

**CABLE SYSTEM ORDINANCE**

**FOR**

**THE CITY OF PASCAGOULA, MISSISSIPPI**

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE RENEWING A FRANCHISE TO CABLE ONE, INC., D/B/A SPARKLIGHT, ITS SUCCESSORS OR ASSIGNS (“SPARKLIGHT”) TO OWN, CONSTRUCT, OPERATE AND MAINTAIN A CABLE SYSTEM IN, UPON, ALONG, ACROSS, ABOVE, OVER, AND UNDER STREETS, ALLEYS, EASEMENTS, OPEN AREAS, PUBLIC WAYS AND PUBLIC PLACES, NOW LAID OUT OR DEDICATED, AND ALL EXTENSIONS THEREOF AND ADDITIONS THERETO, IN THE CITY OF PASCAGOULA, MISSISSIPPI: SETTING FORTH CONDITIONS ACCOMPANYING THE RENEWAL OF FRANCHISE; AND PROVIDING FOR THE REGULATION AND USE OF SAID SYSTEM**

**WHEREAS**, it is the intent of the City of Pascagoula to renew Cable One Inc.’s cable system franchise on the terms and conditions set forth in this ordinance:

**NOW, THEREFORE, BE ORDAINED BY THE CITY COUNCIL OF THE CITY OF PASCAGOULA, MISSISSIPPI:**

**SECTION 1:** Short Title

This ordinance shall be known and may be cited as the Cable One, Inc. dba Sparklight Franchise Renewal Ordinance.

**SECTION 2. DEFINITIONS**

For purposes of this Ordinance the following terms, phrases, words, abbreviations, and their derivations shall have the same meaning given herein.

A. Cable System or System shall mean the Company's system of antennas, cables, amplifiers, towers, microwave links, waveguides, satellites, or any other conductors, converters, equipment or facilities designed and constructed for the purpose of producing, receiving, amplifying, storing, processing or distributing audio, video, digital, or other forms of electronic, electrical, or light signals capable of being transmitted by wire, cable, fiber optics or radio to subscribing members of the public in the City who pay for such services.

B. City shall mean the City of Pascagoula, Mississippi and all territory within its governmental authority.

C. City Council shall mean the present governing body of the City or any successor to the legislative powers of the present government body.

D. Company shall mean Cable One, Inc., d/b/a Sparklight, a Delaware Corporation.

E. Federal Communications Commission or FCC shall mean the agency as presently constituted by the U.S. Congress or any successor agency authorized by the Congress to regulate cable systems.

F. Gross Revenues shall mean all revenue derived by the Company, its affiliates or subsidiaries from subscription to its cable services in the City, but shall not include revenue from cable advertising, sale or exchange of assets or equipment, cable modem services, telecommunications services, any taxes on services furnished by the Company and imposed directly upon a subscriber or user by the state, county, or other governmental unit and collected by the Company on behalf of the said governmental unit, or any amounts collected directly from subscribers to satisfy the franchise fee requirements of this Ordinance.

G. Person shall mean any person, firm, partnership, association, corporation, company, or organization of any kind.

H. Regular Subscriber Service shall mean that service regularly provided by the Company to all subscribers, without regard to the technology used to deliver the cable service, including Internet protocol technologies.

I. Street shall mean the surface of and the space above and below any public street, road, highway, freeway, lane, path, public way, or place, alley, court, boulevard, parkway, drive, or other easement now or hereafter held by the City for the purpose of public travel and shall include other easements or rights of way as shall be now held or hereafter by the City which shall, within their proper use and meaning, entitle the City and the Company to the use thereof for the purposes of installing or transmitting cable system transmission over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments, and other property as may be ordinarily necessary and pertinent to a cable system.

### **SECTION 3. GRANT OF AUTHORITY**

The City hereby grants to Sparklight, a nonexclusive right, privilege, and franchise to construct, operate, and maintain a cable system in, upon, across, above over and under, streets, alleys, easements, open areas, public ways, and public places now laid out or dedicated in the City and upon annexation of any territory to the City, this Franchise shall extend to the territory so annexed.

### **SECTION 4. TERM AND DURATION OF FRANCHISE**

(a) Term. The term of the Franchise shall be renewed October 21, 2023 and be

for a period of (15 years) until October 20, 2038, subject to the conditions and restrictions herein provided.

(b) Surrender. The Company may surrender this Franchise at any time upon filing with the City a written notice of its intention so to do, at least six (6) months before the surrender date. All the rights and privileges and all of the obligations, duties, and liability of the Company under this Ordinance, except as to the extent previously accrued hereunder, shall terminate on the surrender date specified in such notice.

#### **SECTION 5. RENEWAL PROCEDURES**

This Franchise may be renewed by the City in accordance with the Cable Acts of 1984 and 1992, and/or any future relevant laws.

#### **SECTION 6. TRANSFER OF OWNERSHIP OR CONTROL**

(a) Assignment or Transfer. This Franchise shall not be assigned or transferred without the prior approval of the City Council of the City of Pascagoula which shall not be withheld unreasonably. The purchaser, assignee, or transferee must demonstrate to the satisfaction of the City Council of the City of Pascagoula, its financial and technical ability to operate and maintain the System.

(b) Notice. The Franchisee under this document shall give the City of Pascagoula written notice of any proposed purchaser, assignee, or transferee of this Franchise and should the City fail to call a meeting of the City Council to consider and act upon such proposed sale, assignment or transfer within sixty days following receipt of written notice of such proposed sale, transfer, on assignment, the City shall be deemed to have consented to the proposed sale, transfer, or assignment.

#### **SECTION 7. FRANCHISE PAYMENT**

(a) Franchise Fee. For the use of the streets and other facilities of the City in the operation of the System, and in lieu of all licenses, permits, taxes, and other similar fees, the Company shall pay to the franchising authority monthly a sum equal to five percent (5%) of the gross revenues for cable services. Payment for each month's fee shall be no later than forty-five (45) days after the last day of the month for which payment is made.

(b) Inspection. The City shall have the right to inspect the Company's income records, and the right to audit and to recompute any amounts determined to be payable under this Ordinance; provided, however, that such audit shall take place within twelve (12) months following the close of each of the Company's fiscal years. Any additional amount due to the City as a result of the audit shall be paid within thirty (30) days following written notice to the Company by the City which notice shall include a copy of the audit report.

## **SECTION 8. BOOKS AND RECORDS**

(a) **Books and Records.** The Company shall keep a full and accurate set of books showing the amount of gross revenues received by the Company from the area governed by the City, based upon which the franchise payments to be made hereunder are computed.

(b) **Installation Map.** The Company shall at all times maintain a complete working map showing the exact location of all the equipment of the System installed or in use in streets and other public places in the City, and such map shall be accessible at normal business hours to the City for all proper purposes.

(c) **Examination of Books and Records.** At all reasonable times, the Company shall permit the City, or its duly authorized representatives, to examine all public books and records of the Company concerning operations of its cable system in the area governed by the City, and to examine any and all maps and any other records kept or maintained by the Company which deal with the operations and affairs of the Company with respect to this Franchise.

## **SECTION 9. LIABILITY INSURANCE AND INDEMNIFICATION**

(a) **Insurance:** At all times during the term of the Franchise Agreement granted hereunder, the Grantee shall, at its own expense, maintain in full force and effect a general comprehensive liability insurance policy protecting the City against liability for loss or damage for personal injury, death and property damage occasioned by the negligence or default of the Grantee under the Franchise with a maximum liability limit of One Million Dollars (\$1,000,000.00). Said policy shall name the City as an additional insured and shall contain a provision that the policy or policies are not cancelable except upon service of a written notice of cancellation or reduction in coverage of said policy to the City within thirty (30) days in advance of the effective date thereof. Insurers shall have no right of recovery against the City, it being the intention that the insurance policies shall protect the City, and the City shall be primarily covered for all losses covered by the policies. Companies issuing the insurance policies shall have no recourse against the City for payment of any premiums or assessment, being that all are negotiated at the sole risk of the Company.

(b) **Indemnification:** Grantee shall, at its sole expense, indemnify, defend, and hold harmless the City, its officers, boards, commissions, and employees against any and all claims, suits, actions, liability, and judgments for damages, as follows:

1. To persons or property arising out of or through the acts or omissions, its servants, agents, or employees.
2. Arising out of any claim for invasion of the rights of privacy, for defamation of any person, firm or corporation, or the violation of infringement of any copyright, trademark, trade name, service mark or patent, or of any other right of person, firm or corporation.
3. Arising out of Grantee's failure to comply with the provisions of any federal, state, or

local statute, ordinance, or regulation applicable to Grantee in its businesses hereunder.

(c) Construction and Reclamation Bond. The entity which installs the Company's cable and related equipment into the public ways of the City shall obtain and maintain, at its sole cost and expense, throughout the construction or installation period, and shall file with the City Clerk, a Construction and Reclamation Bond with a bonding company authorized to business in the State of Mississippi, and found reasonably acceptable by the City, in the amount of One Hundred Thousand Dollars (\$100,000.00) in order to safeguard the City from damage done as a result of negligent construction or installation of Company's System. The Company shall provide certification of this Construction and Reclamation Bond to the City at least ten (10) days prior to the commencement of the construction or installation of Company's System into the public right of ways of the City. The bond shall not be permitted to expire until the construction and installation of the cable and related equipment is completed. The Construction and Reclamation Bond shall provide, but not be limited to, the following condition:

there shall be recoverable by the City of Pascagoula, jointly and severally from the principal and the surety, any and all damages, losses or costs suffered by the City of Pascagoula resulting from the negligent construction or installation of Company's cable and related equipment in the City of Pascagoula, Mississippi.

The rights reserved to the City with respect to the Construction and Reclamation Bond 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 Construction and Reclamation Bond shall affect any other right the City may have.

Prior to City's attachment to such Construction and Reclamation Bond, City shall notify Company and/or Company's contractor of any such damage and Company shall be given a reasonable amount of time and right to repair.

(d) Performance Bond. Within one (1) month of the effective date of this Franchise, the Company shall obtain and maintain, at its sole cost and expense, and file with the City Clerk, a Performance Bond with a bonding company authorized to do business in the State of Mississippi and found acceptable by the City, the approval of which shall not be unreasonably withheld, in the amount of Fifty Thousand Dollars (\$50,000.00), in order to secure the Company's performance of its obligations and faithful adherence to all requirements of this Franchise. The Performance Bond shall provide, but not be limited to, the following condition:

there shall be recoverable by the City of Pascagoula, jointly and severally from the principal and the surety, any and all damages, losses or costs suffered by the City of Pascagoula resulting from the failure of the Company to: (a) keep the System in good repair; or (b) remove its cables or related equipment from the public ways of the City of Pascagoula, upon the City's request for their removal, either at the time of the expiration of the franchise, upon the Company's abandonment of said cable and related equipment, or for any other reason contemplated by this Agreement.

The Performance Bond shall also contain the following endorsement:

It is hereby understood and agreed that this instrument may not be cancelled nor any intention not to renew by exercised until sixty (60) days after receipt by the City of Pascagoula by registered mail of written notice of said intent.

**SECTION 10. CONDITIONS OF STREET OCCUPANCY**

(a) Location of Poles and Fixtures. The Company shall not place poles or other fixtures where the same will interfere with any gas, electric, or telephone fixtures, water hydrant, mains or public sewer lines, and all such poles or other fixtures placed in any street shall be placed in the right-of-way between the roadway and the property as directed by the City. If public funds are available to any other company using such street, easement, or right of way for the purpose of defraying the cost of installing or improving a cable system, such funds shall also be made available to Company.

(b) Occupancy of Streets and Right of Ways. Prior to performing any excavation, digging, or directional boring in a public street or right of way, the Company shall obtain permits from the City's Planning and Building Department and from the City Engineer. The Company shall comply with the terms or conditions included in any such permit. Further, at least seventy-two (72) hours prior to commencing excavation, digging, or directional boring in a public street or right of way, the Company shall provide written notice to the City Engineer of the Company's intent to commence such work. The failure to comply with these terms and conditions shall constitute a breach of this Franchise. In the event the Company breaches or otherwise fails to comply these requirements, the City may, in addition to any other remedy it may possess under law and this Franchise, assess liquidated damages of \$5,000.00 to the Company. The Company shall remit payment to the City within thirty (30) days of receipt of written notice of the assessment of such liquidated damages. Further, unless there is an emergency situation, at least seventy-two (72) hours prior to commencing excavation, digging, or directional boring in a public street or right of way, the Company shall provide written notice by e-mail to the City Engineer of the Company's intent to commence such work. In the event of an emergency, the Company will provide notice by e-mail or otherwise to the City Engineer of such activities prior to commencing such work. Failure to provide notice shall result in liquidated damages of \$2,500.00.

(c) Restoration. The Company shall, upon completion of any work requiring the opening of any street or public place, restore the same, including the paving and its foundations, to as good condition as formerly, and in a manner and quality approved by the City, and shall exercise reasonable care to maintain the same thereafter in good condition. Said work shall be performed with due diligence, and if the Company shall fail to perform and complete the work within a reasonable time, to remove all dirt and rubbish and to put the street or public place in good condition, the City shall have the right to put the street or public place in good condition at the expense of the Company; and the Company shall upon demand, pay to the City the cost of such work done for or performed by the City.

(d) Damage to Utilities. If, during the course of the Company's performance of work related to the cable system, the Company or its contractors disturb utilities owned by the City (including, but not limited to, water lines, sewer lines, and storm drains), the Company shall, at its expense, replace, repair, or otherwise restore the utilities to a condition comparable to the condition of the utilities existing immediately prior to such disturbance to the satisfaction of the City. The work done under this provision, and the replacement, repair, and restoration of utilities, must be completed within the dates specified in any permits authorizing the work. The Company shall perform the work according to the standards and with the materials specified or approved by the City Engineer. If Company fails to do so by the dates specified in the permits referenced above, the City may, in its sole and absolute discretion, perform any replacement, repair, or restoration to its utilities when disturbed by the Company or its contractors, and the Company agrees to fully reimburse the City for any and all costs or expenses incurred for such replacement, repair, or restoration. The Company shall complete such reimbursement to the City within thirty (30) days of receiving a written demand from the City for such reimbursement. The Company's failure to reimburse the City as established herein shall constitute a breach of this Franchise. In the event of such a breach, the City may, in addition to exercising any other right it possesses under law and this Franchise, file litigation against the Company for the reimbursement required herein. In the event the City files such litigation and is the prevailing party in such litigation, the Company shall pay, in addition to any damages, the City's costs, expenses, and reasonable attorneys' fees incurred in relation to said litigation. The Company and City agree and acknowledge that the litigation referenced in this section shall be filed in a court of competent jurisdiction in Jackson County, Mississippi, and the Company consents to jurisdiction and venue in such court.

(e) Relocation of Facilities. Whenever the City shall grade, regrade, or change the line of any street or public place or construct or reconstruct any sewer, water, or drainage system therein and shall, with due regard to reasonable working conditions, order the Company to relocate or protect its wires, conduits, cables, and other property located in said street or public place, the Company shall relocate or protect its facilities at its own expense. The City shall give the Company reasonable notice of plans to grade, regrade, or change the line of any street or public place or to construct or reconstruct any sewer or water system therein.

(f) Protection of Facilities. Nothing contained in this section shall relieve any person, or corporations, from liability arising out of the failure to exercise reasonable care to avoid injuring the Company's facilities while performing any work connected with grading, regrading, or changing the line of any street or public place or with the construction or reconstruction of any sewer or water system.

(g) Notice of Improvements. The City shall give the Company reasonable written notice of plans for street improvements where paving or resurfacing of a permanent nature is involved that would affect the Company's facilities, which notice shall contain the nature and character of the improvements, the streets upon which the improvements are to be made, the extent of the improvements and the time when the City is going to start the work. The notice shall be given to the Company a sufficient length of time, considering reasonable working conditions, in advance of the actual commencement of the work to permit the Company to make any addition, alterations, or repairs



to its facilities deemed necessary.

(h) Facilities Not Hazardous to Public. All wires, conduits, cables, and other property and facilities shall be so located, constructed, installed, and maintained as not to endanger or unnecessarily interfere with the usual and customary trade, traffic, and travel upon the streets and public places of the City. The Company shall keep and maintain all of its property in good condition, order, and repair, so that the same shall not menace or endanger the life or property of any person. The Company shall keep accurate maps and records of all its facilities and furnish copies of such maps and records as requested by the City. Adherence to the City requirements for placement of Company wires, conduits, cables and other property and facilities shall be deemed proof of compliance with this section.

(i) Moving of Buildings. The Company shall, on the request of any person holding a building moving permit, temporarily raise or lower its wires to permit the moving of buildings. The expense of such temporary removal, raising or lowering of wires shall be paid by the person requesting the same, and the Company shall have the authority to require such payment in advance.

(j) Trimming of Trees and Shrubbery. The Company may only perform trimming, cutting, or removal of trees or shrubbery in the City's streets and right of ways after obtaining a permit from the City's Planning Director to do so after giving that official ten (10) days written notice of its request to perform such work. Any work so performed shall be limited to the work specified in the Company's permit application. The Company shall reasonably compensate the City for any damages, in such amounts as determined by the City, caused by trimming, cutting or removing trees or shrubbery, or shall, at its own expense, replace all trees or shrubs damaged as a result of any construction, installation, repair or maintenance of the system undertaken by the Company to the satisfaction of the City.

## **SECTION 11. MAINTENANCE AND REPAIRS.**

(a) Maintenance of System. The Company shall erect and maintain all parts of the system in good condition throughout the entire franchise period.

(b) Interruption of Service. Whenever it is necessary to shut-off or interrupt service for the purpose of making repairs, adjustments, or installations, the Company shall use its best efforts to do so during periods of minimum use of the system by subscribers. Unless such interruption is unforeseen and immediately necessary, the Company shall give subscribers reasonable notice of any planned interruption of service. All costs incurred in repairing and correcting an interruption of service shall be borne by the Company; provided, however, that nothing herein shall prevent the Company from recovering the costs incurred from persons responsible for occurrences or acts which result in damage to the cable system.

## **SECTION 12. SERVICE.**

(a) Construction. Company has fully constructed an operational cable system currently serving the City.

(b) Availability. Where technically and economically reasonable, video service shall be available to all areas within the corporate limits of the City which have a minimum of sixty (60) dwelling units per street mile.

(c) Extensions. All applicants desiring cable antenna service at a location greater than 300 feet from the nearest distribution line shall pay to the Company its actual costs of labor and materials for said installation.

(d) Additional Territory. In the event additional adjacent territory is incorporated within the City's limits, by annexation or otherwise, the Company's rights and duties under this Ordinance shall be deemed to include such additional territory.

## **SECTION 13. UNAUTHORIZED PRACTICES AND PENALTIES.**

(a) Franchise Required. From and after the effective date of the Ordinance, and unless otherwise permitted by the City, it shall be unlawful for any person to establish, operate, or to carry on the business of distributing to any person in the City any video signals or radio signals by means of a cable system unless a franchise therefore has first been obtained pursuant to the provisions of a City or State Ordinance, and unless such franchise is in full force and effect.

(b) Franchise Required for Use of Right-of-Way. Unless otherwise permitted by the City, it shall be unlawful for any person to construct, install, or maintain within any public street in the City, or within any other public property of the City, or within any privately owned area within the City which has not yet become a public street but is designated or delineated as a proposed public street on any tentative subdivision map approved by the City, any equipment or facilities for distributing any video signals or radio signals through a cable system, unless a franchise authorizing use of such street, property, or areas has first been obtained pursuant to provisions of a City Ordinance, and unless such franchise is in full force and effect.

(c) Unauthorized Connections Prohibited. It shall be unlawful for any person, firm, or corporation to make any unauthorized connection, whether physically, electrically, acoustically, inductively, or otherwise, with any part of a franchised cable system within this City for the purpose of taking or receiving television signals, radio signals, pictures, programs, data, or sound.

(d) Tampering with System Equipment Prohibited. It shall be unlawful for any person, without the consent of the Company, to willfully tamper with, remove, or injure any cables, wires, or equipment used for distribution of television signals, radio signals, pictures, programs, or sound.

(e) Penalties for Violation. The violation of any provision of Section 12 of this Ordinance is a misdemeanor, and under federal and state law the same is punishable by fine and incarceration. Company and City agree to cooperate in the prosecution of offenders.

#### **SECTION 14. COMPLIANCE WITH APPLICABLE LAWS.**

The Company shall at all times comply with all laws, ordinances, and regulations of the federal, state and City governments or any administrative agencies thereof. If any federal or state law or regulation shall be in conflict with the terms of this Franchise, or any ordinance of the City, then as soon as possible following knowledge thereof, the Company shall notify the City of the point of conflict and the City and Company shall amend the Franchise as appropriate to the extent allowed by federal and state law.

#### **SECTION 15. BREACH AND TERMINATION.**

(a) Breach. In addition to all other rights and powers retained by the City under this Franchise or otherwise, the City reserves the right to terminate the Franchise and all rights and privileges of the Company hereunder in the event of a substantial breach of its terms and conditions. A substantial breach by Company shall include the following:

- (1) Violation of any material provision of the Franchise or any material rule, order, regulation, or determination which the City is authorized to make under the terms of this Franchise.
- (2) Attempt to evade any material provision of the Franchise or attempts to practice any fraud or deceit upon the City or its subscribers or customers.
- (3) Material misrepresentation of fact in the application for or negotiation of the Franchise.

(b) Excuse for Breach. The foregoing shall not constitute a substantial breach if the violation occurs, but it is without fault of the Company or occurs as a result of circumstances beyond its control.

#### **SECTION 16. RULES AND REGULATIONS.**

(a) Subject to the laws of the State of Mississippi, in addition to the inherent powers of the City to regulate and control this Franchise, and those powers expressly reserved by the City herein, the right and power is hereby reserved by the City to promulgate such additional regulations or ordinances as it shall find necessary in the exercise of its lawful powers and in furtherance of the terms and conditions of this Franchise. The Company agrees to comply with any such regulations and ordinances promulgated by the City.

(b) The City may also adopt such regulations at the request of the Company upon application.

**SECTION 17. FAILURE OF CITY TO ENFORCE THIS FRANCHISE, NO WAIVER OF THE TERMS THEREOF.**

The Company shall not be excused from complying with any of the terms and conditions of this Franchise by any failure of the City upon any one or more occasions to insist upon or to seek compliance with any such terms or conditions.

**SECTION 18. SEVERABILITY.**

If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held illegal, invalid, or unconstitutional by any court of competent jurisdiction or the FCC, such decision shall not affect the validity of the remaining portions. The invalidity of any such portion of this Ordinance shall not abate, reduce, or otherwise affect any consideration or other obligation required by the City of the Company under the Franchise granted.

**SECTION 19. NOTICE.**

All notices called for in this Franchise shall be written notice and will be considered as being completed notice when mailed by registered mail or certified mail return receipt requested and addressed to the party to be notified as shown below:

To City: City of Pascagoula  
Attn: City Manager  
603 Watts Ave.  
PO Drawer 908  
Pascagoula, MS 73554

To Company: Cable One, Inc.  
Attn: General Counsel  
210 E. Earll Drive  
Phoenix, Arizona 85012

With Copy to: Sparklight  
Attn: General Manager  
5100 MacPhelah St.  
Pascagoula, MS 39567

**SECTION 20. GOVERNING LAW AND VENUE.**

This Franchise shall be deemed to have been made in the State of Mississippi, and the validity of the same, its construction, interpretation, enforcement, and the rights of the parties hereunder, shall

be determined under, governed by and construed in accordance with the substantive laws of the State of Mississippi, without giving effect to any choice of law provisions arising thereunder. Venue and jurisdiction for any dispute between the parties to this Franchise shall be in the appropriate state court located in Jackson County, Mississippi, to the exclusion of all other venues.

**SECTION 21. ACCEPTANCE BY THE COMPANY.**

The renewal of this Franchise and its terms and provisions shall be accepted by signature below of Company's authorized representative.

**ADOPTED AND APPROVED** this \_\_\_\_\_ day of September, 2023.

**CITY OF PASCAGOULA, MISSISSIPPI**

By: \_\_\_\_\_

Mayor Dr. Jay Willis

**ATTEST:**

\_\_\_\_\_  
Karen Kennedy, City Clerk

The terms of this Ordinance and Franchise are accepted and agreed to by Cable One, Inc., d/b/a Sparklight by its authorized representative below.

**CABLE ONE, INC. D/B/A SPARKLIGHT**

By: Donna Chatman

Donna Chatman  
SouthEast Division Vice President