



## MEMORANDUM

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T.R.A. DOCKET ROOM

DATE: July 30, 2008  
TO: Terry Willett, City Manager  
FROM: Russell E. Byrd  
RE: Comcast Public, Educational, and Government ("PEG") Franchise Obligations in the City of Rockford, Tennessee

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Pursuant to the Competitive Cable and Video Services Act (the "CCVSA"), which was enacted on July 1, 2008, once a local government receives notice from a cable or video services provider that an application for a state-issued certificate of franchise authority has been filed, local governments are required to provide certain information to the Tennessee Regulatory Authority related to PEG access channels provided by the incumbent provider that have been activated and are authorized to be activated and the amount of any fee or other payment for PEG support required under the terms of the franchise agreement with the incumbent cable service provider with the most subscribers in the municipality or county on January 1, 2008, whether or not such agreement had expired. *See* CCVSA § 10.

Accordingly, Comcast's PEG obligations pursuant to the Franchise Agreement with the City of Rockford are:

1. The number of activated PEG channels for the City of East Ridge are, as well as the number authorized to be activated, if different.

Response: There are NO PEG requirements in the franchise agreement

2. The terms of any PEG support payments being provided by Comcast to the City of Rockford

Response: There are NO PEG payment requirements in the franchise agreement

If you have any questions or require further assistance, please do not hesitate to contact me at 865-862-5001.

# City of Cleveland

CLEVELAND, TENNESSEE

Office of the City Manager



Janice S. Casteel

City Manager

(423) 472-4551

(423) 559-3337 Fax

jcasteel@cityofclevelandtn.com

Cleveland Municipal Building

190 Church Street, N.E.

P.O. Box 1519

Cleveland, TN 37364-1519

July 29, 2008

Tennessee Regulatory Authority

ATTN: Docket Room (08-00115)

460 James Robertson Parkway

Nashville, TN. 37243

RE: Public, Educational, and Government ("PEG") Franchise Obligations by the City of Cleveland, TN. Current cable service provider

Dear Sir or Maddam:

Enclosed is a copy of the City of Cleveland's franchise agreement with Charter Communications. I have been in contact with Charter and they have confirmed that we do not have any (PEG) Public, Education, Government channels. If you need additional information please don't hesitate to give me a call at (423) 472-4551.

Sincerely,

Janice S. Casteel

City Manager

APPENDIX A

CABLE TELEVISION FRANCHISE ORDINANCE<sup>1</sup>

AN ORDINANCE GRANTING A FRANCHISE TO TELECABLE OF CLEVELAND, INC., ITS SUCCESSORS AND ASSIGNS, TO OPERATE, MAINTAIN, AND CARRY ON THE BUSINESS OF TRANSMITTING TELEVISION, VIDEO, AND/OR AUDIO SIGNALS TO PERSONS, ASSOCIATIONS, PARTNERSHIPS, AND CORPORATIONS IN THE CITY OF CLEVELAND, TENNESSEE:

BE IT ORDAINED BY THE BOARD OF MAYOR AND COMMISSIONERS OF THE CITY OF CLEVELAND AS FOLLOWS:

Section 1. Definitions.

For the purpose of this Franchise, the following terms, phrases, words and derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number and words in the singular number include the plural number.

- a. "State" is the State of Tennessee.
- b. "City" is the City of Cleveland, Tennessee.
- c. "Company" is TeleCable of Cleveland, Inc., a Tennessee Corporation.
- d. "Person" is any person, firm, partnership, association, corporation, company or organization of any kind.
- e. "Cable Communications System," "Cable Television System" or "CATV System," shall mean a system of antennas, cables, wires, lines, towers, waveguides, or other conductors, converters, equipment or facilities, designed and constructed for the purpose of producing, receiving, transmitting, amplifying and distributing, audio, video and other forms of electronic or electrical signals, located in the City.
- f. "Gross receipts" means all receipts received directly or indirectly by Grantee derived from the operation of the Cable System to

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<sup>1</sup>This ordinance was passed by the city council on January 19, 1990.

provide Cable Services (as defined in 47 U.S.C. 522(6)). Gross Receipts shall specifically include any receipts derived from the operation of the Cable System to provide Cable Services received by Grantee's affiliates, subsidiaries, parents, or any person or entity in which Grantee has financial interest, including any receipts which have the effect of avoiding the payment of compensation that would otherwise be payable as a percentage of Gross Receipts to the City for the Franchise granted herein. Gross Receipts shall include franchise fees collected from subscribers.

Gross receipts shall not include receipts received from the provision of Internet Service over the cable system until such time as the FCC rules that such service shall be designated a Cable Service and included in Gross Receipts for the purpose of calculating franchise fees. Further, Gross Receipts shall not include:

- (1) Any taxes, fees or assessment collected by the Grantee from Subscribers for pass-through to a government agency, including the FCC User Fee;
- (2) Un-recovered bad debt; and
- (3) Any PEG or li-Net amounts recovered from Subscribers.

On or before April 30<sup>th</sup> of each year of this agreement, Company shall provide City with a detailed summary of gross receipts, by item and type, subject to inclusion in the calculation of franchise fees received during the preceding year, certified by an officer of the Company. The Franchise Fee shall be payable in accordance with the ordinance.

g. "Effective Date" shall mean the day and year of final passage.

h. "Basic Cable Services" shall mean the lowest priced level of service offered by the Company that includes local broadcast stations. (as amended by Ord. of 1/13/03)

## Section 2. Grant of Authority.

There is hereby granted by the City to the Company, which is within the power to the City to grant, the non-exclusive right and privilege to construct, erect, operate and maintain in, upon, along, across, above, over and under the streets, alleys, City easements and right-of-ways, easements or right-of-ways dedicated for use compatible with cable system operations, public ways and public places now laid out or dedicated, utility easements, maintenance easements, sewage and water easements, ingress and egress easements and all extensions thereof and additions thereto in the City, wires, poles, cables, underground conduits, conductors, and fixtures necessary for the maintenance and operation in the City of a Cable Communications System. The Company

shall have the right in the operation of the system to make attachments to City-owned property at such reasonable rates and upon such terms and conditions as shall from time to time be determined by the City. The rights herein granted shall extend to any area hereafter annexed to the City and Company shall be bound by the same rules and regulations as to such area as are otherwise herein or hereafter provided.

**Section 3. Compliance with Laws, Regulations, Ordinances and Practices.**

The Company shall, at all times during the life of this Franchise Agreement, be subject to the lawful exercise of the police power of the City and to such reasonable regulations no inconsistent herewith, as the City has or shall hereafter by resolution or ordinance provide. The construction, operation and maintenance of the system by the Company shall be in accord with good engineering practices and shall be in full compliance with the National Electrical Safety Code and applicable laws.

**Section 4. Company Liability and Indemnification.**

a. Company shall save City harmless from all loss sustained by the City on account of any suit, judgment, execution, claim or demand, including costs and attorneys fees, whatsoever, arising out of the negligence of the Company in the construction, operation and maintenance of its system. The Company agrees to maintain and keep in full force and effect at all times during the term of this Franchise Agreement sufficient property damage and personal injury and public liability insurance coverage to protect the City and the Company against any such claims, suits, judgments, executions or demands in a sum of not less than One Million and no/100 Dollars (\$1,000,000.00) per person for any one claim, One Million and no/100 Dollars (\$1,000,000.00) for any one accident or occurrence, and not less than One Million and no/100 Dollars (\$1,000,000.00) for property damage as to any one accident or occurrence. The City shall be named as an additional insured in said policy.

b. Company shall carry Comprehensive Automobile Liability insurance to protect against bodily injury in the amount of One Million and no/100 Dollars (\$1,000,000.00) for any one person and One Million and no/100 Dollars (\$1,000,000.00) for any one occurrence and One Million and no/100 Dollars (\$1,000,000.00) for property damage as to any one accident or occurrence.

c. The Company shall also maintain in full force and effect throughout the duration of this Franchise Agreement sufficient Worker's

Compensation Insurance Coverage to protect adequately and fully its agents and employees as required by law.

d. All Insurance policies and bonds as are required of the Company in this Franchise Agreement shall be written by a company or companies authorized and qualified to do business in the State of Tennessee. Certificates of all coverage required hereunder shall be promptly filed by the Company with the City in the office of the City Clerk and shall be filed within thirty (30) days of the effective date of this Franchise.

Section 5. Conditions of Street Occupancy and System Construction.

a. All transmission and distribution structures, lines and equipment erected by the Company within the City shall be so located as to cause minimum interference with the proper use of streets, alleys and other public ways and places and to cause minimum interference with the reasonable convenience of property owners who adjoin any of said streets, alley or other public ways or places.

b. In the case of any disturbance of pavement, sidewalks, driveways, or other surfacing, the Company shall, at its own expense and in a manner required by the City, properly replace and/or restore such places so disturbed.

c. In the event that at any time during the period of this Franchise Agreement the City shall lawfully elect to alter or change the location or grade of any street, alley, or other public way, the Company upon reasonable notice by the City shall remove, relay, and relocate its equipment at its own expense.

d. The Company shall not place any fixtures or equipment, and the location by the Company of its lines and equipment shall be in such a manner as to not interfere with the usual travel on said streets, alleys and public ways and the use of the same by gas, electric, telephone, water lines and other public utilities, fixtures and equipment.

e. The Company shall, on the request of the City, temporarily raise or lower its wires to permit the moving of buildings.

f. Nothing in the Franchise Agreement shall grant to the Company any right to City-owned property, nor shall the City be compelled to maintain any of its property any longer than, or in any

fashion other than , in the City's judgment, its own business or needs may require.

g. The City shall not be required to assume any responsibility for the securing of any rights of way or easements, nor shall the City be responsible for securing any permits or agreements with other persons or utilities.

h. Where underground service shall be required for electric power and telephone services, the City may require that underground service be provided by the Company.

#### Section 6. Franchise Consideration.

The Company shall pay to the City each year a franchise fee sum equal to five percent (5%) of the annual gross receipts up to Two Hundred Thousand Dollars (\$200,000.00) per year and five percent (5%) of annual gross receipts in excess of Two Hundred Thousand Dollars (\$200,000.00). Franchise fees shall be paid quarterly within 30 days following the end of the calendar quarter. (as amended by Ord. of 1/13/03)

#### Section 7. Service Standards.

a. The Company shall maintain and operate the system so that there will be no interference with television reception, radio reception, telephone communications or other installations which are now or may hereafter be installed and in use by the City or any persons in the City, and in such a manner as to prevent radiation from its facilities in excess of the limits specified in applicable rules and regulations of the Federal Communications Commission.

b. The Company shall take all necessary steps so that the system shall maintain at all times:

(1) Use of all-band distribution plan equipment capable of passing the entire VHF television and FM radio spectrum.

(2) Equipment that passes standard color television signals without material degradation and with no appreciable effect on color fidelity and intelligence.

(3) A minimum level of one thousand (1,000) micro-volts at the input terminals of each TV receiver on one line.

(4) A system and all equipment designed and rated for 24-hour per day continuous operation.

(5) A signal-to-noise ratio of not less than forty decibels for broadcast signals received within the station's grade B contour.

(6) A television signal with a hum modulation less than five (5) percent.

(7) Components that have voltage standing wave ratio of 1.4 or less.

(8) An inter-modulation distortion not to exceed minus forty-six decibels.

(9) A plot of gain versus frequency across any six megacycle channel of a flat plus or minus two decibels.

#### Section 8. Rights of Individuals.

The Company shall not, as to rates, charges, service facilities, rules, regulations or in any other respect, make or grant any undue preference or advantage to any person, nor subject any person to prejudice or disadvantage. This shall not prohibit the Company from offering promotional discounts and specials from time to time or offering bulk billing discounts to commercial accounts.

#### Section 9. Local Office.

During the term of this Franchise and any renewal thereof, the Company shall maintain a local (available by phone without long distance charges) business office for the purpose of handling customer inquiries regarding the ordering of service, equipment malfunctions, billing questions and similar matters.

#### Section 10. Company Rules.

The Company shall have the authority to promulgate such rules, regulations, terms and conditions governing the conduct of its business and shall be reasonable necessary to enable the Company to exercise its rights and to perform its obligations under this Franchise Agreement and to assure an uninterrupted service to each and all its customers; provided, however that such



rules, regulations, terms and conditions shall not be in conflict with the provisions hereof.

Section 11. Service to City.

The Company, at its own expense, shall provide and maintain one connection to existing City office buildings, police stations, fire stations, libraries, public schools, and any other public facilities as designated by the City; provided, that the Company shall not be responsible for providing the distribution system within any of such places. Further, no monthly customer service fees shall be charged for one connection of basic service to such places. Such connection shall be provided where service can be provided from the Company's existing distribution plant.

Section 12. Construction Plans.

All new plant extensions and cable plant rebuild shall be constructed for a fifty-four (54) channel capacity.

Section 13. New Developments.

It shall be the policy of the City to reasonably amend this Franchise Agreement upon application of the Company when necessary to enable the Company to take advantage of any developments in the field of transmission of television, radio signals and cable television, and to take advantage of any changes in the Federal Laws or Regulations relating to cable television.

Section 14. Service Area.

The Company shall serve any area within the City where the housing density is twenty-five (25) housing units or more per mile of contiguous cable plant. The Company may enter into cost sharing arrangements to extend cable service to those areas that do not meet the density standard. Areas annexed to the City which meet the density standard shall be served within one (1) year from the date of annexation unless it is not technically feasible.

Section 15. Separability.

In the event any section or part of this Franchise Agreement shall be held invalid, such invalidity shall not affect the remaining sections or portions of this Franchise Agreement. If the terms of this Franchise Agreement should conflict with any laws or regulations now in effect or hereafter adopted by the Federal Communications Commission (or any other governmental agency now existing or to be formed issuing rules and regulations affecting telecommunications), the

State or the United States government, compliance by the Company with such rules shall not cause a forfeiture of this Franchise Agreement.

Section 16. Term.

This Franchise Agreement shall supersede all previous agreements or grants of authority by ordinance, and shall have a term commencing as of the effective date of this Franchise Agreement and ending twenty (20) years from August 19, 1993.

Section 17. Rates.

(1) If during the term of this franchise the Cable Communications Policy Act of 1984 should be amended to permit municipal regulation of basic cable service rates, the City shall have the option, upon proper notice to the Company and an opportunity for the Company to comment, to regulate basic cable service rates.

(2) Between January 1 and February 28 of each year the City Council may determine whether it will assume basic cable service rate regulation authority. If the City Council takes no action to assume rate regulation authority, then basic cable service rates may be changed by the Company by filing with the City a schedule of new basic cable service rates and by notifying its subscribers prior to the rate change.

(3) If the City assumes rate regulation of basic cable service rates then for the remainder of that calendar year basic cable service rates may be changed subject to the following provisions:

(a) Upon a written request by the Company to increase basic cable service rates, the City shall have 60 days within which to render a decision approving, or disapproving the rate change. If such decision is not rendered by a majority vote of the City Council within 60 days of the initial request, such request will be deemed approved.

(b) Further, it will not be necessary for the Company to seek approval of the City to the extent that the basic cable service rate is not increased more than one time in any 12-month period the greater of five percent (5%) or the cumulative increase (calculated from the date of the last basic rate increase) in the Consumer Price Index for All Urban Consumers--the United States Average (CPI) published by the Bureau of Labor Statistics of the United States Department of Labor.

(c) Notice of any rate increase made pursuant to paragraph (b) of this section shall be filed with the City Clerk thirty or more days prior to implementation of the rate increase together with all supporting data to justify such an increase.

Section 18. Binding Effect.

This Franchise Agreement is binding on and inures to the benefit of the parties hereto, their successors and assigns, forever.

Section 19. Effective Date.

This Ordinance shall be in force and take effect as provided by law.