

**METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY**



KARL F. DEAN  
MAYOR

SUE B. CAIN  
DIRECTOR OF LAW

RECEIVED

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TRA RECEIPT ROOM  
DEPARTMENT OF LAW  
METROPOLITAN COURTHOUSE, SUITE 108  
P O BOX 196300  
NASHVILLE, TENNESSEE 37219-6300  
(615) 862-6341  
(615) 862-6352 FAX

July 14, 2008

VIA HAND DELIVERY

Ms. Lisa Cooper  
TRA Programs Manager  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, TN 37243-0505

Re: Response of the Metropolitan Government of Nashville and Davidson County to the Notice of TRA Receipt of Application for Certificate of Franchise Authority and Official Request for Information

Dear Ms. Cooper,

Thank you for taking time today to discuss your letter that this office received on July 9, 2008. I am writing in response to your request for information pursuant to the requirements of the Competitive Cable and Video Services Act.

Enclosed, you will find Section 6 of the Cable Communications Franchise Agreement between The Metropolitan Government and Nashville and Davidson County and Comcast Cablevision of Nashville, LLC, relating to public, educational, and governmental ("PEG") access channels. Beginning on page 38 you will find information concerning the number of activated and authorized PEG access channels; and, beginning on page 51 you will find information concerning the terms of support payments. Please let me know at your earliest convenience if you need additional information that is not contained in the enclosed documents.

If I can be of further assistance or if you have any additional questions, please call me.

Sincerely,

Margaret O. Darby  
Assistant Metropolitan Attorney

Encls.

Cc: Jim Hester, Senior Advisor, Mayor's Office



interconnected parties shall equitably and fairly share the costs of construction, operation and maintenance of the interconnection and related programming.

(k) *Uses of System:* Franchisee must agree to advise Metropolitan Nashville of all active uses of the System, for both entertainment and other purposes, such as data transmission, local area networks, and voice transmission. Metropolitan Nashville shall have the right to conduct unannounced audits of such usage.

(l) *Additional Capacity:* Franchisee agrees to notify Metropolitan Nashville at least one hundred- twenty (120) days in advance of the installation of any fiber optic capacity not contemplated by the initial design of the System pursuant to this Agreement, so that the actual cost of installing additional fiber for government and institutional use may be minimized.

**6. Channel Capacity and Facilities for Public, Educational and Governmental Use.**

(a) *Access Channel Capacity:*

(1) Until the end of the second calendar quarter of 1996, the Franchisee shall continue to provide one and one-half

(1.5) video channels for public, educational and governmental use, as it had been doing under the Prior Franchise.

(2) By the end of the second calendar quarter of 1996, Franchisee shall provide a total of four (4) activated standard (6 MHz) channels for public, educational and governmental ("PEG") use. (Until completion of the system upgrade required by Section 5, Metropolitan Nashville understands and acknowledges that two (2) of the four (4) access channels may be carried on the satellite value package tier and may not be available to all system subscribers.) All programming to subscribers carried on these PEG channels (or any additional PEG capacity as specified in Section 6(a)(3) hereof) shall be carried on the Basic Service tier. Franchisee acknowledges and agrees that PEG use, as referenced in this Agreement, is not limited to delivery of subscriber programming but also includes use of PEG capacity for data transport, closed circuit and interactive service uses.

(3) In addition to the channel capacity specified in Section 6(a)(2), Metropolitan Nashville may require Franchisee to make available additional capacity for PEG use, up to a maximum of eight (8) percent of activated System capacity, whenever use

of existing PEG capacity at a given time exceeds the following thresholds:

(A) For subscriber PEG programming, Metropolitan Nashville may require Franchisee to make available one additional 6 MHz channel (or digital equivalent) whenever all then-existing PEG channels are programmed with qualified programming at least seventy percent (70%) of the cumulative time between the test hours of 9:00 a.m. and 10:00 p.m., Monday through Friday, for a period of ten (10) consecutive weeks. All qualified programming shall count in this measurement for actual running time shown. Repeat programs as defined in this subparagraph are qualified programming only to a maximum of twenty-five percent (25%) of total qualified programming. Programs that are neither locally produced nor programming related to the Metropolitan Nashville region are qualified programming only to a maximum of fifty percent (50%) of total qualified programming. Any program broadcast locally within three (3) years of the measurement period is not qualified programming. Notwithstanding, the Franchisee may, in its sole discretion, permit the program to be qualified programming upon written request by Metropolitan

Nashville. Metropolitan Nashville and the Franchisee agree to meet within four (4) years of the effective date of this Agreement to discuss amending the treatment of programs broadcast locally as qualified programming. As used in this Section 16(a)(3)(A):

(i) "broadcast locally" means transmitted on the signal of a local commercial television station or a qualified local noncommercial educational television station with signal carriage rights on the Franchisee's System pursuant to 47 U.S.C. Sec. 535, as in effect on the effective date of this Agreement.

(ii) "repeat programs" means the running time of any program only to the extent it is shown more than four (4) times during the test hours over the ten (10) week measurement period.

(iii) "locally produced programming" means programming (a) produced within Metropolitan Nashville, or (b) produced by any Metropolitan Nashville resident or any agency, public or private, which provides services to residents within Metropolitan Nashville regardless of the location at which the programming was produced.

(iv) "programming related to the Metropolitan Nashville region" means programming which addresses the educational, political, social or cultural interests of any segment of the residents of Metropolitan Nashville or the region of Middle Tennessee.

(v) "qualified programming" includes video bulletin board material if the material consists of multiple and different text (or video and text) screens transmitted to different subscribers simultaneously. The term does not include video bulletin board material such as character generated material to the extent the same text (or video and text) screen is sent simultaneously without variation to all system subscribers, or non-video, data uses of the system by subscribers.

(B) For data, voice or closed-circuit use of PEG capacity, Metropolitan Nashville may require Franchisee to make available additional capacity whenever Metropolitan Nashville can demonstrate that then-existing PEG capacity for such use is insufficient to meet demand.

(4) Franchisee shall have the right to petition the CATV Special Committee to recapture any unused portion of PEG

capacity. In deciding whether to grant such petition, the CATV Special Committee shall consider the comments and views of Franchisee and all other interested persons or entities.

(5) Additional capacity beyond that required in Section 6(a)(2) shall be in analog format provided that total analog channels do not exceed eight (8) percent of the System's activated analog capacity. Any required additional capacity in excess of the analog allotment shall be in digital format, provided, however, that unless or until Franchisee activates digital capacity, all additional PEG capacity shall be analog. Franchisee may convert analog PEG capacity to digital format when all subscribers have the necessary equipment to receive PEG programming in digital format. The bandwidth for digital PEG channels shall equal or exceed the bandwidth and transmission quality of standard commercial digital video channels on the System.

(6) The Franchisee shall provide upstream capacity and interactive capability for PEG use in accordance with the provisions of Section 6(b).

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(7) All downstream access channels shall be carried on the basic service tier throughout the life of the Franchise.

(8) Franchisee shall transfer to Metropolitan Nashville (or its designate) title to all PEG access equipment and the mobile van for PEG access use that Franchisee provided for PEG use under the Prior Franchise.

*(b) Return Feed, Institutional Network and Interactive Facilities:*

(1) The Franchisee shall provide a dedicated, bidirectional fiber optic link between the studio of WDCN and the headend. This link shall permit signals to be transmitted on any of the downstream access channel capacity provided pursuant to Section 6(a) and must be completed within six months of the effective date of the Franchise.

(2) The Franchisee shall provide dedicated, bidirectional fiber optic links between each of the Stahlman Building (or its reasonably designated replacement or successor) and the Metro Courthouse and the headend. These links shall permit signals to be transmitted on the downstream access channel capacity provided pursuant to Section 6(a), and must be

completed within six months of the effective date of the Franchise.

(3) The Franchisee shall provide a dedicated, bidirectional fiber optic and coaxial link between the Waverly Belmont Center or any reasonably designated successor and the headend. This link shall permit signals to be transmitted on any of the downstream access channel capacity provided pursuant to Section 6(a) and must be completed within six months of the effective date of the Franchise.

(4) The Franchisee shall provide a dedicated, bidirectional fiber optic links between both the Pearl Cohn School and Tennessee State University (Centennial Boulevard) campuses (or any reasonably designated successor to either location). These links shall permit signals to be transmitted on any of the downstream access channel capacity provided pursuant to Section 6(a), and must be completed within six months of Metropolitan Nashville's request (or such longer period as the parties may reasonably agree).

(5) The dedicated connections required by Sections 6(b)(1)-(4) shall be designed and built to include all equipment,

including but not limited to laser transmitters, modulators, and processors, drops and wiring, so that each of the access centers designated pursuant to Section 6(b)(1)-(4) can send signals to the headend and those signals can be distributed downstream on the subscriber network via the PEG capacity provided pursuant to Section 6(a); and so that each of those designated access centers can remotely and without assistance from the Franchisee or access to its headend (i) receive analog signals from distant locations; (ii) route analog signals originated at that center or at other locations onto any of the access channel capacity on the regular subscriber network; and (iii) otherwise control the signals to allow for smooth breaks, transitions, insertion of station IDs and other material.

(6) At any time after any fiber node is completed and activated (whether construction of all nodes is completed or not), the Franchisee, within 60 days of a request from Metropolitan Nashville, shall provide upstream capacity to the headend and the access centers designated pursuant to Section 6(b)(1)-(4) hereof, so that signals can be originated at a

distant location and routed onto an appropriate access channel without the assistance of the Franchisee.

(7) Franchisee specifically acknowledges Metropolitan Nashville's list of current and future planned uses of the PEG capacity attached hereto as Exhibit A, and agrees that in constructing its upgraded System, it will configure the System so that it can accommodate such current and future planned uses over the PEG capacity and facilities provided pursuant to this Section 6. Franchisee shall satisfy these current and future PEG needs in the following two phases:

(A) Under Phase One, Franchisee shall, by October 1, 1995, complete construction, interconnection and activation of a dedicated Institutional Network interconnecting various educational facilities and Franchisee's headend with a combination of dedicated coaxial plant and fiber plant as set forth in the facilities diagram attached hereto as Exhibit B. The interconnected educational facilities are Tennessee State University, Eakin Elementary School, Pearl Cohn School, Buena Vista Middle School, Cameron Middle School, the Waverly Belmont

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Center and WDCN. The Institutional Network will support analog video, PC-based video and data, high and low-speed data and limited point-to-point telephony transmission requirements under the control of Metropolitan Nashville or an entity designated by it. The Institutional Network is intended to satisfy Metropolitan Nashville's current PEG needs and to enable it to experiment with various interactive applications to determine its future PEG needs.

(i) The Institutional Network will be constructed so that any analog video signals transmitted over it may be inserted on any one of the downstream subscriber access channels required by Section 6(a) via video switching equipment operated by Metropolitan Nashville or its designate.

(ii) The Institutional Network will provide full availability of the 5 to 30 MHz return spectrum and the 54 to 300 MHz downstream spectrum to and from Eakin Elementary School, Pearl Cohn School, Buena Vista Middle School, Cameron Middle School and the Waverly Belmont Center. Direct fiber optic links will be provided for both WDCN and Tennessee State University, and Franchisee will provide additional upstream and downstream spectrum to these two locations as needed.

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(iii) Franchisee shall retain ownership of the Institutional Network, but Metropolitan Nashville (or any entity designated by it) shall control use of the Institutional Network.

(B) Under Phase Two, which shall be implemented by the end of the second quarter of 1997, Franchisee shall have installed and activated the software and equipment required to integrate telephony/data transmission and interactive capability into its System so that the subscriber network may accommodate the future PEG uses of Metropolitan Nashville set forth in Exhibit A hereto through dynamic spectrum management technologies . If such dynamic spectrum management technologies are not commercially available and are not financially feasible, Franchisee may petition Metropolitan Nashville for relief from implementing, or a deferral of implementation of, such technologies, provided, however, that if such technologies are not implemented or are deferred, Franchisee shall be obligated to provide Metropolitan Nashville with at least 10 MHz of reverse capacity on the System and shall cooperate and coordinate in good faith with Metropolitan Nashville in making use of the reverse

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capacity allocated hereunder and the other PEG capacity provided under this Section 6 to meet the future PEG uses and applications of Metropolitan Nashville set forth in Exhibit A.

(C) Prior to the introduction of non-analog services on the PEG channels, Metropolitan Nashville agrees to coordinate the planning and introduction of these services with Franchisee's technical representatives in order to ensure that the transmission of these services does not adversely impact the quality of services provided to system subscribers.

(D) Metropolitan Nashville and the Franchisee shall review technical issues and PEG needs associated with the provision of interactive, data and voice services as part of the periodic review and upgrade option processes set forth in Section 2(r) and (s) hereof.

(8) Metropolitan Nashville agrees that it will not use PEG access capacity and facilities required by Section 6(a) and (b) hereof to provide for-profit commercial services that compete with Franchisee's lines of businesses. Metropolitan Nashville or its PEG access designate may, however, authorize charges to pay the direct costs of non-commercial services, such as fees for

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video class instruction or charges to recover the cost of special use equipment, and may solicit and obtain donations and sponsorships to contribute to PEG access programming and operations.

(c) *Capital Grant for Access Equipment and Facilities:*

(1) No later than the effective date of the Franchise, the Franchisee shall provide a capital grant to Metropolitan Nashville of Six Hundred Thousand Dollars (\$600,000) (the "Initial PEG Support Grant") to be used by Metropolitan Nashville, in its sole discretion, for public, educational and governmental access equipment, facilities and support.

(2) On each of the fourteen succeeding anniversary dates of the effective date of the Franchise, Franchisee shall provide an additional grant to Metropolitan Nashville of One Hundred Thousand Dollars (\$100,000) ("Annual PEG Support Grant") to be used by Metropolitan Nashville, in its sole discretion, for public, educational and governmental access equipment, facilities and support. On or before each of the fourteen succeeding anniversary dates of the effective date of the Franchise, Metropolitan Nashville shall cause to be delivered to

Franchisee a report summarizing PEG access plans for the coming year.

(3) For one (1) year after the Effective Date hereof, the Franchisee shall allow the Community Access Corporation access to Franchisee's equipment and studios for access use to the same extent as Franchisee did under the Prior Franchise.

(d) *Management of Channels:* Metropolitan Nashville may designate one (1) or more entities, including the existing Community Access Corporation, to manage the use of all or part of the public, educational, and governmental access channel capacity dedicated under Section 6(a) and (b). Until further action is taken, the Community Access Corporation shall continue to be responsible for those areas for which it has been responsible to date, and Metropolitan Nashville shall be responsible for all other functions.

(e) *Costs and Payments Not Franchise Fees:* The parties hereby agree that any costs to the Franchisee associated with the provision of support for public, educational or governmental access pursuant to this Franchise Agreement, and any payments made to Metropolitan Nashville pursuant to Sections 5, 6 or 11 of

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this Agreement, do not constitute and are not part of a franchise fee, and fall within one or more of the exceptions to 47 U.S.C. § 542.

(f) *Editorial Control:* Except as expressly permitted by federal law, the Franchisee shall not exercise any editorial control over the content of programming on any access channel capacity (except for such programming the Franchisee may produce and cablecast on those channels).

(g) *PEG Schedule:* If Metropolitan Nashville makes a schedule of public, educational and governmental programming available to Franchisee within the time required to meet Franchisee's publication deadline, Franchisee shall include such a schedule in any publication or video channel listing which it controls in the Metropolitan Nashville area, and Franchisee shall cooperate with Metropolitan Nashville in making the schedule available to all subscribers and to appropriate news sources, in the same manner as it does all other programming on the System. Franchisee is not, however, responsible for any decision by an independent publisher or news source to not publish the schedule. Prior to the completion of the System rebuild, Franchisee may

fulfill its obligation under this paragraph of including a PEG schedule in a publication it controls by including PEG programming on its on-screen program guides and by using its best efforts to include regularly-scheduled PEG programming in its pre-rebuild printed program guide.

**7. Non-discrimination.**

(a) *No Discrimination:*

(1) The Franchisee must comply with all applicable local, state and federal laws and regulations prohibiting discrimination, including without limitation, the Cable Ordinance and laws and regulations prohibiting discrimination in the provision of Cable Service or employment.

(2) The Franchisee is specifically prohibited from discriminating among persons or taking any retaliatory action against a person because of that person's exercise of any right it may have under federal, state, or local law, nor may the Franchisee require a person to waive such rights as a condition of taking service.