HI-NET CONTRACT

TECHNICAL EQUIPMENT

The television receive only (TVRO) satellite earth stations and computer addressable hotel TV systems (CATS) will meet standardized specifications and performance criteria. Equipment and installations may be provided by more than one equipment supplier.

- Television Receive Only Satellite Earth Stations will consist of the following Scientific Atlanta items or equivalent:
 - One (1) 4.5 Meter dual polarization prime focus feed antenna with EL/AZ mount, anchor bolts, foundation and conduit
 - Two (2) Series 362, 215° K, Ku-band, Low Noise Converters
 - Four (4) Model 9531 Video Receivers, two of which shall contain an additional subcarrier demodulator for a second audio channel
 - Four (4) Model 6330 Television Modulators
 - One (1) Lot Cable and accessories, including 200 feet or more of coaxial cable, four (4) connectors and two (2) 4-port power dividers
 - One (1) Lot Mini-Cable equipment rack, including one (1) cabinet with rear door, side panels, equipment slides, rack adaptors, necessary blank panels, GA-319 grille and CB-360 blower (where applicable), and #81939 AC strip.
- Hotel Pay TV System, Series 2480 will consist of the following Scientific Atlanta items or equivalent:
 - Premium Program Selector Unit Model 2481
 - One (1) per room This attractively designed unit is to be placed on top of or adjacent to the guest room television set. It connects the standard MATV wall tap to the television set and provides the room occupant the option to select from 3 free to guest channels (CNN, ESPN, Showtime), one pay TV programming channel (Satellite Cinema) in addition to the standard television channels.

Subscriber Service Authorization Unit Model 2486

- One (1) IBM Computer with floppy disc is the heart of the hotel pay TV system
- One (1) Video Display Screen
- One (1) Keyboard
- One (1) Billing Printer
- One (1) Lot Operating Software
- One (1) Lot Links to data Modem (ATX)

This subscriber service authorization unit monitors and controls the entire hotel pay TV system with minimum human interaction. The unit works automatically after initial setup. The comprehensive software package enables the computer to a) monitor the hotel pay TV system, b) authorize service to individual guest rooms, c) record pay TV purchases by room and time of purchase, d) shut out pay TV programming from predetermined rooms and e) issue bill for pay TV programming purchases.

A historical record of pay TV purchases is maintained in the computer which the software condenses into a summary of purchase data consisting of number of guest selections billed per day, week and month. A remote link (via telephone modem) is provided so a master computer at HI-NET headquarters in Memphis, Tennessee can access the stored data used in preparation of monthly invoices and calculation of Pay TV service revenue sharing credits.

Data Modem Model 2487 ATX

- One (1) This data modem is located at the MATV headend.
- Per Hotel It accepts the command signals from the Subscriber Service Authorization Unit and transmits them over the MATV system to the Premium Program Selector Units in guest rooms thereby releasing the Pay TV programming to guest rooms who have ordered the pay TV service. The unit also transmits purchase information to hotel subscriber authorization unit. When the pay TV movie is over the computer commands the program selector unit to the standard TV position.

ADDENDA

15. This Service Agreement shall, at the option of affiliate terminate as to a location prior to the end of the term set forth above upon the occurrence of any of the following events:

- (a) Such location ceases to be a "Holiday Inn" hotel;
- (b) Hi-Net fails to provide the Service it has agreed to provide in accordance with Paragraph 1 of this Service Agreement for a period of 15 consecutive days, regardless of cause, unless resulting from the negligence of affiliate, its agents or employees.

EXHIBIT F TO HI-NET CONTRACT INSTALLATION AND SERVICE

A. Pre Installation Site Survey - New Affiliates or Existing Affiliates With Own Equipment

In advance of construction/installation of the satellite earth station, HI-NET will visit and survey each location in cooperation with local hotel management. At a minimum, the site survey will involve the following activities:

1. Selection of an antenna location agreeable to the Affiliate and HI-NET. Location will be based on factors such as ability to see the satellite arc, proximity of antenna to hotel equipment room where satellite earth station electronics are housed, security protection and esthetics.
2. Preparing a detailed scaled sketch to show cable routing from proposed antenna location to the receive equipment and from the receive equipment to the MATV headend.
3. Designating a temperature controlled equipment room inside hotel to house satellite earth station electronics. Room cannot be any further than 200 feet from antenna.
4. Determining whether television channel 3 or 4 is to be used for showing HI-NET programming.
5. Designating a location close to front office that is agreeable to hotel rep for housing the Subscriber Service Authorization Unit and telephone jack.
6. Checking quality of MATV system and issuing report on any modification required and cost of such modification.
7. Creating an installation plan and obtaining written approval from hotel designated site representative.

B. Pre Installation Site Survey - Existing Affiliates With HI-NET Equipment

As a site survey was conducted in advance of C-band earth station installation currently in operation, a new survey will not be required to perform functions 1-4 above. Functions 5-7 will be performed when installation crew arrives to install the 4 channel Ku-band system.

C. Steps To Install HI-NET Service and Approximate Timing

For hotels that contract for HI-NET service prior to Jan. 1, 1985, the following steps will typically be taken to provide the Service.

<u>Period</u>	<u>Activity</u>
Prior To June 1, 1985	The Affiliate appoints an individual who will have authority to act on his behalf as site representative (the "Site Representative"). Manufacturer schedules survey and HI-NET informs the Site Representative and coordinates site survey dates.
	• Site Survey Crew arrives, meets the Site Representative. Site planning typically takes 1/2 day per hotel.
	• Site Survey Crew prepares plan and secures the Site Representative's written approval.
	• Site Planner forwards site plan documentation (2 copies) to HI-NET.
	• FCC papers filed with FCC by HI-NET.
	• HI-NET issues notice to proceed to manufacturer.
Subse- quent To June 1, 1985	• Manufacturer schedules installation, informs HI-NET, HI-NET informs the Site Representative.
	• Existing HI-NET affiliates receive priority attention. New affiliates will be installed on a first come first served basis consistent with availability of installation crews and-weather conditions. Roughly 80 hotels can be installed each month.
	• Manufacturer installs, connects, provides certificate of installation and acceptance to HI-NET. (Installation typically takes 1 week.)
	• Site Representative installs fencing or other protective devices.

D. Affiliate Obligations

The Affiliate shall cooperate with HI-NET before, during and after installation of the Equipment with the objective of achieving maximum efficiencies and optimizing scheduling/ completion of installation work.

The Affiliate obligations are:

a) at least 45 days prior to commencement of work at each Location, notify HI-NET (on form to be provided) of the Site Representative with whom HI-NET and installation company can coordinate activities to assure efficient, uninterrupted performance of the installation work;

b) use best efforts to provide uninterrupted access to hotel rooms between the hours of 9:00 a.m. and 5:00 p.m. when computerized addressable television system (CATS) is being installed, including the use of a pass key, the assignment of a hotel employee to escort the installation personnel from room to room, or other means that assure no lost time awaiting access to a room;

c) furnish up to three (3) standard rooms (double occupancy) to installation crews at no charge; and collecting all other expenses incurred by installation crew personnel directly from such personnel. HI-NET will not be responsible for any hotel charges incurred by installation crew;

d) on the basis of recommendations resulting from the site survey, select and provide suitable installation site free of surface and subsurface obstructions that could interfere with installation and free of line-of-sight obstructions between earth station and satellites;

e) provide and maintain in effect all permits and licenses required by state or local authorities for construction, test and operation of satellite earth stations;

f) use best efforts to provide accurate drawings of each Location showing the location of all underground utilities (any extra costs arising from damage to underground utilities not accurately shown on the drawings shall be borne by the Affiliate except those resulting directly from negligence of installation crew, such as by ignoring an obvious indication of the location of an underground utility);

g) using best efforts to provide uninterrupted ingress and egress to each Location including appropriate materials handling equipment, such as a crane and operator, at Locations where the satellite earth stations are to be mounted on the roof or where special conditions require the use of special handling equipment to move satellite earth stations from point of delivery to the place of installation;

h) providing electrical power suitable for use during installation and subsequently for operation of the Equipment:

i) providing all leveling, grading, drainage, fencing and other civil works necessary to prepare sites for installation pursuant to this contract, except HI-NET through 3rd party will (i) make suitable adjustment to existing concrete antenna foundations or provide new foundations at sites where existing foundations are non-existent or inadequate and (ii) dig conduit trenches and provide conduit as needed at each site;

j) use best efforts to safely store delivered equipment in an environmentally protected and secure area pending installation;

k) providing a place on or close to the hotel property for depositing construction debris and providing any resodding, reseeding or other landscape restoral necessitated by installations;

l) agree to location of Subscriber Service Authorization Unit and telephone jack at time of site survey;

m) provide telephone jack for installation of Subscriber Service Authorization Unit (computer);

n) notify HI-NET in writing within 30 days after SERVICE is turned on and accepted by authorized hotel representative, such acceptance to be evidenced by signing certificate of Verification of Performance, of any particulars in which such SERVICE fails to provide good quality pictures.

E. Antenna Site Selection- HI-NET/Hotel Decision

This section covers the details of the steps that will be taken before an earth station can be erected at a Location:

- A site must be selected for the antenna itself. The antenna site should be within 75 feet of the earth station electronics room site for best reception. (but never more than 200 feet).

- An earth station electronics component room must be selected to house the necessary equipment for the earth station (see item 6 "Controlled Environment" in following "Site Survey" Section.)

- Site survey teams representing the earth station vendors will visit each Location and coordinate with the Site Representative on the site selection process.

• Prior to the arrival of the site survey teams the Affiliate will need to consider:

1. Property boundaries within which the earth station must be placed, including consideration of setbacks and easements.

2. Anticipated building expansion plans which may block visibility of the satellite, both on a Location and other nearby properties; such risk must be assumed by the Affiliate. The antenna must "see" the satellite, which is located 22,300 miles above the equator in a southern direction. The antenna angle-of-elevation will range from a low of 22° from horizontal in Northern New England to 30° + on the Southern U.S. borders.

• Considerations that the site planning crew will make when they visit include:

1. Visibility of satellite throughout the geostationary orbit, so that the earth station can "see" all of the future satellite positions. Where a site requires special engineering, vendors will report to HI-NET with recommendations.

2. Selected site shall be acceptable to the hotel's management (to prevent interference with normal or planned operation at each Location).

3. Specification for a security fence which does not block visibility of satellite. Standard designs will be provided for local adaptation and installation (at the Affiliate's cost).

4. Accessibility of selected site for equipment delivery, installation and service.

5. If needed, the use of local building or vegetation shielding to resolve conflicts revealed in the interference measurement and analysis.

6. Location of electronic equipment rack in temperature (40° to 90°F) and humidity (40% to 60%) controlled environment. The rack will be wall or shelf mounted; equipment is typically 2'x2'x3' high. Room shall contain 120 volt, 20 AMP duplex outlet which shall be within 8 feet from electronic equipment. There must be room for a TV set for troubleshooting tests (see "Maintenance"). The best location would be in the Innkeeper's office, as it is secure, environmentally-controlled, and easily checked during any signal interruption.

7. Cabling routes to interconnect: A) the earth station antenna to the electronic equipment rack (200' maximum; cables within 2" conduit when outside of building, carrying two special 1/2" co-ax cables, maximum 20 volts D.C./low voltage); and B) the electronic equipment rack to the MATV system (up to 1000' of RG 59 coaxial cable, same as now used in your MATV system).

-25-

Interconnect to the MATV system.

-26-

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in and the cost of modifying the building, including special mount to be installed to tie satellite earth station into hotel's roof. Not later than forty-five (45) days after receipt of structural drawings from the Affiliate, HI-NET will forward such analysis and estimated cost of a) modifying the building and b) providing/installing the special mount needed to affix satellite earth station to roof. If HI-NET considers the cost of a roof top installation to be cost prohibitive it shall have the right to refuse installation and this contract shall be terminated. If HI-NET decides to proceed with installation it will secure written approval from the Affiliate to do so and will be responsible for cost of constructing and installing required building modifications. The Equipment will be installed concurrent with the completion of any required building modifications and installation of special mount and satellite earth station antenna.

H. Service & Repair.

Service dispatching will be made through HI-NET personnel 24 hours a day. To request service call the telephone number specified in the HI-NET System Operations Procedure Manual (supplied when system is turned on). After reviewing the trouble shooting procedure with the Affiliate (specified in System Operations Procedure Manual provided by HI-NET), HI-NET will relay a request for service to the appropriate vendor.



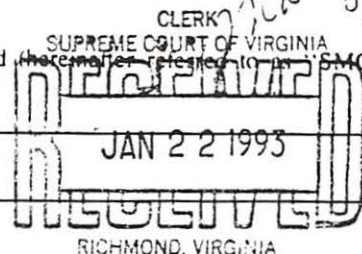
SUBSCRIBER LICENSING AGREEMENT

THIS LICENSING AGREEMENT is made by and between Satellite Movie Company, Incorporated, (hereinafter referred to as "SMC") and

HOTEL MADISON NORFOLK

345 GRANBY ST., NORFOLK, VA 23510

(a corporation/partnership), (hereinafter referred to as "Subscriber").



A. Programming and License Fee(s): SMC hereby grants to Subscriber the license to lawfully receive and exhibit the satellite delivered programming service(s) identified on the Programming Schedule set forth below ("Program Service") at the Property identified on the Programming Schedule according to the terms of this Agreement.

B. Payment of Fees: Subscriber agrees to pay to SMC the total Licensing Fees set forth on the Programming Schedule (for each guest room at the Property regardless of whether the room is occupied or unoccupied), plus applicable sales tax. The total Licensing Fees must be received by SMC by the 25th day of the month preceeding the month of service. Any amount not paid by Subscriber within thirty (30) days after the original invoice date shall accrue interest at the rate of 1.5 percent per month, but not more than the highest lawful rate, until paid.

C. Licensing Period: The initial term of this Agreement shall begin on the first of the Commencement of Service Date(s) identified on the Programming Schedule and shall continue for the number of years identified on the Programming Schedule as the Initial Term. Thereafter, this Agreement shall be automatically renewed for the number of years identified on the Programming Schedule as the Renewal Term unless either party notifies the other in writing at least sixty (60) days prior to the end of the Initial Term of its intent not to renew. SMC shall further have the right to terminate this Agreement or the licensing authority for any programming service(s) granted hereunder, upon thirty (30) days notice if its licensing authority with a Network is terminated, for whatever reason.

D. Restrictions on Price Increases: The Licensing Fees may be periodically increased by giving Subscriber sixty (60) days advanced written notice ("Increase Notice") of the new Licensing Fees and the Effective Date of the increase; PROVIDED HOWEVER, that the total of the Licensing Fees may not increase by more than ten (10) percent during any calendar year unless (a) one or more of the Networks institutes a material alteration in the content of its Program Service or (b) the increase is due to actions or events beyond the control of the Networks or SMC including but not limited to material modifications of Federal law, regulation or legal interpretations thereof. If the new Licensing Fees increases the total by more than ten (10) percent during any calendar year, Subscriber shall have the right to terminate this Agreement as of the Effective Date by giving SMC written notice of its desire to terminate within thirty (30) days after receiving the Increase Notice, unless SMC thereafter notifies Subscriber that it has elected not to increase the Licensing Fees in excess of the ten (10) percent limit.

E. Exhibition of Program Service:

E.1 Free-to-Guest Service: Subscriber agrees not to charge an admission fee to the Property or impose any special charge or fee for the privilege of viewing the Program Service in any lodging room, including without limitation, any incremental charge in addition to the usual fee or charge attributable to the lodging room for the privilege of viewing the Program Service, it being furnished on a "free-to-guest" basis. Furthermore, Subscriber agrees to exhibit and distribute the Program Service as received without any delay, addition, deletion, alteration or editing.

E.2 Accessibility: Subscriber agrees not to authorize or permit any television set located within the Property from receiving The Movie Channel, Showtime, Disney, Home Box Office, Cinemax or Festival, if applicable, in any room or area which is not a lodging room, including without limitation, places of public access or accommodation, bars, lounges, restaurants, lobbies, common areas, hallways or any area where an admission fee is charged.

E.3 Unauthorized Use: Subscriber agrees not to authorize nor permit any third party to record, copy, tape and/or duplicate the Program Service in whole or in part. Subscriber further agrees to take all reasonable precautions to prevent any such unauthorized use. If Subscriber becomes aware that any third party is recording, copying, taping, duplicating, connecting to and/or receiving any part of the Program Service in an unauthorized manner, Subscriber shall take appropriate steps to prevent such unauthorized use. In this regard, Subscriber agrees to conduct an inspection of the Property at least once a year to verify that there is no such unauthorized use, and shall at the request of SMC, provide SMC with a copy of the findings of such inspection.

E.4 Blackout: Subscriber understands that certain programming may be required to be blacked-out or deleted by the Networks (e.g. live sporting events) without violating this Agreement. SMC or the involved Network will give Subscriber written notice of any such requirement within a reasonable time prior to the black-out period to enable Subscriber to disable or turn-off the designated programming for the designated period of time. Subscriber agrees not to distribute or show any programming required to be blacked-out at the Property. Failure to comply with this provision shall be grounds for immediate termination by SMC of this Agreement.

F. Modifications to Signal Distribution:

F.1 In the event that the satellite signal for the Program Service is encoded or scrambled after the time of this Agreement, SMC agrees to use its best efforts to make available to Subscriber the necessary equipment to descramble the signal at a reasonable cost. The encoding or scrambling of the signal itself shall not be grounds for terminating this Agreement or offset against the monthly Licensing Fees by Subscriber, the parties acknowledging that this Agreement is strictly a licensing agreement.

F.2 In the event that a Program Service is terminated by a Network, can no longer be licensed by SMC, is moved to another transponder on the same satellite and/or is moved to another satellite not containing all of the programming service(s) licensed hereunder, SMC reserves the right, but not the obligation, to provide Subscriber with alternate or comparable programming at then prevailing service rates.

F.3 Acknowledging that this is strictly a licensing Agreement, Subscriber agrees that SMC is not liable nor responsible for any failure, loss, degradation or non-availability of any Program Service signal caused by an act of God, labor dispute, non-delivery by Networks or others, breakdown of satellites or facilities, fire, flood, legal enactment, government order or regulation or any other cause beyond the control of SMC. Subscriber shall remain liable to SMC notwithstanding interruptions to the Program Service.

F.4 In the event that any modifications or changes to the Program Service signal or means of distribution necessitate changes, modifications, repairs or additions to Subscriber's satellite signal receiving equipment, Subscriber agrees to pay any and all costs necessary to constructively receive and distribute the Program Service signal, without recourse to SMC.

G. Default and Termination: Timely performance by Subscriber is of the essence. If Subscriber fails to make any payment or fails to perform any of its material obligations under this Agreement, and such failure is not cured within five (5) days after written notice from SMC, or if Subscriber becomes insolvent or if a bankruptcy petition is filed by or against Subscriber or if Subscriber executes an assignment for the benefit of creditors or if a receiver is appointed for the assets of Subscriber or if Subscriber takes advantage of any insolvency or like statute (all of which

PROGRAMMING SCHEDULE

Subscriber Name: HOTEL MADISON NORFOLK

Address: _____

Property Name: HOTEL MADISON NORFOLK

Address: 345 GRANBY ST., NORFOLK, VA 23510

Number of Rooms: 135 Contact Person: MS. DEBRA CARR

Telephone Number: (804) 622-6682

Initial Term: THREE (3) YEARS Renewal Term: THREE (3) YEARS

Program Service	Monthly Room Licensing Fees	Commencement of Service Date
ESPN	\$.55 PER ROOM PER MONTH	7-1-88
WTBS	\$.15 PER ROOM PER MONTH	7-1-88
CNN	\$.25 PER ROOM PER MONTH WHEN CARRIED WITH WTBS	7-1-88
	\$ _____	_____
	\$ _____	_____
	\$ _____	_____
	\$ _____	_____
	\$ _____	_____
	\$ _____	_____
	\$ _____	_____
	\$ _____	_____

Monthly Room Fees: \$.95 (per room/per month)

Number of Rooms: X 135

Monthly Sub-Total: \$ 128.25

FSM Charges: \$ 10.00 (WTBS, CNN)

Licensing Fees Total: \$ 138.25 (plus applicable sales tax)

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the date identified in the preamble.

SATELLITE MOVIE COMPANY, INC.
1608 West Russell Avenue
Sioux Falls, South Dakota 57104

HOTEL MADISON NORFOLK-NORFOLK, VA
(Name of Subscriber)

By _____
Its Authorized Representative

By [Signature]
Title: Debra Carr

Date: _____

Date: Aug 26, 1984

PROGRAMMING SCHEDULE

Subscriber Name: HOTEL MADISON

Address: _____

Property Name: HOTEL MADISON

Address: 345 GRANBY ST., NORFOLK, VA 23510

Number of Rooms: 137 Contact Person: MR. MARK HUREWITZ

Telephone Number: () 804-622-6682

Initial Term: THREE (3) YEARS Renewal Term: THREE (3) YEARS

Program Service	Monthly Room Licensing Fees	Commencement of Service Date
CNN	\$.25 PER ROOM PER MONTH WHEN CARRIED WITH WTBS	
ESPN	\$.55 PER ROOM PER MONTH	
WTBS	\$.15 PER ROOM PER MONTH	
	\$	
	\$	
	\$	
	\$	
	\$	
	\$	
	\$	
	\$	

Monthly Room Fees: \$.95 (per room/per month)

Number of Rooms: X 137

Monthly Sub-Total: \$ 130.15

FSM Charges: \$ 10.00 (CNN, WTBS)

Licensing Fees Total: \$ 140.15 (plus applicable sales tax)

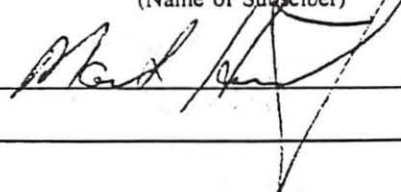
IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the date identified in the preamble.

SATELLITE MOVIE COMPANY, INC.
1608 West Russell Avenue
Sioux Falls, South Dakota 57104

By _____
Its Authorized Representative

Date: _____

HOTEL MADISON NORFOLK
(Name of Subscriber)

By 

Title: _____

Date: _____

Lease Agreement

CLERK
SUPREME COURT OF VIRGINIA 1988
DECEMBER 29, 1988

QUANTITY	DESCRIPTION OF LEASED EQUIPMENT	SERIAL NO.
1	3-CHANNEL LODGENET SATELLITE EARTH STATION INSTALLATION	

AGENCY DISCLAIMER
Neither the supplier nor any salesperson is an agent of Lessor nor are they authorized to waive or alter the terms of this lease. Their representations shall in no way affect Lessee or Lessor's rights and obligations as herein set forth.

INITIAL TERM	FREQUENCY	ADVANCE PAYMENT	BASE PERIODIC PAYMENT
87* (Months)	MONTHLY (Mo., Qtr., Semi An., Ann.)	\$ 207.96 (Include Tax)	\$ 199.00* (Exclusive of Tax, Options)

EQUIPMENT LOCATION IF OTHER THAN BILLING ADDRESS		City	County	State	Zip
Address					

THIS LEASE CANNOT BE CANCELLED EXCEPT AS EXPRESSLY PROVIDED HEREIN. THIS LEASE SHALL BECOME EFFECTIVE ONLY UPON EXECUTION BY LESSOR AT ITS MICHIGAN OFFICE.

1. **TERMS AND CONDITIONS.** In consideration of Lessor's purchase of the Equipment from a supplier, both the equipment and supplier selected by Lessee, and in further consideration of Lessee's written acceptance of the equipment and agreement to pay all rentals and other charges in accordance with this Lease, Lessor leases to Lessee, and Lessee or subscriber hereto leases from Lessor, the equipment identified above and on any attached schedule pursuant to the terms and conditions set forth herein. Lessee authorizes Lessor to insert in this Equipment Lease Agreement ("Lease"), serial numbers and other identification data when determined. This Lease constitutes the FULL AND ENTIRE AGREEMENT between the Lessor and Lessee in connection with the Equipment and MERGES ANY OTHER UNDERSTANDING. Neither party relies on any other statement, representation or assurance of cure. The Lease can be NEITHER CANCELLED NOR MODIFIED except by a written agreement signed by Lessee and by a corporate officer of Lessor.

2. **LESSEE'S AND GUARANTOR'S WARRANTIES TO LESSOR.** Lessee and any Guarantor(s) expressly represent and warrant to Lessor, and Lessor relies on the fact that a) said parties have read and understood this Lease before it was signed; b) said parties have selected and are fully satisfied with both the Equipment and the Supplier who sold the Equipment to Lessor; c) said parties have freely chosen to lease, not buy, from Lessor, only after having considered other means of obtaining the use of the Equipment; d) said parties will authorize Lessor to pay for the Equipment only after Lessee has received and accepted the Equipment as fully operable for Lessee's purposes; e) NEITHER THE SUPPLIER OF THE EQUIPMENT NOR ANY OF ITS SALESPERSONS ARE, OR HAVE ACTED AS, LESSOR'S AGENTS OR EMPLOYEES; f) financial information and other statements provided to Lessor are accurate and correct, and will be updated upon Lessor's request during the term of the Lease; g) said parties are currently meeting all debts as such come due; h) the Equipment is leased exclusively for Lessee's business purposes and not for starting a new business or for personal, family or household purposes; i) Lessee or subscriber has unrestricted power to enter into this Lease, has duly authorized the person executing it, and certifies that all signatures are authentic and authorized; and j) said parties will pay all costs connected with the Equipment, including taxes, insurance, repairs, shipping, collection costs and other expenses normally paid in a net lease; and k) Lessor owns the Equipment and therefore has no duty on Lessee's default to repossess or remarket the Equipment.

3. **LESSEE'S WAIVER OF DAMAGES AND WARRANTIES FROM LESSOR** a) Lessee leases the Equipment from Lessor "AS IS". LESSOR MAKES ABSOLUTELY NO WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE; b) IF THE EQUIPMENT IS NOT PROPERLY INSTALLED, DOES NOT OPERATE AS REPRESENTED OR WARRANTED BY THE SUPPLIER, OR IS UNSATISFACTORY FOR ANY REASON WHATSOEVER, LESSEE SHALL MAKE ANY CLAIM ON ACCOUNT THEREOF SOLELY AGAINST THE SUPPLIER, AND LESSEE HEREBY WAIVES ANY SUCH CLAIM AGAINST LESSOR. All warranties from the Supplier to Lessor are hereby assigned to Lessee for the term of the Lease for Lessee's exercise at Lessee's expense; c) LESSEE SHALL HOLD LESSOR HARMLESS AND SHALL BE RESPONSIBLE FOR ANY LOSS, DAMAGE OR INJURY TO PERSONS OR PROPERTY CAUSED BY THE EQUIPMENT; d) NO REPRESENTATION OR WARRANTY BY THE SUPPLIER OR SALESPERSON IS BINDING ON LESSOR NOR SHALL BREACH OF SUCH WARRANTY RELIEVE LESSEE OF LESSEE'S OBLIGATIONS TO LESSOR; and e) IN NO CASE SHALL LESSOR BE LIABLE TO LESSEE FOR SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES.

4. **PAYMENTS.** Lessee or subscriber agrees to pay all lease payments and any other agreed upon charges as provided herein. The base Lease payment shall be adjusted proportionately upward or downward, if the actual cost of the equipment exceeds or is less than the estimate. Lessee hereby authorizes Lessor to adjust the base Lease payment by up to 25%. Lease payments shall be increased by any cost or expense Lessor incurs to preserve the Equipment or to pay taxes, assessments, fees, penalties, liens, or encumbrances. Such payments will be deemed additional rentals hereunder. Unless Lessor gives written notice of a new address, all payments under this Lease shall be sent to Lessor at the Michigan address provided by Lessor. Each payment received will be applied first to the oldest charge due under the Lease. LESSEE AGREES THAT TIME IS OF THE ESSENCE AND TO MAKE PAYMENTS REGARDLESS OF ANY PROBLEMS LESSEE MIGHT HAVE WITH THE EQUIPMENT INCLUDING ITS OPERATIONS, CAPABILITY, INSTALLATION, OR REPAIR AND REGARDLESS OF ANY CLAIM, SETOFF, COUNTERCLAIM, OR DEFENSE LESSEE MIGHT HAVE AGAINST THE VENDOR OR MANUFACTURER ("SUPPLIER"), SALESPERSON, OR OTHER THIRD PARTY. Without Lessor's prior written consent, any payment to Lessor of a smaller sum than due at any time under this Lease shall not constitute a release or an accord or satisfaction for any greater sum due, or to become due, regardless of any endorsement restriction. In case the Lease is never finalized, the advance payment will be retained by Lessor in liquidation of documentation and processing expenses. Lessee agrees to pay a monthly fee of \$3.00, henceforth deemed to be additional rent hereunder, to reimburse Lessor's expenses of preparing financing statements, of making credit checks and analysis of Lessee's and Guarantor's financial status, and of Lessor's other documentation and monthly administrative costs.

*MONTHS 1-3 ARE DEFERRED. \$1.00 PURCHASE OPTION AT END OF LEASE - SEE ATTACHED.

THIS LEASE IS NON-CANCELLABLE

This lease is a binding contract consisting of all terms on the front and reverse hereof.

LESSEE (Complete Legal Name)

HOTEL MADISON NORFOLK

Billing Address

P.O. BOX 1218 (345 GRANBY ST.)

City

County

State

Zip

NORFOLK

VA

23501

Phone No.

Date

() 804-622-6682

Signature:

X *Ronald Orleans*

Initials:

Print Name and Title below:

X *RO*

RONALD ORLEANS OWNER G.P.

GUARANTEE

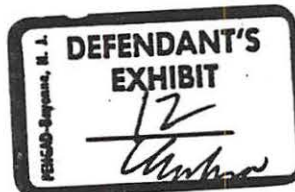
In consideration of the Lessor leasing to the Lessee and other good and valuable consideration, the receipt of which is hereby acknowledged by the undersigned, the undersigned personally and unconditionally guarantees payment and performance of, and agrees to be subject to, all the terms and conditions of this Lease until all obligations under the Lease are fulfilled and in the event of default, hereby pledges the sole and separate estate of the undersigned and waives notice of any modification, amendment or extension of the Lease. This guarantee shall be valid and enforceable whether or not the Key Man Guarantor Option is applicable to this Lease.

(Signature) An Individual (No Title)

X *Ronald Orleans*

(Signature) An Individual (No Title)

X



Commencement date 10/1/88

EQUIPMENT ACCEPTANCE AND PURCHASE AUTHORIZATION

On behalf of Lessee, I hereby certify that all of the Equipment referred to in the above Lease has been delivered to and has been received by the Lessee, that all installation or other work necessary prior to the use thereof has been completed, that the Equipment has been examined by the Lessee and is in good operating order and condition and is in all respects satisfactory to the Lessee, and that the Equipment is accepted by the Lessee for all purposes under this Lease. ACCORDINGLY I AUTHORIZE LESSOR TO PURCHASE THE EQUIPMENT.

Authorized Signature of Lessee:

Date:

X *Ronald Orleans*

5-11-88

REQUEST FOR ELECTRONIC LEASE PAYMENTS

Lessee hereby requests and authorizes Lessor to initiate debit and/or credit entries in connection with this Lease to the Depository Account designated below and authorizes the Depository Financial Institution (DFI) designated below to debit and/or credit same to such account. This authority is to remain in full force and effect until Lessor has received written notification, return receipt requested, from Lessee of its termination in such time and in such manner as to afford Lessor and DFI a reasonable opportunity to act on it.

Name of DFI

366

DFI Trans/ABA No.

Account No.

Authorized Signature of Lessee:

X *Ronald Orleans*

LFEETAP W/O OPT 287

Lease #

25277

Satellite more details

ACCEPTED BY: *Lodgenet* LESSOR

By: *Timothy* DATE: 12/29/88

(For Lessor's Use Only) Verification of Acceptance and Authorization to Purchase:

Given by: To:

Leasing Division

January 5, 1989

Mr. Arnold Orleans
Hotel Madison Norfolk
P.O. Box 1218
345 Granby St.
Norfolk, VA 23501

Dear Mr. Orleans,

RE: Lease #25277

We are pleased to furnish you with an executed copy of the lease agreement between you and Satellite Movie Company, Inc.

Your next payment will be due Feb. 1, 1989. You will be invoiced approximately ten days prior to your due date each month.

If you have any questions regarding this lease/rental, please do not hesitate to contact Satellite Movie Company, Inc.

If you have any questions regarding your billing, please contact our Accounts Processing Center at 515-282-3847. All payments should be remitted to P.O. Box 10336, Des Moines, Iowa 50306.

We appreciate the opportunity of doing business with you.

SATELLITE MOVIE COMPANY, INC.

