ORDINANCE NO. 95-09

AN ORDINANCE GRANTING A FRANCHISE TO FRIENDSHIP CABLE OF ARKANSAS, INC. A TEXAS CORPORATION, ITS SUCCESSORS AND ASSIGNS, TO BUILD, CONSTRUCT, OPERATE AND MAINTAIN A CABLE TELEVISION SYSTEM IN THE CITY OF ATKINS, ARKANSAS, LOCATED IN THE COUNTY OF POPE, AND SETTING FORTH CONDITIONS ACCOMPANYING THE GRANTING OF THIS FRANCHISE;

BE IT ORDAINED BY THE PEOPLE OF THE CITY OF ATKINS, ARKANSAS:

SECTION 1--TITLE

This ordinance shall be known and may be cited as Friendship Cable of Arkansas - City of Atkins, Arkansas Franchise

SECTION 2--DEFINITIONS

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

(A) "Basic Cable Service" is any service tier which includes the retransmission of local television signals and any service tier that includes satellite delivered basic cable programming services.

(B) "Cable television system" or "CATV System" or "cable system" is a facility consisting of a set of closed transmission paths and associated signal generation, reception and control equipment designed to provide video and other programming and information to subscribing members of the public.

(C) "City" is the City of Atkins, a municipal corporation under the laws of the State of Arkansas.

(D) "Grantee" is Friendship Cable of Arkansas, Inc., a corporation organized and existing under the laws of the State of Texas, and it is the grantee of rights under this franchise.

(E) "City Council" is the City Council of the City of Atkins, Arkansas, or its designated representative.

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

(G) "Person" is any individual, firm, partnership, association, corporation, company or organization of any kind.

(H) "Gross Subscriber Revenues" shall include all receipts derived by Grantee from charges for Basic Cable Service, Pay Cable Service and installation of Basic and Pay Cable Service. It shall not include bad debt or any refunds or credits made to subscribers or any taxes imposed upon the services furnished by Grantee.

(I) "Pay Cable Services" are those satellite delivered premium services supplied on a single channel basis for a monthly fee.

SECTION 3--GRANT OF AUTHORITY

There is hereby granted by the City to Grantee the right and privilege to construct, erect, operate and maintain in, upon, along, across, above, over, or under the streets, alleys, public utility easements, public ways and public places now laid out or dedicated and all extensions thereof and additions thereto in the City, all poles, wires, cables, underground conduits, manholes and other conductors and fixtures necessary for the maintenance and operation in the City of a cable television system for the transmission of television signals and all other signals, including those permitted by the FCC, either separately or upon or in conjunction with any public utility maintaining the same in the City, with all of the necessary and desirable appliances and appurtenances pertaining thereto. Without limiting the generality of the foregoing, this franchise and grant shall and does hereby include the right in, over, under and upon the streets, sidewalks, alleys, public utility easements and public grounds and places in the City to install, erect, operate or in any way acquire the use of, as by leasing or licensing, all lines and equipment necessary to a cable television system and the right to make connections to subscribers and the right to repair, replace, enlarge and extend said lines, equipment and connections. The rights herein granted for the purposes set forth shall not be exclusive, and the City reserves the right to grant a similar use of said streets, alleys, public utility easements, public ways and places to any person at any time during the period of this franchise.

SECTION 4--POLICE POWERS

Grantee shall at all times during the term of this franchise be subject to all lawful exercise of the police power of the City. The right is hereby reserved to the City to adopt,

in addition to the provisions herein contained and any other existing applicable ordinances, such additional applicable ordinances as it shall find necessary in the exercise of its police power; provided, however, that such additional ordinances shall be reasonable, shall not conflict with or alter in any manner the rights granted herein, and shall not conflict with the laws of the State of Arkansas, the laws of the United States of America, or the rules, regulations and policies of the FCC.

SECTION 5--INDEMNIFICATION

Grantee shall save the City, its officers, agents and employees harmless from all loss sustained by the City on account of any suit, judgment, execution, claim or demand whatsoever against the City resulting from negligence or other wrongful acts or ommissions on the part of Grantee in the construction, operation or maintenance of its cable television system in the City; and for this purpose Grantee, its agents or assigns, shall carry property damage and personal injury insurance with some responsible insurance company or companies qualified to do business in the State of Arkansas. The amounts of such insurance to be carried for liability due to property damage shall be $500,000 as to any occurrence; and against liability due to injury to or death of person, $500,000 as to any one person and $1,000,000 as to any one occurrence. The City shall notify Grantee, in writing, within ten (10) days after the presentation of any claim or demand, either by suit or otherwise, made against the City on account of any negligence or other wrongful acts or omissions as aforesaid on the part of Grantee, its agents or assigns. Where any such claim or demand against the City is made by suit or other legal action, written notice thereof shall be given by the City to Grantee not less than five (5) days prior to the date upon which an answer

to such legal action is due or within ten (10) days after the claim or demand is made upon the City, whichever notice period yields Grantee the larger amount of time within which to prepare an answer. Failure by the City to notify Grantee properly in accordance with the foregoing of any such claim, suit, or demand against the City shall release Grantee from its obligation to indemnify the City as provided herein.

SECTION 6--CONSTRUCTION AND MAINTENANCE

(A) All structures, lines and equipment erected by Grantee within the City shall be so located as to cause minimum interference with the proper use of streets, alleys, public utility easements and other public ways and places and to cause minimum interference with the rights of reasonable convenience of property owners, and Grantee shall comply with all reasonable, proper and lawful ordinances of the City now or hereafter in force. Existing poles, posts, conduits, and other such structures of electric power system, telephone company, or other public utility located in the City shall be made available to Grantee for leasing or licensing upon reasonable terms and rates and shall be used to the extent practicable in order to minimize interference with travel and avoid unnecessary duplication of facilities. The City shall actively assist Grantee to the fullest extent necessary in obtaining reasonable joint pole or conduit use agreements from the owners of existing poles or conduits. To the extent that existing poles, posts, conduits, and other such structures are not available, or are not available under reasonable terms and conditions, including excessive cost or unreasonable limitation upon the use of Grantee's cable television system, Grantee shall have the right to purchase, lease, or in any other manner acquire land, rights-of-way, or public utility easements upon or under which to erect and maintain its own poles,

conduits, and other such structures as may be necessary for the construction and maintenance of its cable television system.

(B) In case of any disturbance by Grantee of pavement, sidewalk, driveway or other surfacing, Grantee shall, at its own cost and expense and in a manner approved by the City, replace and restore all paving, sidewalk, driveway or surface so disturbed in as good condition as before said work was commenced.

(C) In the event that at any time during the period of this franchise the City shall lawfully elect to alter or change any street, alley, public utility easement, or other public way requiring the relocation of Grantee's facilities, then in such event Grantee, upon reasonable notice by the City shall remove, relay and relocate the same at its own expense.

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

(E) Grantee shall have the authority to trim trees and/or shrubs upon and/or overhanging all streets, alleys, public utility easements, sidewalks and public places of the City so as to prevent the branches of such from coming into contact with Grantee's facilities.

(F) All poles, lines, structures and other facilities of Grantee in, on, over and under the streets, sidewalks, alleys, public utility easements and public grounds or places of the City shall be kept by Grantee at all times in a safe and substantial condition. All equipment, lines, poles, structures, cables and other facilities installed in the City as being a part of

Grantee's distribution system, up to and including that part of the system installed within the individual residences or commercial buildings of the City, shall remain the sole property of Grantee, unless so otherwise stated.

(G) Upon the completion of the Cable System rebuild as provided for in Section 16 (D) hereof and upon request of potential customers, Grantee shall extend its distribution system so as to service the people within the city limits as the city limits exist at the time of the passing and approval of this Ordinance. However, as to any area annexed after the passing and approval of this Ordinance, Grantee shall not be required to extend such distribution system to any potential subscriber who is located in an isolated area from the main trunk system, unless Grantee can be guaranteed a fair rate of return as per industry standards by those subscribers who request the extension of the distribution system into such areas.

SECTION 7--APPLICABLE LAW

This franchise is governed by and subject to all applicable rules, regulations and policies of the Federal Communications Commission and by the laws of the State of Arkansas.

SECTION 8--FRANCHISE TERM

This franchise shall take effect and be in full force from and after successful purchase of the cable system from Empire Cable of Arkansas, Inc. serving the City and acceptance by Grantee as provided in Section 13, and the same shall continue in full force and effect for a term of eight (8) years.

SECTION 9--RENEWAL PROCEDURE

Based upon Grantee's satisfactory performance during the initial term, the Grantee shall have the option to renew this franchise for an additional period not to exceed seven (7) years. Should Grantee desire to exercise this option, it shall so notify the City in writing, not less than six (6) months prior to expiration of this franchise.

SECTION 10--FORFEITURE

If Grantee should violate any of the terms, conditions, or provisions of this franchise or if Grantee should fail to comply with any reasonable provisions of any ordinance of the City regulating the use by Grantee of the street, alleys, public utility easements or public ways of the City, and should Grantee further continue to violate or fail to comply with the same for a period of ninety (90) days or such longer period specified by the City as is reasonable under the circumstances, after Grantee shall have been notified in writing by the City to cease and desist from any such violation or failure to comply so specified, then Grantee may be deemed to have forfeited and annulled and shall thereby forfeit and annul all the rights and privileges granted by this franchise; provided, however, that such forfeiture shall be declared only by written decision of the City Council after an appropriate public proceeding before the City Council affording Grantee due process and full opportunity to assess the evidence used in rendering said declaration and to be heard in response to any such notice of violation or failure to comply; and provided further that the City Council may, in its discretion and upon a finding of violation or failure to comply, impose a lesser penalty than forfeiture of this franchise or excuse the violation or failure to comply. Grantee shall have the right to appeal any finding of violation or failure to comply and any resultant

penalty to any court of competent jurisdiction. During a six (6) month period, which shall run from the effective date of the final order or decision imposing forfeiture, including any appeal, Grantee shall have the right to operate this cable system pursuant to the provisions of this franchise.

SECTION 11--TRANSFERS

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

SECTION 12--FRANCHISE FEE

In consideration of the terms of this franchise, Grantee agrees to pay the City a sum of money equal to three percent (3%) of Grantee's Gross Subscriber Revenues quarterly. Such quarterly payment shall be paid within sixty (60) days following the end of each calendar quarter. All other license fees or taxes levied upon Grantee by the City shall be credited against the payment required herein.

SECTION 13--EFFECTIVE DATE

This Ordinance shall be come effective when all terms and conditions are accepted by both Grantee and City and shall then be and become a valid and binding contract between the City and Grantee.

SECTION 14--UNLAWFUL ACTS

(A) It shall be unlawful for any person to intercept or assist in intercepting or receiving, whether physically, electrically, acoustically, inductively or otherwise any television signals, radio signals, pictures, programs, sounds or any other information, impulses or intelligence transmitted over Grantee's cable system without full payment to Grantee or its lessee by all parties receiving service. For purposes of this provision "assist in intercepting or receiving" shall include the manufacture or distribution of equipment intended by the manufacturer or distributor for unauthorized reception of any communications service offered over a cable system.

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

(C) It shall be a misdemeanor punishable by a fine of not more than Five Hundred Dollars ($500.00), or by imprisonment for a term not to exceed six (6) months, or both, for any person to violate any of the provisions of this Section.

(D) The prohibitions, penalties and remedies set forth in this Section are in addition to the prohibitions, penalties and remedies for theft of cable service provided by federal and state law.

SECTION 15--NOTIFICATION

(A) Grantee agrees to notify City sixty (60) days in advance of any scheduled rate increase, such increase to be subject to any State of Arkansas laws or Federal Communications Commission regulations. Such notice shall not include fees or taxes that are collected for a third party.

(B) When in this Ordinance notice is provided to the other party, such notice shall be in writing and given by certified mailed letter,

To City: City of Atkins
P. O. Box 128
Atkins, Arkansas 72823

To Grantee: Friendship Cable of Arkansas, Inc.
P. O. Box 9090
2010 Sybil Lane (75703)
Tyler, Texas 75711

or at such other location as either party may designate from time to time in writing.

SECTION 16--PROGRAMMING AND SERVICE

(A) Grantee shall provide a Toll-free telephone number for customers use.

(B) Grantees' representatives will be available to respond to customer telephone inquiries Monday through Friday from 8:30 a.m. to 5:45 p.m. After normal business hours, service calls will be received by an answering service via a toll-free number.

(C) Excluding those situations beyond Grantees' control, Grantee will make its best effort to restore service lost due to a cable outage (which is defined as no service) within 24 hours after receiving notification.

(D) Grantee agrees to rebuild the Cable System using new trunk and distribution lines and state of the art 450 MHZ equipment. Rebuild will increase capacity to approximately 60 channels and should be completed by the end of 1996.

(E) The channel line-up as of the passing and approval of this Ordinance is as follows:

	2	KETS (PBS) (2) LITTLE ROCK
*	3	SHOWTIME
	4	DISCOVERY
	5	USA
	6	FAMILY
	7	KATV (ABC) (7) LITTLE ROCK
	8	KARK (NBC) (4) LITTLE ROCK
	9	THE NASHVILLE NETWORK
	10	WTBS (ATLANTA)
	11	TNT
	12	ESPN
	13	KTHV (CBS) (11) LITTLE ROCK
	15	ARTS & ENTERTAINMENT
	16	KLRT (FOX) (16) LITTLE ROCK
*	17	THE MOVIE CHANNEL
	18	CNN
*	20	DISNEY
*	21	HBO
	22	TRINITY BROADCASTING NETWORK
	23	WGN (CHICAGO)

* DENOTES PREMIUM SERVICE

(F) The proposed new programming to be added at the completion of the rebuild per Section 16 (D) is as follows:

# THE WEATHER CHANNEL	# LIFETIME
# COMMUNITY CHANNEL	# KVTN (25)
# COUNTRY MUSIC TELEVISION	# KASN (38)
# NICKELODEON	# HEADLINE NEWS
# TURNER CLASSIC MOVIES	# PAY PER VIEW (1 Channel)

DISNEY ON BASIC LINE-UP

(G) The monthly rates as of the passing and approval of this Ordinance are as follows:

$21.95	Basic Cable Service
4.95	Showtime
19.95	Package M, which includes Home Box Office, Showtime and The Movie Channel
10.95	Home Box Office

(H) The installation charge as of the passing and approval of this Ordinance is as follows:

CURRENT INSTALLATION CHARGE --$25.00 ** COVERS CABLE INSTALLATION TO ONE (1) OUTLET. OTHER SERVICES REQUIRE ADDITIONAL INSTALLATION CHARGES.

** CHARGE COULD BE LESS DEPENDING UPON PROMOTION SPECIALS AND/OR PACKAGED SERVICES PURCHASED.

(I) Grantee shall provide free Basic Cable Service and free installation to each public school building and City Hall within the City, provided that said schools and City Hall are passed by Grantee's cable plant as it exists now or may exist in the future. Said free service and installation shall be for one (1) outlet per building.

SECTION 17--SEVERABILITY

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

PASSED AND APPROVED THIS 14th DAY OF November, 1995.

Chief Official
City of Atkins, Arkansas

ATTEST:

ACCEPTED--Date_____

Friendship Cable of Arkansas, Inc.

SECTION 17--SEVERABILITY

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

PASSED AND APPROVED THIS 14th DAY OF November, 1995.

Chief Official
City of Atkins, Arkansas

ATTEST:

ACCEPTED--Date January 1, 1996

Friendship Cable of Arkansas, Inc.
Bennett W. Hooks, Jr.
President

ORDINANCE NO. 95-11

Be it hereby ordained by the city council to the City of Atkins, Arkansas:

SECTION I. That the property described as follows:

A part of the NW 1/4 of the NE 1/4 of Section 29, T-7-N, R-18-W, Atkins, Pope County, Arkansas, more particularly described as follows:

Commencing at the NE Corner of said NW 1/4 of the NE 1/4; thence S 0 deg 40' 45" W, 470.00 ft.; thence N 89 deg 17' 00" W, 503.50 ft. to the Point of Beginning; thence S 0 deg 43' 00" W, 122.50 ft.; thence N 89 deg 17' 00" W, 366.30 ft. to a point on the East right-of-way of Avenue 3 SE; thence N 0 deg 09' 50" W, along said right-of-way, 122.52 ft.; thence S 89 deg 17' 00" E, 368.20 ft. to the Point of Beginning. Containing 1.03 acres, more or less. Subject to any easements of record.

is hereby rezoned from R-1 to R-2 by amendment to Atkins Municipal Code, Chapter 14.04 of the City of Atkins, Arkansas.

SECTION II. An emergency is hereby declared to exist and this ordinance being necessary for the immediate protection of the public peace, health and safety, shall take effect immediately upon its passage and approval.

Date this 14th day of November, 1995.

Don Ezell
DON EZELL, MAYOR

ATTEST:
Brenda Graves
BRENDA GRAVES, CITY CLERK

(Charles & Carol Moore)