

RESOLUTION NO. 14-088

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, APPROVING THE ATTACHED THIRD AMENDMENT TO LEASE BETWEEN THE CITY AND COMCAST OF CALIFORNIA/COLORADO/FLORIDA/OREGON, INC.; PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, in Resolution No. 95-186, the City Commission approved a lease with Comcast; and

WHEREAS, in Resolution No. 03-310, the City Commission approved a Second Amendment to Lease; and

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, AS FOLLOWS:

Section 1: That the attached Third Amendment to Lease between the City and Comcast of California/Colorado/Florida/Oregon, Inc. for property located on College Road for use for an existing communications tower is hereby approved.

Section 2: That this Resolution shall go into effect immediately upon its passage and adoption and authentication by the signature of the Presiding Officer and the Clerk of the Commission.

Passed and adopted by the City Commission at a meeting held this 18th day of March, 2014.

Authenticated by the Presiding Officer and Clerk of the Commission on 20th day of March, 2014.

Filed with the Clerk on March 20, 2014.

Mayor Craig Cates	<u>Yes</u>
Vice Mayor Mark Rossi	<u>Yes</u>
Commissioner Teri Johnston	<u>Yes</u>
Commissioner Clayton Lopez	<u>Yes</u>
Commissioner Billy Wardlow	<u>Yes</u>
Commissioner Jimmy Weekley	<u>Yes</u>
Commissioner Tony Yaniz	<u>No</u>

ATTEST


CHERYL SMITH, CITY CLERK


CRAIG CATES, MAYOR

EXECUTIVE SUMMARY



TO: City Commission

CC: Bogdan Vitas

FR: Larry Erskine
Marilyn Wilbarger, RPA, CCIM

DT: March 4, 2014

RE: Third Amendment to the Comcast Lease, Franchise Agreement Payment

ACTION STATEMENT:

This is a request to approve the third amendment to the lease agreement between the City of Key West and Comcast of California/Colorado/Florida/Oregon, Inc. and to accept payment of the monies owed pursuant to the Franchise Agreement.

BACKGROUND:

The City and Comcast entered into a lease agreement in July of 1995 for the property located on College Road. The term of the lease expired in September of 2013 and the tenant has been in holdover since then. The parties desire to renew the lease as follows:

PREMISES: The current parcel located at 5700 College Road

TERM: Ten (10) years from October 1, 2013 and ending on September 30, 2023

RENEWAL: The Tenant shall have the option to renew the lease for an additional term of ten (10) years.

RENT: The rent shall be \$30,000 for year one of the renewal and the rent shall increase annually by three percent over the prior year's rent. Rent for the renewal term shall also increase annually by three percent.

FINANCIAL: The rent has been increased from \$2,103.94 to \$2,500 per month beginning October 1, 2013. Additionally, with the approval of the lease amendment Comcast will make the third and final payment of \$65,000 pursuant to the Franchise Agreement.

CONCLUSION:

Staff supports the terms and conditions of the proposed lease renewal and payment of the outstanding franchise fees.

THIRD AMENDMENT TO LEASE

THIS THIRD AMENDMENT TO LEASE is made this 20th day of MARCH, 2014, but deemed effective as of October 1, 2013, by and between **THE CITY OF KEY WEST**, a municipal corporation (hereinafter referred to as "Lessor"), whose address for purposes of notice is P.O. Box 1409, Key West, FL 33041, and **COMCAST OF CALIFORNIA/COLORADO/FLORIDA/OREGON, INC.**, a Georgia corporation, formerly known as TCI Cablevision of Georgia, Inc., successor by merger to TCI Cablevision of Florida, Inc. (hereinafter referred to as "Lessee"), whose address for purposes of notice is 789 International Parkway, Sunrise, FL 33325 (with a copy to Comcast Cable Communications, LLC One Comcast Center, 1701 John F. Kennedy Boulevard, Philadelphia, PA 19103-2838, Attention: General Counsel).

WITNESSETH:

WHEREAS, Lessor and TCI Cablevision of Florida, Inc., the original lessee, entered into that certain Lease Agreement (hereinafter referred to as "Lease Agreement") on the 1st day of July, 1995, as amended on the 28th day of September, 2003, by a document mistakenly styled as the "Second Amendment to Lease" (hereinafter referred to as "Second Amendment"); and

WHEREAS, initial term of the Lease Agreement as modified by the Second Amendment expired on the 30th day of September, 2013, and Tenant has been a holdover tenant since October 1, 2013; and

WHEREAS, the Lease Agreement as modified by the Second Amendment provides for two renewal periods of ten years each, subject to certain conditions; and

WHEREAS, the parties desire to renew the Lease Agreement for a period of 10 years as well as amend certain provisions of the Lease Agreement; and

WHEREAS, this document is styled "Third Amendment to Lease" to avoid confusion as regards the style of the Second Amendment.

NOW, THEREFORE, in consideration of the mutual covenants herein contained and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties hereto agree as follows:

1. The foregoing recitations of fact are true and correct and incorporated herein by this reference.

2. Paragraph 1 of the Lease Agreement and paragraph 1 of the Second Amendment are supplemented with the following:

“The term of this Lease Agreement is hereby extended from October 1, 2013 through and including September 30, 2023 (the ‘Extension Term’).”

3. Paragraph 4 of the Second Amendment, is supplemented with the following:

“The Lessee shall have the option to renew the Lease Agreement for an additional term of 10 years, commencing on October 1, 2023, and ending on September 30, 2033 (the “Renewal Term”) upon written consent of the Lessor, which consent shall not be unreasonably withheld. Absent such written consent of the Lessor, this Lease Agreement shall expire on September 30, 2023, and Lessee shall have no further rights hereunder.”

4. Paragraph 2 of the Lease Agreement and paragraph 2 of the Second Amendment are supplemented with the following:

“During the Extension Term, Lessee shall pay Lessor rent in the amount of \$30,000 per year payable in equal monthly installment of \$2,500.00 each. Such rent shall increase annually by three percent (3%) over the prior year’s rent. In the event the Lessee exercises its option to renew as provided in paragraph 3 of the Third Amendment to Lease, the rent for the first year of the Renewal Term shall be three percent (3%) greater than the rent for the last year of the Extension Term of described in paragraph 2 of the Third Amendment to Lease, and the rent shall increase annually by three percent (3%) thereafter.”

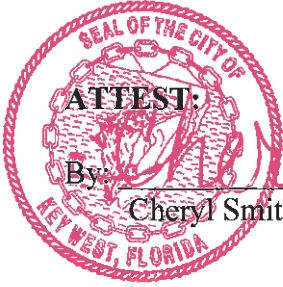
5. Paragraph 22 of the Lease Agreement and paragraph 11 of the Second Amendment are deleted in their entirety and replaced with the following:

“Except as provided for herein, this Lease Agreement is not transferable or assignable and may not be hypothecated nor sublet without the prior written consent of the Lessor, which consent may be withheld and shall be at the sole discretion of the Lessor. Provided, however, Lessee may assign this Lease Agreement to an affiliate, subsidiary or operating division of the Lessee, or to any entity acquiring all or substantially all of Lessee’s assets or stock, without the necessity of Lessor’s consent other than the consent of Lessor to a transfer of Lessee’s franchise.”

6. This Third Amendment may be executed in counterparts. Except as expressly modified by this Third Amendment, all terms and conditions of the Lease Agreement, as modified by the Second Amendment, remain in full force and effect, and binding upon the parties in accordance with its terms. In the event of any conflict between the terms of the Lease Agreement and the terms of this Third Amendment, the terms of this Third Amendment shall control. Lessee further represents and warrants that to its knowledge as of the date hereof it is not in default of any of the conditions or covenants of the Lease Agreement.

IN WITNESS WHEREOF, the parties have caused this Amendment to be executed as of the date first written above.

[SIGNATURE PAGES FOLLOW]



ATTEST:

By: Cheryl Smith
Cheryl Smith, City Clerk

THE CITY OF KEY WEST, a Municipal Corporation

By: Craig Cates
Printed Name: CRAIG CATES
Its: MAYOR

WITNESSES:

Vivian Perez
Signature of Witness
Vivian Perez
Printed Name of Witness

Angela Budge
Signature of Witness
ANGELA BUJGE
Printed Name of Witness

STATE OF FLORIDA)

COUNTY OF MONROE)

The foregoing instrument was acknowledged before me this 20th day of March, 2014, by Craig Cates, as MAYOR, of The City of Key West, a municipal corporation, who is personally known to me or has produced as identification.

(Notary Seal)



Susan P. Harrison
Notary Public, State of Florida
Print Name: SUSAN P. HARRISON

My Commission Expires: 4-8-15

WITNESSES:

[Signature]
Signature of Witness
Derek S. Cooper
Printed Name of Witness

[Signature]
Signature of Witness
Joy Meister
Printed Name of Witness

**COMCAST OF CALIFORNIA/
COLORADO/FLOIDA/OREGON,
INC.,** a Georgia corporation

By: [Signature]
Name: Amy Smith
Title: Regional Senior VA

STATE OF FLORIDA
COUNTY OF Palm Beach

The foregoing instrument was acknowledged before me this 24th day of February, 2014, by Amy Smith, as RSVP of Comcast of California/Colorado/Florida/Oregon, Inc., a Georgia corporation, who is personally known to me or has produced _____ as identification.

(Notary Seal)



[Signature]
Notary Public, State of Florida
Print Name: Latoja Ratlieff

My Commission Expires: 7/11/15



February 24, 2014

CITY OF KEY WEST

FEB 28 2014

CITY ATTORNEY

Larry R. Erskine, Esq.
Chief Assistant City Attorney
City of Key West
P.O. Box 1409
Key West, FL 33041

RE: Comcast/City of Key West Third Amendment to Lease and Final PEG Payment

Dear Larry:

As you know, Comcast and the City of Key West (the "City") have been engaged in ongoing discussions regarding extending Comcast's existing Lease Agreement with the City for its plant located on Stock Island, as well as, the City's demand for the final PEG payment of \$65,000 pursuant to Section 17(d) (2) (iii) of the now expired Franchise Agreement between Comcast and the City of Key West effectuated August 3, 2005 ("Franchise Agreement"). I truly appreciate your and the City's diligence and professionalism in reaching a simultaneous agreement to both of these items. Accordingly, this letter provides the agreed upon and subsequent actions necessary by the City and Comcast to effectuate the terms of agreement for these items.

First, Comcast and the City agree that Comcast shall make a payment to the City in the amount of Sixty-Five Thousand dollars (\$65,000) pursuant to the Franchise Agreement, which shall be held in escrow and predicated upon the City Commission's approval and execution of the enclosed Third Amendment to Lease. Thus, enclosed please find Check No. 209850422 from Comcast made payable to the City in the amount of Sixty-Five Thousand Dollars (\$65,000) pursuant to the Franchise Agreement that shall be held in escrow by the City Attorney until such time that the City Commission approves and executes the Third Amendment To Lease enclosed herein.

Second, the City Attorney and/or its staff shall favorably present and recommend to the City Commission for approval and execution the enclosed Third Amendment to Lease. Upon final approval by the City Commission and the City's execution of the enclosed Third Amendment to Lease, the City is fully authorized to remove from escrow and deposit the enclosed check, including any other rental payments it has held until the execution of the Third Amendment to Lease.

Finally, the City shall provide an original fully executed copy of the Third Amendment to Lease to Comcast for its records. Notably, if you agree with actions and agreement set herein, please execute below and return a copy to me. However, should any of the agreed upon actions sets forth above not comport with the City's agreement and understanding, please return the enclosed check and contact me immediately to discuss these items further.



Thank you again for your assistance and dedication to reaching an amicable agreement to these items. Please do not hesitate to call or email me with any questions or to discuss these matters further.

Very truly yours,

A handwritten signature in blue ink that reads "Derek Cooper".

Derek Cooper
Vice President, Government & Regulatory Affairs

Accepted and Agreed:

Larry R. Erskine, Esq.
Chief Assistant City Attorney
City of Key West

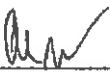
SECRETARY'S CERTIFICATE

I, Arthur R. Block, Secretary of Comcast of California/Colorado/Florida/Oregon, Inc., a Georgia corporation (the "Company"), do hereby certify as follows:

Amy Smith is a duly elected and appointed officer of the Company, holding the title of Regional Senior Vice President; and

Amy Smith is authorized to execute any and all documents on behalf of the Company.

IN WITNESS WHEREOF, the undersigned has executed this Certificate as of this 26th day of February, 2014.



Arthur R. Block, Secretary

RESOLUTION NO. 03-310

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, APPROVING THE ATTACHED SECOND AMENDMENT TO LEASE BETWEEN THE CITY AND COMCAST; PROVIDING FOR AN EFFECTIVE DATE

BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, AS FOLLOWS:

Section 1: That the attached Second Amendment to Lease between the City and Comcast for property located on College Road for use for an existing communications tower is hereby approved.


Section 2: That this Resolution shall go into effect immediately upon its passage and adoption and authentication by the signature of the presiding officer and the Clerk of the Commission.

Passed and adopted by the City Commission at a meeting held this 3 day of September, 2003.

Authenticated by the presiding officer and Clerk of the Commission on September 4, 2003.

Filed with the Clerk September 4, 2003.

ATTEST:


CHERYL SMITH, CITY CLERK


JIMMY WEEKLEY, MAYOR

**SECOND AMENDMENT TO LEASE
BETWEEN
COMCAST OF CALIFORNIA / COLORADO / FLORIDA / OREGON, INC
AND
THE CITY OF KEY WEST**

THIS SECOND AMENDMENT TO LEASE ("Second Amendment") is made as of this 28 day of September, 2003 between **THE CITY OF KEY WEST** a municipal corporation organized and existing under the laws of the state of Florida ("Lessor"), and **COMCAST OF CALIFORNIA / COLORADO / FLORIDA / OREGON, INC.**, a Georgia corporation ("Lessee"), formerly known as TCI Cablevision of Georgia, Inc., successor by merger to TCI Cablevision of Florida, Inc. WITNESSETH

WHEREAS, Lessor and Lessee are parties to a Lease Agreement dated July 1, 1995, ("Lease") for the real property located at Jr. College Road (a/k/a City Dump Road), Stock Island, Florida as legally described in the attached Exhibit 1 ("Premises"); and

WHEREAS, the initial term of the Lease was due to expire on June 30, 2000;

WHEREAS, although prior to the expiration of the initial term of the Lease, the parties negotiated and drafted an Amendment to Lease (the "First Amendment"), to renew the term of the Lease, pursuant to Paragraph 1 of the Lease, for a five-year period commencing on July 1, 2000, the First Amendment was not executed by the parties;

WHEREAS, with Lessor's consent, Lessee has continued to lease the Premises as a hold-over tenant since July 1, 2000 at a total rent of \$16,000 per year; and

WHEREAS, Lessor and Lessee desire to amend the Lease, pursuant to the terms of this Second Amendment, effective as of October 1, 2003; and

NOW THEREFORE, in consideration of the mutual covenants and conditions of this Lease and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto, intending to be legally bound, hereby AMEND the Lease as follows, effective as of October 1, 2003:

1. The Term of the Lease is hereby extended by an additional Ten (10) years (the "Extension Term"), commencing October 1, 2003 and expiring September 30, 2013.

2. The rent for the Extension Term shall be increased to \$18,000.00 per year payable in equal monthly installments of \$1,500.00. Such rent shall increase annually by three percent (3%) over the prior years rent.

3. All notices or demands required or permitted to be given or served pursuant to this Lease shall be deemed to have been given or served only if in writing forwarded by certified mail, postage prepaid or by overnight courier, and addressed as follows:

Lessor: The City of Key West
 PO Box 1409
 Key West Florida, 33301
 Attn: City Manager

Lessee. Comcast of California / Colorado / Florida / Oregon, Inc.
18601 NW 2nd Avenue
Miami, Florida, 33169

with a copy to:

Comcast Cable Communications, Inc.
1500 Market Street
Philadelphia, Pennsylvania 19102
Attn: General Counsel

4. Lessor grants to Lessee two additional renewal periods for this Lease of Ten (10) years each, each commencing upon the day following the last day of the immediately preceding term. These renewal periods may be exercised for each renewal period only by written notice delivered to Lessor not later than three (3) months before the then-current term is to expire, and a resolution from the City Commission approving such renewal period. If such renewal is exercised, and approved by the City Commission, this Lease shall continue during the respective renewal period(s) upon all the terms, covenants and conditions set forth hereunder.

5. Notwithstanding anything to the contrary in the Lease, the Lessee shall not make any improvements to the Premises without the prior written approval of the Lessor, which approval shall not be unreasonably withheld, conditioned or delayed.

6. Lessor agrees that Lessee may at Lessee's expense remove an existing tower (Tower 2-161 foot) and repair an existing tower (Tower 1-160 foot) and replace the One Story Building (Building 1), each as identified on the attached Sit Plan, Exhibit 2.

7. All other terms and conditions of the Lease not amended hereby shall remain in full force and effect and are hereby ratified and confirmed. It is the intention of the parties hereto, that in the event of any conflict between the terms of this Second Amendment and the Lease, this Second Amendment shall prevail and any conflicting language, terms or provisions in the Lease shall be inoperative.

8. Notwithstanding anything to the contrary in the Lease, Lessee may use the Premises to furnish or supply its customers with services provided or franchised by Lessee from time to time during the term of the Lease as extended hereby and as it may be further renewed or extended, including, but not limited to, cable television, telecommunications, communications, and information services provided by Lessee.

9. Paragraph 10 of the Lease is deleted.

10. Paragraph 15 of the Lease is amended by substituting "Certificates of such insurance policy or policies" for "A true copy of the insurance contract".

11. Paragraph 22 is amended to add the following at the end of the paragraph thereto:

"Lessee may sublease space on Premises or any improvement or tower constructed by Lessee on the Premises, including but not limited to any tower or building. In addition, notwithstanding anything to the contrary in the Lease, Lessee may assign the Lease to an affiliate, subsidiary or operating division of Lessee, or to any entity acquiring all or substantially all of Lessee's assets or stock, without the necessity of Landlord's consent other than any the consent of Lessor to a transfer of Lessee's franchise, if applicable, and to the extent such consent is required by law."

IN WITNESS WHEREOF, the parties have caused this Second Amendment to Lease to be executed as of the date first written above.

WITNESSES:

Cheryl Smith
Walter Pees

LESSOR:

THE CITY OF KEY WEST

By: Jimmy Weekley
Print Name: Jimmy Weekley
Title: Mayor

WITNESSES:

Walter Pees
Debbie Lewis

LESSEE:

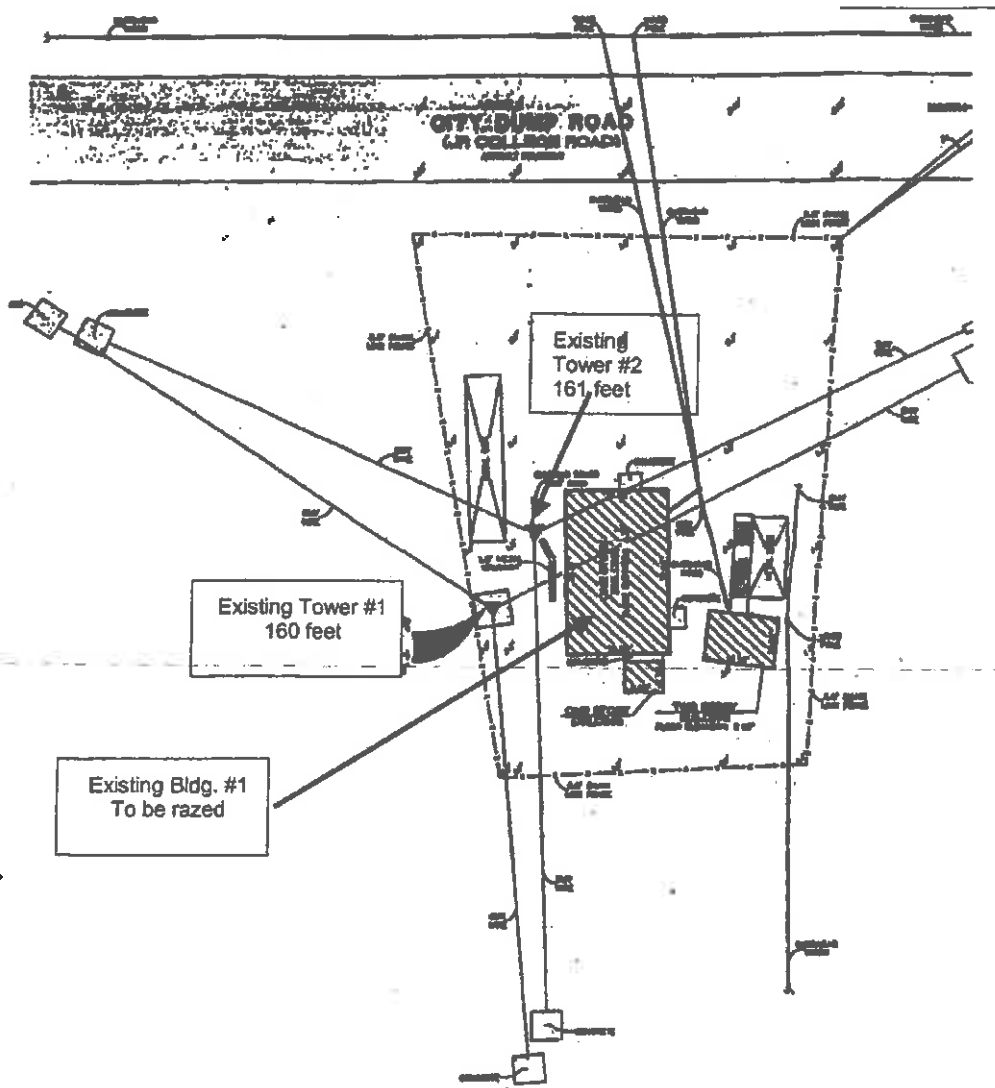
COMCAST OF CALIFORNIA /
COLORADO / FLORIDA / OREGON, INC.

By: Stephen Burck
Print Name: STEPHEN BURCK
Title: President, COMCAST

Exhibit 1
Site Legal Description

Commencing at the Southwest corner of the American Legion Property, as described in Deed Book G71, Page 137 of the Public Records of Monroe County, Florida, said Southwest corner also to be known as the point of beginning of the tract of land hereinafter described, bear North 11 degrees and 03 minutes East for a distance of 278.25 feet to the Northwest corner of the American Legion Property; thence bear North 51 degrees and 58 minutes West for a distance of 182.83 feet to a point on the approximate centerline of the City Dump Road; thence bear South 40 degrees and 46 minutes West on the approximate centerline of the City Dump Road for a distance of 600.0 feet to a point; thence meander the north edge of the Country Club Road in an easterly direction for a distance of 492.88 feet, back to the point of beginning.

EXHIBIT 2
Site Plan



RESOLUTION NO. 95-186

A RESOLUTION APPROVING THE ATTACHED LEASE AGREEMENT BETWEEN THE CITY OF KEY WEST AND TCI CABLEVISION OF FLORIDA, INC.; PROVIDING AN EFFECTIVE DATE.

BE IT RESOLVED by the City Commission of the City of Key West, Florida as follows:

Section 1. The attached Lease Agreement between the City of Key West and TCI Cablevision of Florida, Inc. is hereby approved. The City Manager is hereby authorized and directed to execute said Agreement on behalf of the City.

Section 2. This Resolution shall go into effect upon its passage and adoption and authentication by the signatures of the presiding officer and the Clerk of the Commission.

Passed and adopted by the City Commission at a meeting held this 16th day of May, 1995.

Authenticated by the Presiding Officer and Clerk of the Commission on this 16th day of May, 1995.


DENNIS J. WARDLOW, MAYOR

ATTEST:


JOSEPHINE PARKER, CITY CLERK

Filed with the Clerk May 17, 1995.

95-186

LEASE AGREEMENT

THIS LEASE AGREEMENT made and entered into at Key West, Monroe County, Florida, this ____ day of _____, 1995 by and between **THE CITY OF KEY WEST**, a municipal corporation organized and existing under the laws of the State of Florida, hereinafter the Lessor, and **TCI Cablevision of Florida, Inc.**, hereinafter the Lessee.

WITNESSETH:

WHEREAS, the City of Key West and TCI Cablevision of Florida, Inc., are currently parties to a Lease dated April 16, 1956, as amended by Amendment to Lease dated May 27, 1988; and

WHEREAS, the term of said Lease, as amended, will expire on June 30, 1995, and the parties wish to enter into a new Lease Agreement commencing July 1, 1995 and continuing for an initial five-year period with a certain option to renew more fully described below;

NOW, THEREFORE, the Lessor hereby leases that certain real property more specifically described in Exhibit "A" attached hereto ("Premises") for the exclusive purpose of furnishing or supplying inhabitants of the City of Key West with television programs and signals, and for no other purpose, subject to the following terms, conditions, and limitations:

1. **TERM.** The period of this Lease Agreement shall be five years, commencing on July 1, 1995 and ending on June 30, 2000. The Lessee shall have the option to renew the Lease Agreement for an additional term of five years upon written consent of the Lessor, which consent shall not be unreasonably withheld. Absent such written consent of the Lessor, this Lease Agreement shall expire at the conclusion of its five-year term and Lessee shall have no further rights hereunder.

2. RENTAL. Lessee shall pay Lessor yearly rental of \$10,000.00 during the term of this Lease Agreement, to be paid in equal prorated monthly installments on the first day of each month, beginning July 1995.

3. RULES AND REGULATIONS. The Lessee agrees to strictly execute, comply with and abide by all applicable laws, codes, ordinances, rules, regulations, and directives of the Lessor as presently existing and as may be promulgated by the Lessor during the term hereof, and it shall be the duty of the Lessee to become and remain informed and familiar with the same as and when promulgated, which laws, ordinances, rules, regulations, and directives are incorporated herein and by reference made a part hereof. Failure or refusal to comply with the provisions of this Paragraph shall be a default of the terms hereof and cause for termination of this Lease Agreement.

4. PERSONAL PROPERTY. All personal property placed or moved in or on the Premises shall be at the risk of the Lessee or owner thereof, and the Lessor shall not be liable for any damage or loss to said personal property for any act or negligence of the Lessee or of any other person whomsoever.

5. SAFETY, CORRECTION, ETC. The Lessee shall promptly execute and comply with all statutes, ordinances, rules, orders, regulations, directives, and requirements of the Federal, State, County and City Government and of any and all of their departments and bureaus, applicable to the Premises for safety and correction, prevention and abatement of nuisances or other grievances in, upon, or connected with the Premises and its operation. The Lessee shall obtain and maintain all licenses, permits, and other approvals necessary to operate its business.

6. MECHANICS' LIENS. It is hereby agreed to by the parties that there shall, during the

said demised term, be no mechanics' liens upon any building or improvements which may at any time be put upon or be upon the demised property, and that in case of any mechanics' liens the Lessee must pay off same; and that if default in payment thereof shall continue for thirty days after written notice, the Lessor shall have the right and privilege, at its option, to pay off the same or any portion of the same, and the amount so paid, including expenses, shall, at the Lessor's option, be so much additional rent due from the Lessee at the next rent due after such payment, with interest thereon at the rate of 12% per annum.

7. **PURPOSE; IMPROVEMENTS.** The Lessee further agrees to use the Premises for the sole purpose of conducting a microwave receiving station and television receiving station, in connection with its franchise to furnish or supply the inhabitants of the City of Key West with television programs or signals. The Lessee shall not make any improvements to the Premises without the prior written approval of the Lessor.

8. **USE OF PREMISES.** It is expressly agreed between the parties hereto that the Lessee will not use or suffer nor permit any person to use in any manner whatsoever the Premises, or any building or improvements hereafter constructed or placed on the Premises, nor any portion thereof, for any purpose calculated to injure the reputation of the Premises, nor for any purpose or use in violation of the laws of the United States, or of the State of Florida, or of the Ordinances of the City of Key West, and that it will keep and save the Lessor forever harmless from any penalty or damage or charges imposed for any violation of any of said laws, whether occasioned by neglect of the Lessee, and that said Lessee will indemnify and save and keep harmless the Lessor against and from any loss, cost, damage and expense arising out of any accident or other occurrence, causing injury to any person or property whomsoever or whatsoever, and due directly

or indirectly to the use of the Premises, or any part thereof, by the Lessee.

9. **DEFAULT.** The prompt payment of the rent for said premises upon the terms named, and the faithful observance of the rules, regulations and directives which are by reference made a part hereof, are the conditions upon which the Lease Agreement is made and accepted, and any failure on the part of the Lessee to comply with the terms of this Lease Agreement, or any of said rules and regulations or directives, now in existence or which may hereafter be made shall, at the option of the Lessor, work a forfeiture of this Lease Agreement, and all of the rights of the Lessee hereunder, and thereupon the Lessor, its agents or employees shall have the right to enter the Premises, and remove all persons and property, if desired, therefrom forcibly or otherwise, and the Lessee hereby expressly waives any and all notice required by the law to terminate tenancy, and also waives any and all legal proceedings to recover possession of the Premises, and expressly agrees that in the event of a violation of any of the terms of this Lease Agreement, or of said rules, regulations, or directives, now in existence, or which may hereafter be made, the Lessor, its agents or employees may immediately re-enter the Premises and may, if desired, remove all persons and property therefrom in accordance with law.

10. **FIXTURES.** The Lessee hereby pledges and assigns to the Lessor all fixtures, and goods and chattels of the Lessee, which shall or may be brought or placed on said premises as security for the payment of the rent herein reserved, and the Lessee agrees that the said security may be enforced by distress foreclosure or otherwise at the election of the said Lessor.

11. **ENTRY.** The Lessor, or any of its agents, shall have the right to enter the Premises during all reasonable hours, to examine the same as may be deemed necessary for the safety, comfort or preservation thereof, and to determine if the Lessee is in compliance with all of the

aforementioned rules, regulations, directives and otherwise.

12. **CONDITION OF PREMISES.** The Lessee hereby accepts the Premises in the condition they are in at the beginning of this Lease Agreement and agrees to maintain said Premises in the same condition, order and repair as they are at the commencement of this term, excepting only reasonable wear and tear arising from the use thereof under this Agreement, and to make good to the Lessor immediately upon demand any damage caused by any act or neglect of the Lessee, or of any agent, guest, passenger or person under the control of the Lessee, and the Lessee shall be liable to the Lessor and shall forever hold harmless the Lessor from any and all such damage or loss occasioned to the Premises caused by the acts or negligence of the Lessee or any agent, employee, guest, passenger or person under the control of the Lessee. There is no warranty of any kind as to the conditions of the Premises.

13. **LIABILITY; INDEMNIFICATION; RELEASE.** It is expressly agreed and understood by and between the parties to this Lease Agreement, that the Lessor shall not be liable for any damage, loss or injury which may be sustained by the Lessee or other persons for any other damage, loss or injury resulting from the carelessness, negligence or improper conduct on the part of Lessee or any other person other than the Lessor. The Lessee agrees to indemnify, defend, and hold harmless the Lessor, its officers, employees, and agents from and against any and all liability, actions, claims, costs, expenses, penalties, and judgments for damages at law or equity of any nature whatsoever arising, or alleged to arise, out of the use of the Premises by the Lessee or acts or omissions of the Lessee, its employees, agents, independent contractors, licensees, customers, or invitees, or out of the Lessee's operation of business or exercise of rights conferred by this Lease Agreement. The Lessee shall defend the Lessor and shall pay all reasonable

expenses incurred by the Lessor in defending itself, with regard to all damages and penalties the Lessor may legally be required to pay as a result of the rights granted hereunder. Expenses shall include all incidental expenses including attorney fees, and shall include a reasonable value of any services rendered by the Office of the City Attorney. The Lessee does hereby forever release and discharge the Lessor, its departments, agencies, agents and authorized personnel from any and all liability that has resulted or may result from or be suffered by the Lessee arising out of or in connection with this Lease Agreement, and the Lessee's operation hereunder.

14. CLAIMS. The Lessee shall defend, pay or settle any and all liability, demands and claims by or in favor of any third person including, but not limited to, the Lessee's agents, servants or employees, against the Lessor, its departments, agencies and authorized personnel arising out of, or in connection with this Lease Agreement or the Lessee's operation hereunder, and to forever hold harmless the Lessor, its departments, agencies, agents and personnel from any such liabilities, demands or claims asserted by any of the aforescribed, including cost of suit, attorney's fees and any other expenses in connection therewith, and to pay or settle any claims for the injury, loss or damages to personnel or property of or under the control of the Lessor arising out of this Lease Agreement or the Lessee's operation hereunder.

15. INSURANCE. The Lessee shall carry and provide during the term of this Lease Agreement at the Lessee's expense, insurance coverage which will protect the legal liability of the Lessor and the Lessee to pay claims for personal injury or death resulting therefrom, on account of injury to persons or property and accidents to third parties or the public, which might arise out or, or in connection with the conduct of the Lessee or the Lessee's agents, assignees, invitees, or employees. The minimum limits of such policy shall be One Million Dollars (\$1,000,000.00),

combined single limit coverage for bodily injury for any one person, and One Hundred Thousand Dollars (\$100,000.00) for property damage. Such policy or policies shall carry an endorsement stating that in any suit or action by the Lessee's servants, agents or employees brought against the Lessor, which might arise out of the operations and the conduct of the business by the Lessee on the Premises, such agents or employees shall be considered members of the public. The insurance policy shall be written by a solvent insurance company in good standing and fully licensed to do business in Florida. The policy shall show the Lessor as a named insured, and shall provide that it cannot be cancelled or revoked except after a minimum of thirty (30) days' written notice to the Lessor. A true copy of the insurance contract shall be filed with the City Clerk within ten (10) days after execution of this Lease Agreement, and shall be maintained on file throughout the lease term. Lessee's failure to maintain the insurance policy in full force and effect at any time during the lease term shall be a default hereunder, and upon such default the Lessee shall immediately suspend all lease use and shall provide to the Lessor written notice of the default.

The insurance amounts here provided shall not in any way operate to limit or release, or be construed to limit or release, the Lessee from any liability to the Lessor, or from any obligation to indemnify the Lessor as provided herein. Said insurance amounts are minimum requirements, and shall be supplemented by the Lessee as necessary to meet its obligations, and to fully indemnify the Lessor, as provided in this Lease Agreement.

16. **INSOLVENCY, ETC.** If the Lessee shall become insolvent or if bankruptcy proceedings shall be begun by or against the Lessee before the end of said term, the Lessor is hereby irrevocably authorized at its option to forthwith cancel this Lease Agreement, as for a default. The Lessee may elect to accept rent from such receiver, trustee or other judicial officer

during the term of their occupancy in their fiduciary capacity without affecting the Lessor's rights as contained in this Lease Agreement, but no receiver, trustee or other judicial officer shall ever have any right, title or interest in or to the above-described property by virtue of this Lease Agreement.

17. **ASSIGNS, ETC.** This Lease Agreement shall bind the Lessor and its assigns or successors, and the assigns, administrators, legal representatives, executors or successors as the case may be, of the Lessee.

18. **TIME OF THE ESSENCE.** It is understood and agreed between the parties hereto that time is of the essence of this Lease Agreement and that this also applies to all terms and conditions contained herein.

19. **RIGHTS.** The rights of the Lessor under this Lease Agreement shall be cumulative and failure on the part of the Lessor to exercise promptly any rights given hereunder shall not operate to forfeit any of the said rights.

20. **SIGNS AND ADVERTISING.** It is hereby understood and agreed that any signs or advertising to be used on the Premises leased hereunder shall be first submitted to the Lessor for approval before installing same.

21. **ADDITIONAL RENT: TAXES AND OTHER CHARGES.** Should any taxes be imposed upon the Premises involved in this Lease Agreement, or upon the Lessor, Lessee, occupant, or whomsoever, from any source whatsoever, by reason of said Agreement, including but not limited to sales tax or ad valorem tax, the same shall be the responsibility of the Lessee and the Lessee shall pay same promptly when due as additional rent hereunder.

22. **ASSIGNMENT.** The Lessee shall have the qualified right to assign its interest under

this Lease Agreement provided, however, that the Lessee shall not assign this Lease Agreement, or in any manner transfer this Lease Agreement, or suffer or permit any assignment thereof by operation of law, without the prior written consent of the Lessor first having been obtained. The Lessor may grant or withhold consent at its complete discretion.

23. PREVIOUS LEASE AGREEMENTS CANCELLED. The previous Lease Agreement dated April 16, 1956, the Lease Amendment dated May 27, 1988, and any other Lease Agreements in effect between the parties are hereby cancelled and shall be of no further force and effect.

IN WITNESS WHEREOF, the undersigned have set their hands and seals as of the date first above written

CITY OF KEY WEST

WITNESSES:

BY: _____
G. Felix Cooper, City Manager

DATE: _____

ATTEST: _____
Josephine Parker, City Clerk

WITNESSES:

TCI CABLEVISION OF FLORIDA, INC.

BY: _____
President/Authorized Agent

DATE: _____

ATTEST: _____

Secretary

(Corporate Seal)

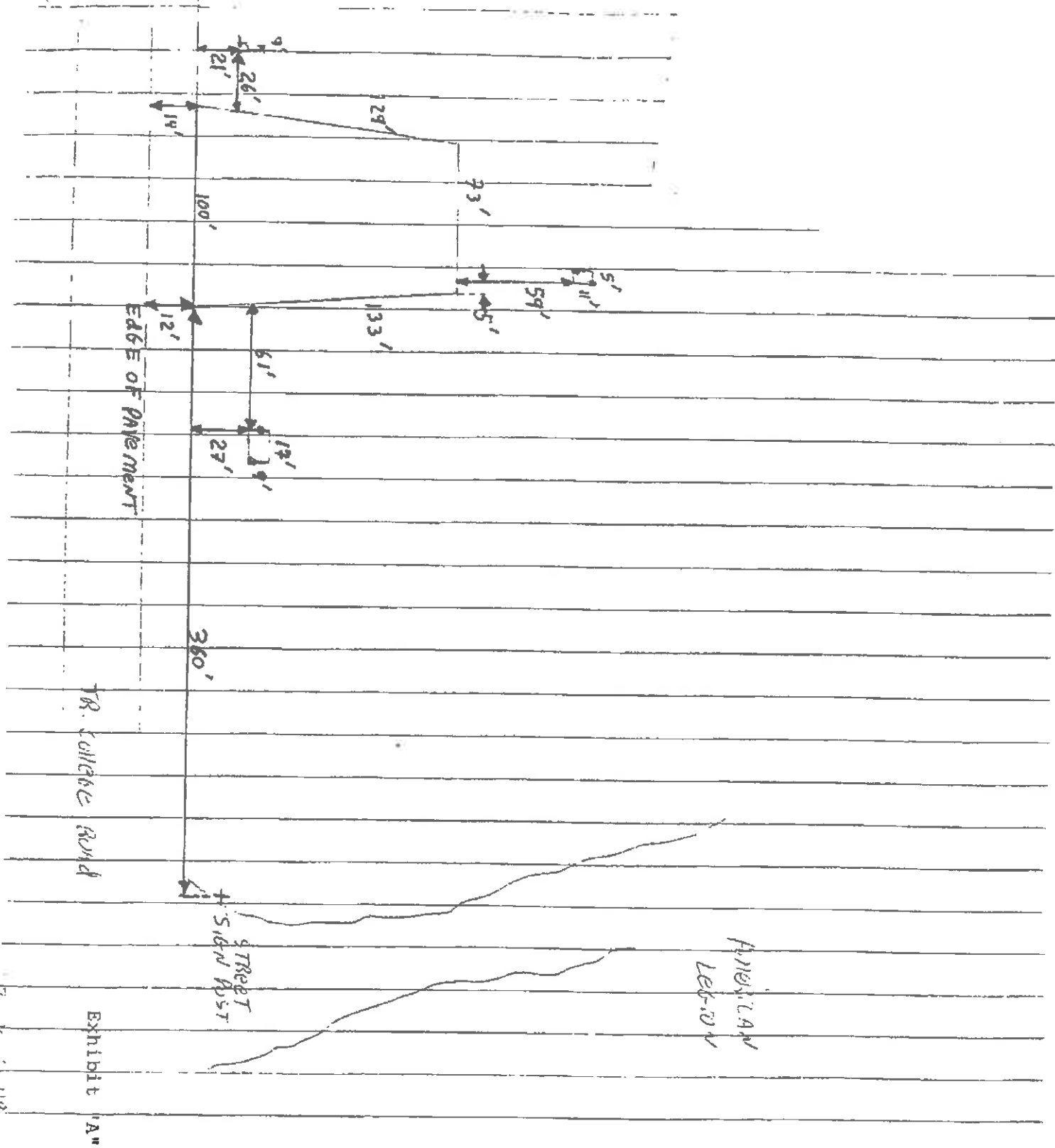


Exhibit "A"