

ORDINANCE NO.94- 201

An Ordinance of the City of Magnolia, Texas  
Granting a Franchise to TCI TKR OF HOUSTON, INC.  
for the Construction and Operation of a Cable System

The City of Magnolia, having determined that the financial, legal and technical ability of TCI TKR of Houston, Inc., is reasonably sufficient to provide services, facilities, and equipment necessary to meet the future cable-related needs of the community, does hereby ordain as follows:

ARTICLE I

SECTION 1  
Definition of Terms

1.1 Terms. For the purpose of this Ordinance, the following terms, phrases, words, and abbreviations shall have the meanings ascribed to them below. When not inconsistent with the context, words in the plural number include the singular number, and words in the singular number include the plural number:

- a. "Affiliate" means an entity which owns or controls, is owned or controlled by, or is under common ownership with Grantee.
- b. "Basic Cable" is the tier of service regularly provided to all subscribers that includes the retransmission of local broadcast television signals.
- c. "Cable Act" means the Cable Communications Policy Act of 1984, as amended.
- d. "Cable Service" means (i) the one-way transmission to subscribers of video programming or other programming services, and (ii) subscriber interaction, if any, which required for the selection of such Video Programming or any other lawful communication service.
- e. "Cable System" means a facility, consisting of a set of closed transmission paths and associated signal generation reception, and control equipment or other communication equipment that is designed to provide Cable Service and other service to Subscribers.

f. "FCC" means Federal Communications Commission or successor governmental entity thereto.

g. "Franchise" shall mean the initial authorization, or renewal thereof, issued by the Franchise Authority, whether such authorization is designated as a franchise, permit, license, resolution, contract, certificate, or otherwise, which authorizes construction and operation of the Cable System for the purpose of offering Cable Service or other service to Subscribers.

h. "Franchise Authority" means the City of Magnolia, Texas or the lawful successor, transferee, or assignee thereof.

i. "Grantee" means TCI TKR OF HOUSTON, INC. or the lawful successor, transferee, or assignee thereof, with the consent as required in this agreement.

j. "Gross Revenue" means the monthly Cable Service revenue received by Grantee from Subscribers of the Cable System inclusive of basic service revenues, expanded basic revenues, pay service revenues, pay-per-view revenues, revenues received from installation, revenues received from the sale or rental of equipment, local advertising revenues, and revenues from the leasing of channels; provided, however, that such phrase shall not include: (i) revenues received from any national advertising carried on the Cable System: (ii) any taxes on Cable Service which are imposed on any Subscriber thereof by any governmental unit or agency, and which are collected by the Grantee on behalf of such governmental unit or agency.

k. "Person" means an individual, partnership, association, joint stock company, trust corporation, or governmental entity.

l. "Public Way" shall mean the surface of, and the space above and below, any public street, highway, freeway, bridge, land path, alley, court, boulevard, sidewalk, parkway, lane, public way, drive, circle, or other public right-of-way, including, but not limited to, public utility easements, dedicated utility strips, or rights-of way dedicated for compatible uses and any temporary or permanent fixtures or improvements located thereon now or hereafter held by the Franchise Authority in the Service Area which shall entitle the Franchise Authority and Grantee to the use thereof for the purpose of installing, operating, repairing, and maintaining the Cable System. Public Way shall also mean any easement now or hereafter held by the Franchise Authority within the Service Area for the purpose of public travel, or for utility or public service use dedicated for compatible uses, and shall include other easements or rights-of-way as shall within their

proper use and meaning entitle the Franchise Authority and the Grantee to the use thereof for the purposes of installing or transmitting Grantee's Cable Service or other service over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments, and other property as may be ordinarily necessary and pertinent to the Cable System.

m. "Service Area" means that area which is presently served in addition to any applicable areas under Section 3.9.

n. "Service Tier" means a category of Cable Service or other services, provided by Grantee and for which a separate charge is made by Grantee.

o. "Subscriber" means a person or user of the Cable System who lawfully receives Cable Services or other service therefrom with Grantee's express permission.

p. "Video Programming" means programming provided by, or generally considered comparable to programming provided by, a television broadcast station.

## SECTION 2 Grant of Franchise

2.1 Grants. The City hereby grants to Grantee a nonexclusive Franchise which authorizes the Grantee to construct and operate a cable system and offer Cable Service and other services, along, among, upon, across, above, over under, or in any manner connected with Public Ways within the Service Area and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain, or retain in, on, over, under, upon, across, or along any Public Way and all extensions thereof and additions thereto, such poles, wires, cables, conductors, ducts, conduits, vaults, manholes, pedestals, amplifiers, appliances, attachments and other related property or equipment as may be necessary or appurtenant to the Cable System.

2.2 Term. The Franchise granted pursuant to this Ordinance shall be for an initial term of fifteen (15) years from the effective date of the Franchise as set forth in Section 2.3, unless otherwise lawfully terminated in accordance with the terms of this Ordinance.

2.3 Acceptance; Effective Date. Grantee shall accept the Franchise granted pursuant hereto by signing this Ordinance and filing same with the City Clerk or other appropriate official or agency of the Franchise Authority within sixty (60) days after the passage and final adoption of this Ordinance. Subject to the acceptance by Grantee, the effective date of this Ordinance shall be the day of its passage.

2.4 Favored Nations. In the event the Franchise Authority enters into a franchise, permit, license, authorization, or other agreement of any kind with any other person or entity other than Grantee to enter into the Franchise Authority's streets and Public Ways for the purpose of constructing or operating a Cable System or providing to any part of the service area, the material provisions thereof shall be reasonably comparable to those contained herein, in order that one operator not be granted an unfair competitive advantage over another, and to provide all parties equal protection under the law.

### SECTION 3 Standards of Service

3.1 Conditions of Street Occupancy. All transmission and distribution structures, poles, other lines, and equipment installed or erected by the Grantee pursuant to the terms hereof shall be located so as to cause a minimum of interference with the proper use of Public Ways and with the rights and reasonable convenience of property owners who own property that adjoins any of said Public Ways.

3.2 Restoration of Public Ways. If during the course of Grantee's construction, operation, or maintenance of the Cable System there occurs a disturbance of any Public Way by Grantee, it shall, at its expense, replace and restore such Public Way to a condition reasonably comparable to the condition of the Public Way existing immediately prior to such disturbance. Restoration of Public Way shall be considered complete and accepted by the City upon final inspection and written notice to Grantee of City's acceptance. Such acceptance not to be unreasonably withheld.

3.3 Relocation at Request of Franchise Authority. Upon its receipt of reasonable advance notice, not to be less than five (5) business days, the Grantee shall, at its own expense, protect, support, temporarily disconnect, relocate in the Public Way, or remove from the Public Way, any property of the Grantee when lawfully required by Franchise Authority by reason of traffic conditions, public safety, street abandonment, freeway and street construction, change or establishment of street grade, installation of sewers, drains, gas or water pipes, or any other type of structures or improvements by the Franchise Authority; but, the Grantee shall in all cases have the right of abandonment of its property. If public funds are available to any company using such street, easement, or right-of-way for the purpose of defraying the cost of any of the foregoing, such funds shall also be made available to the Grantee.

3.4 Relocation at Request of Third Party. The Grantee shall, on the request of any person holding a building moving permit issued by the Franchise Authority, temporarily raise or lower its wires to permit the moving of such building, provided: (a) the expense of

such temporary raising or lowering of wires is paid by said person, including, if required by the Grantee, making such payment in advance; and (b) the Grantee is given not less than ten (10) business days advance written notice to arrange for such temporary wire changes.

3.5 Trimming of Trees and Shrubbery. The Grantee shall have the authority to trim trees or other natural growth overhanging any of its Cable System in the Service Area so as to prevent branches from coming in contact with the Grantee's wires, cables, or other equipment.

3.6 Use of Grantee's Equipment by Franchise Authority. Subject to any state or federal regulations or tariffs, the Franchise Authority shall have the right to make additional use, for any public purpose, of any poles or conduits controlled or maintained exclusively by or for the Grantee in Public Way; provided that: (a) such use by the Franchise Authority does not interfere with a current or future use by the Grantee; (b) the Franchise Authority holds the Grantee harmless against and from all claims, demands, costs, or liabilities of every kind and nature whatsoever arising out of such use of said poles or fees and costs; and (c) at Grantee's sole discretion, the Franchise Authority may be required to pay Grantee's increased cost, if any, associated with Franchise Authority's use of such poles, conduit, or equipment.

3.7 Safety Requirements. Construction, installation, and maintenance of the Cable System shall be performed in an orderly and workmanlike manner. All such work shall be performed in substantial accordance with applicable FCC or other federal, state, and local regulations. The Cable System shall not unreasonably endanger or interfere with the safety of persons or property in the Service Area.

3.8 Aerial and Underground Construction. In those areas of the Service Area where all of the transmission or distribution facilities of the respective public utilities providing telephone communications and electric services are underground, the Grantee likewise shall construct, operate and maintain all of its transmission and distribution facilities underground; provided that such facilities are actually capable of receiving Grantee's cable and other equipment without technical degradation of the Cable System's signal quality. In those areas of the Service Area where the transmission or distribution facilities of the respective public utilities providing telephone communications, and electric services are both aerial and underground, Grantee shall have the sole discretion to construct, operate, and maintain all of its transmission and distribution facilities, or any part thereof, aerially or underground. Nothing contained in this Section 3.8 shall require Grantee to construct, operate, and maintain underground any ground-mounted appurtenances such as Subscriber taps, line extenders, system passive devices (splitters,

directional couplers), amplifiers, power supplies, pedestals, or other related equipment. Notwithstanding anything to the contrary contained in this Section 3.8, in the event that all of the transmission or distribution facilities of the respective public utilities providing telephone communications and electric services are placed underground after the effective date of this Ordinance, Grantee shall only be required to construct, operate, and maintain all of its transmission and distribution facilities underground if it is given reasonable notice and access to the public utilities facilities at the time that such are placed underground.

3.9 Required Extensions of Service. The Cable System, as constructed as of the date of the passage and final adoption of the Ordinance, substantially complies with the material provisions hereof. Grantee is hereby authorized to extend the Cable System as necessary, as desirable, or as required pursuant to the terms hereof within the Service Area. Whenever Grantee shall receive a request for service from at least fifteen (15) Subscribers within 1320 cable-bearing strand feet (one quarter cable mile) of its trunk or distribution cable, it shall extend its Cable System to such Subscribers at no cost to said Subscribers for system extension, other than the usual connection fees for all Subscribers; provided that such extension is technically feasible, or as provided for under Section 3.10 of this Ordinance.

3.10 Subscriber Charges for Extensions of Service. No Subscriber shall be refused service arbitrarily. However, for unusual circumstance, such as a Subscriber's request to locate his cable drop underground, existence of more than one hundred fifty (150) feet of distance from distribution cable to connection of service to Subscribers, or a density of less than fifteen (15) Subscribers per 1320 cable-bearing strand feet of trunk or distribution cable, Cable Service or other service may be made available on the basis of a capital contribution in aid of construction, including cost of material, labor, and easements. For the purpose of determining the amount of capital contribution in aid of construction to be borne by Grantee and Subscribers in the area in which Cable Service may be extended, Grantee will contribute an amount equal to the construction and other costs per mile, multiplied by a fraction whose numerator equals the actual number of potential Subscribers per 1320 cable-bearing strand feet of its trunks or distribution cable, and whose denominator equals fifteen (15) Subscribers. Potential Subscribers will bear the remainder of the construction and other cost on a prorata basis. Grantee may require that the payment of the capital contribution in aid of construction borne by such potential Subscribers be paid in advance.

3.11 Service to Public Buildings. The Grantee shall provide without charge one (1) outlet of Basic Service to the Franchise Authority's office building(s), fire station(s), police station(s), and public school building(s) that are passed by its Cable System.

The outlets of Basic Service shall not be used to distribute or sell Cable Services in or throughout such buildings; nor shall such outlets be located in common or public areas open to the public. Users of such outlets shall hold Grantee harmless from any and all liability or claims arising out of their use of such outlets, including, but not limited to, those arising from copyright liability. Notwithstanding anything to the contrary set forth in this Section 3.11, the Grantee shall not be required to provide an outlet to such buildings where the drop line from the feeder cable to said buildings or premises exceeds one hundred fifty (150) cable feet, unless it is technically feasible and so long as it will not adversely affect the operation, financial condition, or market development of the Cable System to do so, or unless the appropriate governmental entity agrees to pay the incremental cost of such drop line in excess of 150 cable feet. In the event that additional outlets of Basic Service are provided to such buildings, the building owner shall pay the usual installation fees associated therewith, including, but not limited to, labor and materials. Upon request of Grantee, the building owner may also be required to pay the service fees associated with the provision of Basic Service and the additional outlets relating thereto.

3.12 Emergency Override. In the case of any emergency or disaster, the Grantee shall, upon request of the Franchise Authority, make available its facilities for the Franchise Authority to provide emergency information and instructions during the emergency or disaster period. The Franchise Authority shall hold the Grantee, its agents, employees, officers and assigns hereunder, harmless from any claim arising out of the emergency use of its facilities by the Franchise Authority, including, but not limited to, reasonable attorneys' fees and costs.

3.13 Interruption of Service.

A. The Grantee shall at all times maintain all parts of the Cable System in good condition and repair throughout the term of this agreement so as to provide services to all Subscribers on an uninterrupted basis, except as provided in this Section.

B. The Grantee shall promptly notify the Franchise Authority of any significant interruption on all channels in the operation of the Cable System. For the purposes of this Section, a "significant interruption on all channels in the operation of the System" shall mean any interruption of a duration of at least four (4) hours to at least five (5) percent of the Subscribers. The Grantee shall at all times keep an outage log in which all outages shall be regularly logged. The Franchise Authority shall have access to such log upon reasonable notice and at reasonable times, subject to right of privacy of Subscribers.

C. The 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. Except in an emergency necessitating a more expedited procedure, the Grantee may schedule an interruption of service for a period of more than four (4) hours during any twenty-four (24) hour period only after providing the Franchise Authority and affected Subscriber(s) forty-eight (48) hours prior notice via local newspaper and/or cablecast on all System's character generated channels of the proposed interruption.

1. For any programmed channel service interruption lasting twenty-four (24) hours or longer, from time of notification by affected Subscriber to Grantee, determined by Grantee not to be the Subscriber's fault, such Subscriber shall receive, upon request, one full day credit for each continuous twenty-four (24) hour service interruption on next applicable billing.

### 3.14 Service Standards.

A. Compliance with FCC Rule. Grantee shall comply with present and future rules and regulations of the FCC in connection with and relating to the operation of its Cable System.

B. Installations, Outages and Service Calls. Under normal operating conditions, each of the following three standards will be met no less than 95% of the time measured on an annual basis.

1. Standard installations will be performed within seven business days after an order has been placed. "Standard" installations are up to 125 feet from existing distribution system. (Excluding special marketing promotions.)

2. Excluding those situations beyond the control of the cable operator, the cable operator will respond to service interruptions promptly and in no event later than 24 hours. Other service problems will be responded to within 36 hours during the normal work week.

3. The appointment window alternatives for installations, service calls, and other installation activities will be (a) morning, (b) afternoon, or (c) all day during normal business hours. Additionally, based on community needs, Grantee will schedule supplemental hours during which appointments can be set.

C. Grantee will provide telephone assistance with a toll free number with a waiting time of no longer than four rings and of two minutes after the telephone is answered, under normal operating conditions. This standard shall be met not less than ninety (90%) percent of the time, measured on an annual basis.



SECTION 4  
Regulation by Franchise Authority

4.1 Franchise Fee.

A. Grantee shall pay to the Franchise Authority a franchise fee equal to five (5) percent of Gross Revenue (as defined in Section 1.1 of this Franchise) received by Grantee from the operation of the Cable System on a quarterly basis; (such fee being compensation to the City for the use of its property and administration of this Franchise which is not a tax; provided, however, that Grantee may credit against any such payments: (i) any tax, fee, or assessment of any kind imposed by Franchise Authority or other governmental entity on a cable operator, or Subscriber, or both, solely because of their status as such; (ii) any tax, fee or assessment of general applicability which is unduly discriminatory against cable operators or Subscribers (including any such tax, fee, or assessment imposed, both on utilities and cable operators and their services); and (iii) any other special tax, assessment, or fee such as a business, occupation, and entertainment tax. For the purpose of this section, the three (3) month period applicable under the Franchise for the computation of the franchise fee shall be the three-month periods ending March 31, June 30, September 30 and December 31, unless otherwise agreed to in writing by the Franchise Authority and Grantee. The franchise fee payment shall be due and payable sixty (60) days after the close of the preceding three-month period. Each payment shall be accompanied by a brief report from a representative of Grantee showing the basis for the computation. (In no event shall the franchise fee payments required to be paid by Grantee exceed five (5) percent of Gross Revenue received by Grantee in any 12- month period.)

B. The Franchise Authority may require Grantee to conduct, at Grantee's sole cost, a gross receipts examination by an independent certified public accountant on an annual basis. The Franchise Authority may select, at the Franchise Authority's sole cost, an independent certified public accountant to perform this examination.

C. Limitation of Franchise Fee Actions. The period of limitation for recovery of any franchise fee payable hereunder shall be five (5) years from the date on which payment by the Grantee is due. Unless within five (5) years from and after said payment due date the Franchise Authority initiates a lawsuit for recovery of such franchise fees in a court of competent jurisdiction, such recovery shall be barred and the Franchise Authority shall be estopped from asserting any claims whatsoever

D. Reviews. Subject to applicable laws, the Franchise Authority reserves the right to adopt rules and regulations controlling the procedures and subjects for periodic reviews and evaluations of the Grantee and the System to the extent that doing so will not materially affect Grantee's rights and obligations set out under this Ordinance. In the absence of any additional rules and regulations, the Grantee shall be subject to the procedures and subjects described in this Section 3.15(D). Periodic review sessions shall be scheduled within the thirty (30) days after the 6th and 12th anniversary dates of the effective date of the Franchise. The Franchise Authority may require, at its discretion, System performance evaluation sessions at any time during the term of the Franchise, but not more than one (1) time in any twelve month period, or as required by federal or state law. All evaluation sessions shall be published in the same way as a legal notice. To assist in its review and evaluation, the Franchise Authority may, at the Franchise Authority's expense, enlist an independent consultant to conduct an analysis of the System and its performance and to submit a report of such analysis to the Franchise Authority. Topics which may be discussed at any evaluation session may include, but shall not be limited to: Franchise fees, services, application of new technologies, system technical performance, access channels and related facilities and equipment, Subscriber complaints, privacy, amendments, subsequent legal development, including judicial and FCC rulings, and Grantee or Franchise Authority rules. During a review and evaluation by the Franchise Authority, the Grantee shall fully cooperate with the Franchise Authority and shall provide, subject to Section 5.2, without cost, such information and documents deemed reasonably necessary to the enforcement of the Franchise as the City Secretary may request.

E. System Enhancement. Upon passage of this Franchise with a term of at least fifteen (15) years, Grantee agrees to expand System channel capacity to at least sixty (60) channels. This channel capacity expansion will occur on or before the end of the sixth (6th) anniversary date of the effective date of this franchise.

F. Obscene Programming. In accordance with SEC 624(D) (1) of the Cable Act, Grantee shall not show programming that is obscene or otherwise unprotected by the Constitution of the United States.

G. Parental Lock. Grantee shall provide for sale or lease to any Subscriber who so requests, a converter that can be equipped with a parental lock, capable of locking or securing one channel or all channels.

against the Grantee relating to any such alleged deficiencies.

D. Five (5) Percent Fee on Other Cable or Communication Service Providers. Consistent with Section 622(h) of the Cable Act, the Franchise Authority intends to impose a fee equal to five (5) percent of the Gross Revenues of any person that distributes any service over the System for which charges are assessed to Subscribers. If the Grantee collects revenues for said person, then the Grantee shall collect said five (5) percent of the gross revenues of said person actually collected by the Grantee and shall pay said sum to the Franchise Authority along with the Grantee's payment pursuant to Section 4.1 (A), (B), and (C) of this agreement. If the Grantee does not collect the revenues for a person that distributes any service over the System, then the Grantee shall notify said person of this five (5) percent requirement and shall notify the Franchise Authority of said use of the System. Nothing in this Section 4.1 (D) shall require the Grantee to monitor payment of a fee to the Franchise Authority by any person or ensure the accuracy of any information provided to the Franchise Authority by any person. In no event, shall franchise fee payments required to be paid by Grantee exceed five (5) percent of Gross Revenues received by Grantee in any 12-month period.

4.2 Renewal of Franchise. The Franchise Authority and the Grantee agree that any proceedings undertaken by the Franchise Authority that relate to the renewal of the Grantee's Franchise shall be governed by and comply with the provisions of Section 626 of the Cable Act (as such existed as the effective date of the Cable Act), unless the procedures and substantive protection set forth therein shall be deemed to be preempted and superseded by the provisions of any subsequent provision of federal law.

The Franchise Authority agrees that, in addition to the procedures set forth in Section 626 (a) of the Cable Act (Cable Needs Assessment Hearing), to notify Grantee of its preliminary analysis of that hearing in writing regarding the identity of future cable related community needs and interest, as well as the past performance of Grantee under the current Franchise term. Such report shall be provided to the Grantee in a timely fashion after the conclusion of the hearing on community needs as required by Subsection (a) of Section 626 of the Cable Act.

To the extent allowed by law, the delivery of the report shall be deemed the completion of any proceedings under Subsection (a) of Section 626 of the Cable Act from which date the four-month review period referred to in Subsection (c) (1) of Section 626 of the Cable Act would begin. Notwithstanding anything to the contrary set forth in this Section 4.2, the Grantee and Franchising Authority agree that at any time during the term of the then current Franchise, while affording the public appropriate notice and opportunity to comment, the Franchise Authority and Grantee may agree to undertake

and finalize negotiations regarding renewal of the then current Franchise and the Franchise Authority may grant a renewal thereof. The Grantee and the Franchise Authority consider the terms set forth in this section to be consistent with the express provisions of Section 626 of the Cable Act.

4.3 Conditions of Sale. Except to the extent expressly required by federal or state law, if a renewal or extension of Grantee's Franchise is denied or the Franchise is lawfully terminated, and the Franchise Authority either lawfully acquires ownership of the Cable System or by its actions lawfully effects a transfer of ownership of the Cable System to another party, any such acquisition or transfer shall be at a fair market value, determined on the basis of the Cable System valued as a going concern.

Grantee and Franchise Authority agree that in the case of a lawful revocation of the Franchise, at Grantee's request, which shall be made in its sole discretion, Grantee shall be given a reasonable opportunity to effectuate a transfer of its Cable System to a qualified third party. The Franchise Authority further agrees that during such a period of time, it shall authorize the Grantee to continue to operate pursuant to the terms of its prior Franchise; however, in no event shall authorization exceed a period of time greater than six (6) months from the effective date of such revocation. If, at the end of that time Grantee is unsuccessful in procuring a qualified transferee or assignee of its Cable System which is reasonably acceptable to the Franchise Authority, Grantee and Franchise Authority may avail themselves of any rights they may have pursuant to federal or state law; it being further agreed that Grantee's continued operation of its Cable System during the six (6) month period shall not be deemed to be a waiver, nor an extinguishment of, any rights of either the Franchise Authority or the Grantee. Notwithstanding anything to the contrary set forth in Section 4.3, neither Franchise Authority nor Grantee shall be required to violate federal or state law.

4.4 Transfer of Franchise. Grantee's right, title, or interest in the Franchise shall not be sold, transferred, assigned, or otherwise encumbered, other than to an Affiliate, without the prior consent of the Franchise Authority, such consent not to be unreasonably withheld. No such consent shall be required, however, for a transfer in trust, by mortgage, by other hypothecation, or by assignment of any rights, title, or interest of Grantee in the Franchise or Cable System in order to secure indebtedness.

## SECTION 5

### Compliance and Monitoring

5.1 Testing for Compliance. The Franchise Authority may perform technical tests of the Cable System during reasonable times and in a manner which does not unreasonably interfere with the normal business operations of the Grantee or the Cable System in order to determine whether or not the Grantee is in compliance with the terms hereof and applicable state or federal laws. Except in emergency circumstances, such tests may be undertaken only after giving Grantee reasonable notice thereof, not to be less than two (2) business days, and providing a representative of Grantee an opportunity to be present during such test. In the event that such testing demonstrates that the Grantee has substantially failed to comply with a material requirement hereof, the reasonable cost of such tests shall be borne by the Grantee. In the event that such testing demonstrates that Grantee has substantially complied with such material provisions hereof, the cost of such test shall be borne by the Franchise Authority. Except in emergency circumstances, the Franchise Authority agrees that such testing shall be undertaken no more than two (2) times a year in the aggregate, and that the results thereof shall be made available to the Grantee upon Grantee's request.

5.2 Books and Records. The Grantee agrees that the Franchise Authority may review such of its books and records, during normal business hours and on a nondisruptive basis, as is reasonably necessary to monitor compliance with the terms hereof. Such records shall include, but shall not be limited to, any public records required to be kept by the Grantee pursuant to the rules and regulations of the FCC. Notwithstanding anything to the contrary set forth herein, Grantee shall not be required to disclose information which it reasonably deems to be proprietary or confidential in nature. The Franchise Authority agrees to treat any information disclosed by the Grantee to it as confidential and only to disclose it to employees, representatives, and agents thereof that have a need to know, or in order to enforce the provisions hereof.

5.3 Survey. The Grantee shall, on an annual basis, generally survey its Subscribers concerning the Company's general performance.

## SECTION 6 Insurance, Indemnification, and Bonds or Other Surety

6.1 Insurance Requirements. Grantee shall maintain in full force and effect, at its own cost and expense, during the term of the Franchise, Comprehensive General Liability Insurance in the amount of \$1,000,000 combined single limit for bodily injury and property damage. Said insurance shall designate the Franchise Authority as an additional insured. Such insurance shall be noncancellable

except upon thirty (30) days prior written notice to the Franchise Authority.

6.2 Indemnification. The Grantee agrees to indemnify, save and hold harmless, and defend the Franchise Authority, its officers, boards and employees from and against any liability for damages and for any liability or claims resulting from property damage or bodily injury (including accidental death), which arise out of the Grantee's construction, operation, or maintenance of its Cable System, including, but not limited to, reasonable attorney's fees and costs. Grantee further agrees not to oppose intervention by the City in such a suit; however, any intervention will be at the Franchise Authority's sole cost and expense.

6.3 Bonds and Other Surety. Except as expressly provided herein, Grantee shall not be required to obtain or maintain bonds or other surety as a condition of being awarded the Franchise or continuing its existence. The Franchise Authority agrees to require bonds and other surety only in such amounts and during such times as there is a reasonably demonstrated need therefore. The Franchise Authority agrees that in no event, however, shall it require a bond or other related surety in an aggregate amount greater than \$10,000, conditioned upon the substantial performance of the material terms, covenants, and conditions of the Franchise. Initially, no bond or other surety will be required. In the event that one is required in the future, the Franchise Authority agrees to give Grantee at least sixty (60) days prior written notice thereof stating the exact reason for the requirement. Such reason must demonstrate a change in the Grantee's legal, financial, or technical qualifications which would materially prohibit or impair its ability to comply with the terms of the Franchise or afford compliance therewith.

## SECTION 7

### Enforcement and Termination of Franchise

7.1 Notice of Violation. In the event that the Franchise Authority believes that the Grantee has not complied with the terms of the Franchise, it shall notify Grantee in writing of the exact nature of the alleged noncompliance.

7.2 Grantee's Right to Cure or Respond. Grantee shall have thirty (30) days from receipt of the notice described in 7.1: (a) to respond to the Franchise Authority contesting the assertion of noncompliance; or (b) to cure such default; or (c) in the event that, by the nature of default, such default cannot be cured within the thirty (30) day period, initiate reasonable steps to remedy such default and notify the Franchise Authority of the steps being taken and the projected date that they will be completed.

7.3 Public Hearing. In the event that Grantee fails to respond to the notice described in Section 7.1 pursuant to the procedures set forth in Section 7.2, or in the event that the alleged default is not remedied within sixty (60) days after the Grantee is notified of the alleged default pursuant to Section 7.1, the Franchise Authority shall schedule a public meeting to investigate the default. Such public meeting shall be held at the next regularly scheduled meeting of the Franchise Authority which is scheduled at a time which is not less than five (5) business days therefrom. The Franchise Authority shall notify the Grantee of the time and place of such meeting and provide the Grantee with an opportunity to be heard.

7.4 Enforcement. Subject to applicable federal and state law, in the event the Franchise Authority, after such meeting, determines that Grantee is in default of any provision of the Franchise, the Franchise Authority may:

- a. Foreclose on all or any part of any security provided under this Franchise, if any, including without limitation, any bonds or other surety; provided, however, the foreclosure shall only be in such a manner and in such amount as the Franchise Authority reasonably determines is necessary to remedy the default;
- b. Commence an action at law for monetary damages or seek other equitable relief;
- c. In the case of a substantial material breach of a provision of the Franchise, declare the Franchise Agreement to be revoked; or
- d. Seek specific performance of any provision, which reasonably leads itself to such remedy, as an alternative to damages.

The Grantee shall not be relieved of any of its obligations to comply promptly with any provision of the Franchise by reason of any failure of the Franchise Authority to enforce prompt compliance.

7.5 Acts of God. The Grantee shall not be held in default or noncompliance with the provisions of the Franchise, nor suffer any enforcement or penalty relating thereto, where such noncompliance or alleged defaults are caused by strikes, acts of God, power outages, or other events reasonably beyond its ability to control.

## SECTION 8 Miscellaneous Provisions

8.1 Actions of Franchise Authority. In any action by the Franchise Authority or representative thereof mandated or permitted under the terms hereof, such party shall act in a reasonable, expeditious, and timely manner. Furthermore, in any instance where approval or consent is required under the terms hereof, such approval or consent shall not be unreasonably withheld.

8.2 Notice. Unless expressly otherwise agreed between the parties, every notice or response to be served upon the Franchise Authority or Grantee shall be in writing, and shall be deemed to have been posted in a properly sealed and correctly addressed envelope by certified or registered mail, postage prepaid, at a Post Office or branch thereof regularly maintained by the U.S. Postal Service.

The notices or responses to the Franchise Authority shall be addressed as follows:

The City of Magnolia, Texas  
Attention: Mayor Bramlett  
P.O. Box 396  
Magnolia, Tx. 77355

with copy to: City Attorney of Magnolia, Texas  
P.O. Box 396  
Magnolia, Tx. 77355

The notices or responses to the Grantee shall be addressed as follows:

TCI TKR of Houston, Inc.  
Attention: System Manager  
6732 Mayard Road  
Houston, TX 77041

with copy to: TCI TKR of Houston, Inc.  
Attention: Legal Department  
4700 S Syracuse St. Suite 1100  
Denver, CO 80237

Franchise Authority and the Grantee may designate such other address or addresses from time to time by giving notice to the other.

8.3 Descriptive Headings. The captions to Sections contained herein are intended solely to facilitate the reading thereof. Such captions shall not affect the meaning or interpretation of the text herein.



8.4 Severability. If any Section, sentence, paragraph, term, or provision hereof is determined to be illegal, invalid, or unconstitutional, by any court of competent jurisdiction or by any state or federal regulatory authority having jurisdiction thereof, such determination shall have no effect on the validity of any other section, sentence, paragraph, term or provision hereof, all of which will remain in full force and effect for the term of the Franchise, or any renewal or renewals thereof.

8.5 Reading of Ordinance. The requirement for the reading of this Ordinance having been dispensed with by a majority vote of all members of the City Council, this Ordinance shall be finally passed upon the date of its introduction and shall become effective from and after its passage and adoption.

PASSED and ADOPTED this 11 day of October, 1994

  
Mayor, City of Magnolia, Texas

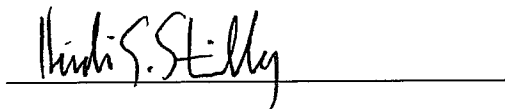
ATTEST:

  
City Secretary

Accepted and agreed to this 18<sup>TH</sup> day of NOVEMBER, 1994, subject to applicable federal, state and local law.

WITNESS:

TCI TKR OF HOUSTON, INC.



BY: 

Title: Scott E. Higgs  
Executive Vice President and  
Chief Operating Officer



TCI Cablevision of Texas  
We're taking television into tomorrow.

November 30, 1994

The Honorable John Bramlett  
Mayor, City of Magnolia  
P. O. Box 396  
Magnolia, Texas 77355

*Ord. of Insurance*

Re: Ordinance No. 94-201 - Franchise Agreement

Dear Mayor Bramlett:

Enclosed for your records is a fully-executed original of the captioned document, Ordinance No. 94-201, passed and adopted October 11, 1994, whereby the City of Magnolia granted a 15-year franchise to TCI TKR of Houston, Inc., effective October 11, 1994 through October 10, 2009.

I have also enclosed a certificate of insurance.

It has been a pleasure working with you and your staff. If I can be of assistance to you in any way, please call me at (713) 645-7331.

Yours truly,

Jill Mack  
Houston Metroplex Area  
Government and Public Affairs Manager

Enclosure

cc: Scott Marshall  
Heidi S. Stribley

**ACORD. CERTIFICATE OF INSURANCE**

DATE (MM/DD/YY)

11-11-94

## PRODUCER

DESPOT NELSON & COMPANY  
INSURANCE BROKERS, INC.  
6312 S FIDDLER'S GREEN CIR. #435N  
ENGLEWOOD, CO 80111

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION  
ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE  
HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR  
ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

## COMPANIES AFFORDING COVERAGE

COMPANY  
A AETNA CASUALTY & SURETY CO.

COMPANY  
B

COMPANY  
C

COMPANY  
D

## INSURED

TCI TKR OF HOUSTON, INC.  
C/O TCI RISK MANAGEMENT  
5619 DTC PARKWAY, 9TH FLOOR  
ENGLEWOOD, CO 80111

## COVERAGES

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED, NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

CO LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
A	<b>GENERAL LIABILITY</b> <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> OWNER'S & CONT PROT	19GL5006608-SCA	12-03-93	12-03-94	GENERAL AGGREGATE \$2,000,000
					PRODUCTS-COMP/OP AGG \$2,000,000
					PERSONAL & ADV INJURY \$1,000,000
					EACH OCCURRENCE \$1,000,000
					FIRE DAMAGE (Any one fire) \$ 50,000
					MED EXP (Any one person) \$ 5,000
	<b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS				COMBINED SINGLE LIMIT \$
					BODILY INJURY (Per person) \$
					BODILY INJURY (Per accident) \$
					PROPERTY DAMAGE \$
	<b>GARAGE LIABILITY</b> <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT \$
					OTHER THAN AUTO ONLY:
					EACH ACCIDENT \$
	<b>EXCESS LIABILITY</b> <input type="checkbox"/> UMBRELLA FORM <input type="checkbox"/> OTHER THAN UMBRELLA FORM				AGGREGATE \$
	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> THE PROPRIETOR/ PARTNERS/EXECUTIVE OFFICERS ARE: <input type="checkbox"/> INCL <input type="checkbox"/> EXCL				STATUTORY LIMITS
					EACH ACCIDENT \$
					DISEASE - POLICY LIMIT \$
					DISEASE - EACH EMPLOYEE \$
	<b>OTHER</b>				

## DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/SPECIAL ITEMS

RE: TOMBALL HEADEND

FRANCHISE AUTHORITY IS NAMED AS ADDITIONAL INSURED ON THE GENERAL LIAB.  
POLICY ABOVE, IF REQUIRED BY WRITTEN CONTRACT.

## CERTIFICATE HOLDER

CITY OF MAGNOLIA  
ATTN: CITY MAYOR  
PO BOX 396  
MAGNOLIA TX 77355

## CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE  
EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL ENDEAVOR TO MAIL  
30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT,  
BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY  
OF ANY KIND UPON THE COMPANY, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE

*J. Michael O'Connell*  
J. MICHAEL O'CONNELL - VICE PRESIDENT