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July 11, 2008

VIA CERTIFIED MAIL

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

Re: TRA Receipt of Application for Certificate of Franchise Authority and Official  
Request for Information

Dear Ms. Cooper:

The Town of Smyrna (hereinafter "the Town") is in receipt of the Application of BellSouth Telecommunications, Inc. d/b/a AT&T Tennessee for a State-Issued Certificate of Franchise Authority, as well as your request for the following information:

The number of activated PEG channels for such municipality or county, as well as the number authorized to be activated if different; and

The terms of any PEG support payments being provided by the incumbent service provider.

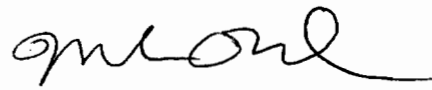
The Town of Smyrna has an active franchise agreement (2004 Cable Franchise Agreement between the Town of Smyrna and Comcast Cablevision of Nashville II, LLC, hereinafter "the Agreement") with Comcast Cable allowing them to provide cable services in the present territorial limits of the Town and any area lawfully annexed thereto during the term of the franchise. The Town currently has one activated PEG channel, although pursuant to §6(a)(1) of the Agreement there is availability for (2) available full-time PEG channels, as well as the opportunity for one more additional PEG channel based upon certain criteria involving the amount and duration of Qualified Programming as set out in the Agreement.

Pursuant to §7(a) of the Agreement, each year during the incumbent franchise term, the franchisee must pay to the Town, on a quarterly basis, a franchise fee of five percent (5%) of

gross revenues. Gross revenues are defined in the Agreement as any and all revenues actually received by the franchisee from the operation of the franchisee's cable system to provide cable services in the franchise area, which also includes subscriber revenues as well as home shopping commissions and advertising revenue. PEG support payments are included in such franchise fees. I have attached for your information a copy of our Franchise Agreement with Comcast.

I would respectfully request that you deem this letter to have been received within the CCVSA-designated 10-day period given our office received the AT&T application notification on July 7, 2008. Should you have any questions or need additional information, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "m. o'neal", written in a cursive style.

Mark O'Neal  
Town Manager

ORDINANCE NO. 4-20

Town of Smyrna

CABLE FRANCHISE ORDINANCE

AND

A CABLE FRANCHISE AGREEMENT

BETWEEN THE TOWN OF SMYRNA, TENNESSEE

AND COMCAST CABLEVISION OF NASHVILLE II, LLC

*June 08*, 2004

Prepared by:  
Creighton Bradley & Guzzetta, LLC  
950 Piper Jaffray Plaza  
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TOWN OF SMYRNA, TENNESSEE

ORDINANCE NO. 04-\_\_\_\_\_

AN ORDINANCE GRANTING A FRANCHISE TO COMCAST CABLEVISION OF NASHVILLE II, LLC, D/B/A COMCAST, TO CONSTRUCT, OPERATE AND MAINTAIN A CABLE SYSTEM IN THE TOWN OF SMYRNA, TENNESSEE, FOR THE PURPOSE OF PROVIDING CABLE SERVICE; SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OF THE FRANCHISE; PROVIDING FOR REGULATION AND USE OF THE SYSTEM AND THE PUBLIC RIGHTS-OF-WAY IN CONJUNCTION WITH THE TOWN'S RIGHT-OF-WAY ORDINANCE, IF ANY; AND PRESCRIBING PENALTIES FOR THE VIOLATIONS OF THE PROVISIONS HEREIN.

BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF SMYRNA: That the Town of Smyrna and Comcast Cablevision of Nashville II, LLC hereby agree as follows:

**THIS CABLE FRANCHISE ORDINANCE AND AGREEMENT** (the "Franchise Agreement") is entered into by and between the Town of Smyrna, Tennessee ("Town"), a municipal corporation, and Comcast Cablevision of Nashville II, LLC, a Delaware limited liability company ("Franchisee").

**WHEREAS**, Franchisee has asked the Town to renew its nonexclusive cable franchise including any amendments, resolutions, written agreements or transfer consent ordinances and resolutions related thereto (the "Prior Franchise") to construct, install, maintain and operate a Cable System in the Town; and

**WHEREAS**, the construction, installation, maintenance and operation of a Cable System involves the occupation of and placement of facilities in the Public Rights-of-Way within the Town; and

**WHEREAS**, the Town has reviewed the performance of Franchisee and its predecessor under the Prior Franchise and the quality of service during the Prior Franchise term, has identified the future cable-related needs and interests of the Town and its citizens, has considered the financial, technical and legal qualifications of Franchisee, and has determined whether

Franchisee's plans for constructing, operating and maintaining its Cable System are reasonable to meet the future cable-related community needs and interests, in light of the costs of meeting such needs and interests, in a full public proceeding affording due process to all parties; and

**WHEREAS**, the Town has relied on Franchisee's representations and has considered the information that Franchisee has presented to it; and

**WHEREAS**, based on Franchisee's representations and information, and in response to its request for renewal, the Town Council has determined that the terms and conditions set forth herein, the grant of a new, nonexclusive renewal franchise to Franchisee, to supersede the Prior Franchise, on the terms and conditions herein and subject to applicable law, is consistent with the public interest; and

**WHEREAS**, the Town and Franchisee have reached agreement on the terms and conditions set forth herein;

**NOW, THEREFORE**, in consideration of the Town's grant of a new, nonexclusive renewal Franchise to Franchisee;

**THE DULY AUTHORIZED SIGNATORIES TO THIS FRANCHISE AGREEMENT DO HEREBY AGREE AS FOLLOWS:**

**1. DEFINITIONS.**

The following terms, phrases, words, abbreviations and their derivations shall have the meaning given herein for the purposes of this Agreement. When not inconsistent with the context, words used in the present tense include the future tense; words in the plural number include the singular number; words in the singular number include the plural number; and the masculine gender includes the feminine gender. Unless otherwise expressly stated, words not defined herein shall be given the meaning set forth in Title VI of the Communications Act of 1934, as amended, 47

U.S.C. § 521, *et seq.*, Title 47 of the United States Code, as amended, Title 47, Part 76 of the Code of Federal Regulations, as amended, or other applicable law and, if not defined therein, the words shall be given their common and ordinary meaning. The words “shall” and “will” are always mandatory and not merely directory. The word “may” is directory and discretionary, and not mandatory.

1(a) *Access Channel:* Any Channel on the Cable System set aside by the Franchisee and/or the Town for Noncommercial educational or Noncommercial governmental programming.

1(b) *Actual Cost:* The incremental cost to the Franchisee of materials and labor necessary to install and construct fiber-optic lines, coaxial cable and/or equipment.

1(c) *Affiliate:* Any Person who owns and controls, is owned and controlled by or is under common ownership and control with the Franchisee.

1(d) *Basic Cable Service:* Any service tier that includes the retransmission of local television broadcast signals.

1(e) *Cable Act:* The Cable Communications Policy Act of 1984, 47 U.S.C. §§ 521 *et seq.*, as amended from time to time.

1(f) *Cable Commission:* The Smyrna Cable Television Commission, its designee or any successor entity.

1(g) *Cable Modem:* An electronic device commonly referred to as such or performing the same functions as an electronic device commonly understood to be a cable modem.

1(h) *Cable Service:* One-way transmission to Subscribers of video programming or other programming services; and Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming services. For purposes of this Franchise, the parties hereto acknowledge that as of the Effective Date there exist ongoing legal

proceedings regarding whether cable modem service may be lawfully considered a cable service under federal law. As of the adoption of this Franchise, cable modem services are not considered "Cable Service." As to the definition of "Cable Service," and any inclusion of cable modem service in such service, the parties agree to comply with future applicable federal or State law or applicable regulations.

1(i) *Cable System or System:* A facility consisting of a set of closed transmission paths and associated signal generation, reception and control equipment that is designed to provide Cable Service which includes video programming and which is provided to multiple Subscribers within the Town, but such term does not include (1) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (2) a facility that serves Subscribers without using any Public Rights-of-Way; (3) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Communications Act of 1934, as amended, except that such facility shall be considered a Cable System (other than for purposes of Section 621(c) of the Cable Act) to the extent such facility is used in the transmission of video programming directly to Subscribers, unless the extent of such use is solely to provide interactive on-demand services; (4) an open video system that complies with 47 U.S.C. § 573; or (5) any facilities of any electric utility used solely for operating its electric utility system.

1(j) *Channel:* The electromagnetic frequency spectrum, which is used in a Cable System and, which is capable of delivering a television channel (as such term is defined by the FCC by regulation).

1(k) *Town:* The Town of Smyrna, Tennessee, a municipal corporation in the State of Tennessee.



1(l) *Town Code*: The Smyrna Municipal Code, as amended from time to time.

1(m) *Town Council*: The governing body of the Town or its lawful designee.

1(n) *Commercial Leased Access Channels*: Any Channels or portions thereof on the Cable System which are designated or dedicated for use by a Person unaffiliated with the Franchisee pursuant to 47 U.S.C. § 532.

1(o) *Converter*: An electronic device which may serve as an interface between the System and a Subscriber's television monitor, receiver or other terminal equipment, and which may perform a variety of functions, including signal security, descrambling, frequency conversion and Channel selection.

1(p) *Drop*: The cable that connects the ground block on the Subscriber's residence or institution to the nearest feeder cable of the System.

1(q) *Dwelling Unit*: Any building or portion thereof providing complete independent permanent facilities for living, sleeping, cooking, eating and sanitation designed for or used exclusively as living quarters by an individual, but not including a tent, seasonal quarters, travel trailer, or a room in a hotel, motel or boarding house.

1(r) *Educational Access Channel or Educational Channel*: Any Channel on the System designated for Noncommercial educational programming.

1(s) *FCC*: The Federal Communications Commission, its designee, or any successor governmental agency thereto.

1(t) *Franchise*: The nonexclusive authorization or renewal thereof granted pursuant to this ordinance and Agreement to construct, operate and maintain a System along the Public Rights-of-Way within the Franchise Area. This Franchise does not include any license or permit

generally required of any Person for the privilege of transacting and carrying on business within the Town.

1(u) *Franchise Agreement or Agreement:* This ordinance and contract and any amendments, exhibits or appendices hereto.

1(v) *Franchise Area:* The entire present territorial limits of the Town and any area lawfully annexed thereto during the term of the Franchise.

1(w) *Franchisee:* Comcast Cablevision of Nashville II, LLC, and its lawful and permitted successors, assigns, and transferees.

1(x) *Governmental Access Channel or Governmental Channel:* Any Channel on the System designated for Noncommercial government programming.

1(y) *Gross Revenues:* Any and all revenues actually received by the Franchisee from the operation of the Franchisee's Cable System to provide Cable Services in the Franchise Area, which shall also include subscriber revenues as well as home shopping commissions and advertising revenue. Gross Revenues shall include revenues received by an entity other than the Franchisee where necessary to prevent evasion or avoidance of the Franchisee's obligation under this Franchise to pay the franchise fee. Gross Revenues shall not include any taxes on services furnished by the Franchisee which are imposed directly on any Subscriber or User by the State, Town, or other governmental unit and which are collected by the Franchisee on behalf of said governmental unit. A franchise fee is not such a tax. For purposes of calculating franchise fee payments, for any package which includes Cable Services and non-cable services or other products, any charges and discounts shall be allocated in a reasonable manner and in accordance with generally accepted accounting principles (GAAP) or other standard industry practices. Franchise fee payments covering periods in which any such aggregated bill is used shall be

accompanied by an explanation of such allocation and the amounts so allocated. Any such allocation may be addressed in any audit conducted pursuant to this Franchise Agreement. If cable modem service and the revenues derived there from may be legally included in Gross Revenues for the purpose of assessing a franchise fee, Town may immediately commence, though on a reasonable implementation schedule, the assessment of a franchise fee on cable modem service to the maximum amount allowable by applicable law, and Franchisee agrees to pay such franchise fee on cable modem service revenues, in such event.

1(z) *Institutional Network or I-Net:* The network provided by the Franchisee to identified institutions as required by this Franchise.

1(aa) *Noncommercial:* A description of any actions undertaken by the Town or any Person which cannot reasonably be determined to provide or sell (whether audio, video or text) or promote the providing or selling of any products, programming or services which are or which may reasonably be expected to be provided, promoted or sold by Franchisee. This term shall not be interpreted to prohibit Town or any Access Channel programmer from receiving financial support to produce programming for the Access Channels or from acknowledging a contribution. Nor shall this term be interpreted to prohibit in any way the Town from providing services or products to itself or any other public institution through the utilization of the System to the extent otherwise authorized pursuant to this Franchise. By way of further elaboration, it is the intent of the Town and Franchisee that Access Channel programming should not become a profit-making endeavor for the Town, but that any revenues received for Access Channel Programming shall be used to support Access Channel programming. Additionally, unless otherwise required by State or Federal law, this Franchise Agreement shall be interpreted to prohibit the provision of Access Channel programming to any direct competitor of Franchisee unless said competitor has

contributed to the production of such Access programming pursuant to Section 2(d) of this Franchise. Further, the Town or any programmer shall not permit the acquisition of Access Channel programming through utilization of the System or connection thereto by any satellite or other multi-channel video provider or any television station, provided however, the Town or any programmer shall have no liability should any such entity acquire such programming through other means. Notwithstanding the above, Access Channel Programming may be freely shared with other governmental entities, excluding only government-owned or government-operated cable television systems which Town knows or has reason to know directly compete with Franchisee or an Affiliate; except that, in no event shall such programming be eligible to contribute to any additional channel activation triggers in any Franchise of Franchisee or an Affiliate.

Nothing in this definition or this Franchise Agreement shall be interpreted to prohibit Town or any entity of the Town from publishing audio, video or text Access Channel programming on or in its own media, including but not limited to its own web site on the World Wide Web.

1(bb) *Outage*: A Service Interruption affecting more than ten (10) Subscribers that are receiving their signal from a given amplifier.

1(cc) *Person*: An individual, partnership, association, joint stock company, joint venture, domestic or foreign corporation, stock or non-stock corporation, limited liability company, professional limited liability corporation, or organization of any kind or any lawful successor thereto or transferee thereof, but such term does not include the Town.

1(dd) *Qualified Programming*: Any locally produced programming or material carried on the Government Access Channel. For the purpose of this definition "locally produced

programming or material” shall be: (1) no more than thirty-three percent (33%) combined of (a) repeat programming (any programming played more than once) and (b) programming that is primarily character generated; plus (2) no more than thirty (30) hours per month of Noncommercial satellite or Noncommercial non-locally produced programming that is educational or governmental in nature.

1(ee) *Service Interruption:* The loss of picture or sound on one or more cable Channels.

1(ff) *State:* The State of Tennessee and its agencies and departments.

1(gg) *Subscriber:* Any Person who legally subscribes and pays for any Cable Service delivered over the Cable System.

## **2. GRANT OF AUTHORITY; LIMITS AND RESERVATIONS.**

2(a) *Grant of Authority:*

2(a)(1) Subject to the terms and conditions of this Franchise Agreement, the Town hereby grants the Franchisee the right to own, construct, operate and maintain a Cable System along the Public Rights-of-Way within the Franchise Area. The grant of authority set forth in this Franchise and Franchise Agreement applies to the Franchisee’s provision of Cable Service; provided, however, that nothing herein shall limit the Franchisee’s ability to use the Cable System for other purposes not inconsistent with the provision of Cable Service; and provided further, that any local, State and federal authorizations necessary for the Franchisee’s use of the System for other purposes are obtained by the Franchisee. No privilege or power of eminent domain is bestowed by this grant; nor is such a privilege or power bestowed by this Agreement.

2(a)(2) This Franchise authorizes the use of Public Rights-of-Way for the operation of a System. The grant of this Franchise and the payment of franchise fees hereunder

shall not exempt the Franchisee from the obligation to pay any lawful fees for the use of Town property, other than Public Rights-of-Way, or that the Franchisee wishes to occupy for purposes other than the provision of Cable Service in the Town; provided, however, that such fees are lawfully required by Town ordinance, regulation or policy and are not unlawfully discriminatory.

2(a)(3) This Franchise Agreement does not take the place of any other certificate, license, permit or approval which might be required of the Franchisee by law or regulation. Prior to commencing any construction required by this Agreement or undertaking any other actions requiring Town approval, the Franchisee shall obtain and hereby agrees fully to comply with all lawful and applicable permit and license requirements.

2(b) *Area Served:*

2(b)(1) The Franchise is granted for the Franchise Area defined herein.

2(b)(2) The Franchisee shall build its System so that it is able to provide service to all areas located within the Town limits as they existed on the Effective Date, subject to the line extension density requirement set forth in Section 3(a) of this Agreement. It must build the System so that it can extend Cable Service to residents of the Town, including residents located in areas which are annexed in the future, in accordance with the provisions of this Agreement, unless this requirement is waived in writing by the Town.

2(c) *Term:* The Franchise and this Franchise Agreement shall extend for a term of fifteen (15) years, commencing on the date accepted below by the Franchisee, unless the Franchise is earlier revoked or otherwise lawfully shortened.

2(d) *Grant Not Exclusive:* The Franchise and the right it grants to use and occupy the Public Rights-of-Way shall not be exclusive, and the Town reserves the right to grant other franchises for similar uses or for other uses of the Public Rights-of-Way, or any portions thereof, to any Person, or to make any such use itself, at any time during the term of this Franchise

Agreement, with or without a franchise; provided, however, that the Town shall not authorize or otherwise permit another Person to operate, construct or maintain a Cable System in the Town, or provide Cable Service in the Town, on terms or conditions more favorable or less burdensome than those in this Franchise Agreement, taken as a whole.

2(e) *Franchise Agreement Subject to Other Laws:* This Franchise Agreement is subject to and shall be governed by all applicable provisions of federal and state law, unless otherwise specifically qualified herein.

2(f) *Franchise Agreement Subject to Exercise of Police Powers:* All rights and privileges granted herein are subject to the lawful and generally applicable exercise of the police powers of the Town to similarly situated Persons. Town reserves all rights under applicable laws and regulations that it has not contracted away herein.

2(g) *Customer Service Standards:* The Franchisee shall, at a minimum, meet any current applicable federal customer service standards and any customer service standards and consumer protection standards set forth herein. The Franchisee will continue to maintain a staffed local business office in the City of Murfreesboro, Tennessee. "Local" for purposes of this Section shall be understood to mean within the City of Murfreesboro city limits for the first five years of the Franchise term, and thereafter the Murfreesboro Urban Growth Boundary Area or the Town limits of the Town of Smyrna as they exist, as of May, 2003. The office will be operated during regular business hours.

2(h) *Effective Date:* This Franchise Agreement shall become effective on the date accepted below by the Franchisee (the "Effective Date"), after all pre-execution requirements of this Franchise Agreement are satisfied, it has been approved by the Town Council in accordance with applicable law, and it has been accepted and signed by the Franchisee and the Town.

2(i) *Effect of Acceptance:* By accepting the Franchise and executing this Franchise Agreement, the Franchisee:

2(i)(1) accepts this Agreement, agrees to comply with all applicable federal, state, and generally applicable local laws and regulations;

2(i)(2) acknowledges and accepts the Town's legal right to grant the Franchise, to enter into this Franchise Agreement; and

2(i)(3) agrees that the Franchise was granted pursuant to processes and procedures consistent with applicable law, and that it will not allege to the contrary in any claim or proceeding by the Franchisee against the Town, or allege that any provision, condition or term of this Franchise Agreement at the time of the acceptance of the Franchise was illegal or arbitrary.

2(j) *Claims Related to Prior Franchise:*

2(j)(1) In addition to satisfying all the provisions of this Franchise Agreement, the Franchisee shall continue to be bound by any previously accrued but unfulfilled obligations under the Prior Franchise with respect to payment of all franchise fees since January 1, 2000 so long as any such issue is raised and Franchisee provided notice within 36 months after Effective Date of this Franchise Agreement. The grant of this Franchise shall have no effect on any duty of the Franchisee under the Prior Franchise to indemnify or insure the Town against acts and omissions occurring during the period that the Prior Franchise was in effect.

2(j)(2) Except as required to carry out the intent of the previous paragraph, as of the Effective Date of this Franchise Agreement, the Prior Franchise is superseded and is of no further force and effect, and the Town and the Franchisee mutually release each other from any claims each had, has or may have against the other under the Prior Franchise.



2(k) *No Waiver:*

2(k)(1) The failure of the Town on one or more occasions to exercise a right or to require compliance or performance under this Franchise Agreement or any other applicable law shall not be deemed to constitute a waiver of such right or a waiver of future compliance or performance by the Town, nor to excuse the Franchisee from complying or performing in the future, unless such right or such compliance or performance has been specifically waived in writing.

2(k)(2) Waiver of a breach of this Agreement shall not be a waiver of any other breach, whether similar to or different from that waived. Neither the granting of the Franchise, nor any provision herein, nor any action by the Town hereunder shall constitute a waiver of or a bar to the exercise of any governmental right or power of the Town, including without limitation the right of eminent domain.

3. **PROVISION OF CABLE SERVICE.**

3(a) *Line Extension Requirements.*

3(a)(1) Subject to subsection 4(a)(2) below, the Franchisee shall make Cable Service available to all Dwelling Units, within the Town, including multiple Dwelling Unit buildings, whose owners or occupants request Cable Service, except for multiple Dwelling Unit buildings or other Dwelling Units to which the Franchisee cannot, after reasonable efforts, obtain legal authorization to access.

3(a)(2) Within the Franchise Area, including any areas annexed after the Effective Date of this Franchise, the Franchisee must extend its System upon written request to provide Cable Service to any Person at no charge other than any applicable Installation fees for the individual Subscriber's Drop, as long as the following conditions are satisfied, unless the

Franchisee demonstrates to the Town's satisfaction that a waiver of this requirement is justified due to extraordinary circumstances:

3(a)(2)(A) the potential Subscriber requesting service is located 125 feet or less from the distribution plant of Franchisee's Cable System, and

3(a)(2)(B) the area of the Town in which the potential Subscriber resides has a density of at least twenty-five (25) Dwelling Units per mile of feeder cable, excluding Drop footage, measured from the Franchisee's existing distribution plant. All areas within the Franchise Area that reach the applicable density requirement at any time during the Franchise term shall be provided Cable Service upon reaching such minimum density.

3(a)(3) Irrespective of the density requirement set forth in subsection 3(a)(2) above, the Franchisee shall continue to offer Cable Service to all Dwelling Units and other structures being served by the Franchisee as of the Effective Date of this Agreement, but only to the extent such Subscriber remains in good standing.

3(b) *Continuity of Service.*

3(b)(1) It is the right of all Subscribers and the Town in the Franchise Area to have the ability to receive all available Cable Services from the Franchisee as long as their financial and other obligations to the Franchisee are satisfied, and subject to such other reasonable conditions lawfully imposed by the Franchisee.

3(b)(2) The Franchisee shall use best efforts to ensure that all Subscribers receive continuous uninterrupted Cable Service. At the Town's request, the Franchisee shall, as trustee for its successor in interest, operate its System for a Transition Period following the termination, sale, or Transfer of its Franchise as may be necessary to maintain Cable Service to Subscribers, and, in the event of termination, shall cooperate with the Town to assure an orderly transition from it to another Franchisee.

3(b)(3) For the continued operation of the Cable System under the same terms and conditions of this Agreement during the Transition Period, the Franchisee shall be entitled to the revenues from the System.

3(b)(4) If the Franchisee ceases operation of its System during the Franchise term for more than seven (7) consecutive days or fails to operate its System in accordance with the terms of this Agreement during any Transition Period, the Town, at its option, may operate the System, designate any other Person to operate the System on behalf of the Town temporarily until the Franchisee restores service under conditions acceptable to the Town or until the Franchise is revoked and a new franchisee selected by the Town is providing service, or obtain an injunction requiring the Franchisee to continue operations. If the Town is required to operate or designate another entity to operate the Cable System, the Franchisee shall reimburse the Town or its designee for all reasonable costs and actual damages incurred that are in excess of the revenues from the Cable System.

3(b)(5) Franchisee will designate a representative as key liaison to the Town's zoning and planning department.

#### **4. CONSTRUCTION AND MAINTENANCE.**

##### **4(a) *Construction Standards.***

4(a)(1) The construction, operation, maintenance, and repair of the System shall be in accordance with all applicable sections of the Occupational Safety and Health Act of 1970, as amended; the most current edition of the National Electrical Safety Code and National Electric Code; Obstruction Marking and Lighting, AC 70/7460 i.e., Federal Aviation Administration; Construction, Marking and Lighting of Antenna Structures, Federal Communications Commission Rules Part 17; Franchisee's Construction Procedures Manual, if applicable; and other generally applicable federal, state, or local laws and regulations that may

apply to the operation, construction, maintenance, or repair of a Cable System, including, without limitation, generally applicable local zoning and construction codes and laws, all as hereafter may be amended or adopted pursuant to the Town's police powers.

4(a)(2) All installation of electronic equipment shall be of a permanent nature, using durable components, except where maintenance for emergency repairs requires the installation of temporary equipment. Temporary equipment shall be replaced as soon as reasonably possible.

4(a)(3) Without limiting the foregoing, antennae and their supporting structures (towers) shall be painted, lighted, erected, and maintained in accordance with all applicable rules and regulations of the Federal Aviation Administration and all other generally applicable state or local laws, codes, and regulations all as hereafter may be amended or adopted.

4(a)(4) Without limiting the foregoing, all of the Franchisee's plant and equipment, including, but not limited to, the antennae site, head end and distribution system, towers, house connections, structures, poles, wires, cable, coaxial cable, fiber-optic cable, fixtures, and apparatuses shall be installed, located, erected, constructed, reconstructed, replaced, removed, repaired, maintained, and operated in accordance with good engineering practices, performed by experienced and properly trained maintenance and construction personnel so as not to endanger or interfere with improvements the Town shall deem appropriate to make or to interfere in any manner with the Public Rights-of-Way or legal rights of any property owner or to unnecessarily hinder or obstruct pedestrian or vehicular traffic.

4(a)(5) All safety practices required by applicable law shall be used during construction, maintenance, and repair of the Cable System. The Franchisee shall at all times

employ ordinary care and shall install and maintain in use commonly accepted methods and devices preventing failures and accidents that are likely to cause damage or injury to the public.

4(a)(6) The Franchisee shall utilize such devices as will apprise or warn Persons using the Public Rights-of-Way of the existence of work being performed on the System in Public Rights-of-Way.

4(a)(7) The Franchisee shall be a member of the Tennessee One Call Notification System (otherwise known as "TN One-Call") or its successor, and shall field mark the locations of its underground facilities upon request from TN One-Call. Throughout the term of this Franchise, upon reasonable notice, the Franchisee shall identify the location of its facilities for the Town at no charge to the Town.

4(a)(8) In the event of a failure by the Franchisee to complete any work required for the protection or restoration of the Public Rights-of-Way, within the time specified by and to the reasonable satisfaction of the Town, the Town, following notice and an opportunity to cure, may cause such work to be done, and the Franchisee shall reimburse the Town the Actual Cost thereof within thirty (30) days after receipt of an itemized list of such costs.

4(a)(9) The Franchisee shall not place facilities, equipment, or fixtures where they will interfere with any gas, electric, telephone, water, sewer, or other utility facilities, or obstruct or hinder in any manner the various utilities serving the residents of the Town of their use of any Public Rights-of-Way.

4(a)(10) Any and all Public Rights-of-Way, public property, or private property that is disturbed or damaged during the construction, repair, replacement, relocation, operation, maintenance, or construction of the Franchisee's System shall be promptly repaired by the Franchisee at no cost to the Town.

4(a)(11) The Franchisee shall, by a reasonable time specified by the Town and at no cost to the Town, protect, support, temporarily disconnect, relocate, or remove any of its property when required by the Town by reason of traffic conditions; public safety; Public Right-of-Way construction; Public Right-of Way maintenance or repair (including resurfacing or widening); change of Public Right-of-Way grade; construction, installation or repair of sewers, drains, water pipes, power lines, signal lines, tracks, or any other type of government-owned communications system used for internal government purposes only, public work or improvement or any government-owned utility; or Public Right-of-Way vacation; provided, however, that if such request to temporarily disconnect, relocate, or remove any of Franchisee's property is made by the Town in its capacity as a provider, or potential provider, of Cable Services or an entity actually planning to provide Cable Services, then the costs of such temporary disconnection, relocation or removal shall be borne by the Town.

4(a)(12) If any removal, relaying, or relocation is required to accommodate the construction, operation, or repair of the facilities of another Person that is authorized to use the Public Rights-of-Way, the Franchisee shall, after thirty (30) days' advance written notice, take action to effect the necessary changes requested by the responsible entity. The responsibility for costs associated with the removal, relaying, or relocation of facilities shall be with the Person requesting same and the Franchisee shall have the authority to require such payment in advance, except in the case where the requesting Person is the Town, in which case no payment shall be required, unless the Town requests the movement of the Franchisee's wires in the capacity as a provider, or potential provider, of Cable Service.

4(a)(13) In the event of an emergency, or where the Cable System creates or is contributing to an imminent danger to health, safety, or property, and prior notice to Franchisee

is not reasonably practicable (however Town will provide notice to Franchisee at such time that such notice is reasonably practicable), the Town may remove, relay, or relocate any or all parts of the Cable System without prior notice.

4(a)(14) The Franchisee shall, on the request of any Person holding a building or moving permit issued by the Town, temporarily raise or lower its wires to permit the moving of buildings. The expense of such temporary removal or raising or lowering of wires shall be paid by the Person requesting same, and the Franchisee shall have the authority to require such payment in advance, except in the case where the requesting Person is the Town, in which case no payment shall be required. The Franchisee shall be given not less than five (5) business days' advance written notice to arrange for such temporary wire changes.

4(a)(15) To the extent consistent with generally applicable Municipal Code provisions, rules and regulations including those requiring a permit to cut or trim trees in the Public Rights of Way, the Franchisee shall have the authority to remove, cut, trim and keep clear of its System trees or other vegetation in and along or overhanging the Public Rights-of-Way. However, in the exercise of this right, the Franchisee agrees not to cut or otherwise injure said trees to any greater extent than is reasonably necessary. This Franchise does not give the Franchisee any authority to remove trees on private property in the Town. All trimming shall be performed at the no cost to the Town.

4(a)(16) Where existing poles, underground conduits, ducts or other wire holding structures are available for use by the Franchisee, under reasonably negotiated terms and conditions, as may be reasonably determined by the Franchisee, but it does not make arrangements for such use, the Town may require, through the established permit, or any other

applicable procedure, the Franchisee to use such existing poles and wire holding structures if the Town determines that the public convenience would be enhanced thereby.

4(a)(17) System cable and facilities may be constructed overhead where poles now exist and electric or telephone lines or both are now overhead. However, where no overhead poles exist, and where all other electric or telephone utilities are underground (except those facilities owned by the Tennessee Valley Authority to the extent Town has no jurisdiction over such facilities), all cables and facilities, excluding System passive or active electronics that may be housed in low-profile, above-ground pedestals, shall be constructed underground. Whenever and wherever electric lines and telephone lines are moved from overhead to underground placement, all Cable System cables shall be similarly moved at no cost to the Town, provided however, if any Person is reimbursed by the Town in conjunction with such electric line, telephone line, or cable relocation, Franchisee shall be likewise reimbursed by the Town. The Town shall not take any action which would restrict or limit the Franchisee's ability to obtain reimbursement from a third party or other governmental agency.

4(a)(18) The Town, after consultation with the Franchisee, shall have the right to use for its sole, noncommercial purposes, the Franchisee's poles, conduits, ducts, or manholes free of charge, provided that such use will not unreasonably interfere with the present or future needs or System operations of the Franchisee and provided, further, that the Town is not using such poles, conduits, ducts, or manholes for the provision of telecommunications or Cable Services. To the extent of its maximum liability to third parties or other indemnification exposure under applicable law, the Town shall indemnify and hold harmless the Franchisee and its Affiliates from and against any and all liability or claims arising out of the Town's use of the Franchisee's facilities pursuant to this subsection.



4(a)(19) Prior to erection of any towers, poles, or conduits or the construction, upgrade, or rebuild of a Cable System, the Franchisee shall first submit to the Town a concise description of the Cable System facilities proposed to be erected or installed, including engineering drawings, if required by the Town's lawful, generally applicable-to-similarly-situated Persons regulations, together with a map and plans indicating the proposed location of all such facilities. No such erection or construction shall be commenced by any Person until approval therefore has been received from the Town pursuant to any applicable, lawful, generally-applicable-to-similarly-situated Persons regulations.

4(a)(20) No placement of any pole or wire holding structure of the Franchisee is to be considered a vested interest in the Public Rights-of-Way or in Town property. All transmission and distribution structures, lines, wires, cables, equipment, and poles or other fixtures erected by the Franchisee within the Town are to be so located and installed as to cause minimum interference with the rights and convenience of property owners.

4(a)(21) Any contractor or subcontractor used for work or construction, installation, operation, maintenance, or repair of System equipment must be properly licensed under laws of the State and all applicable local ordinances, where applicable. The Franchisee shall ensure that contractors, subcontractors and all employees who will perform work for it are qualified to perform such work. The Franchisee shall be responsible for: (i) ensuring that the work of contractors and subcontractors is performed consistent with this Agreement and applicable law; (ii) all acts or omissions of contractors or subcontractors; and (iii) promptly correcting acts or omissions by any contractor or subcontractor known by Franchisee.

4(a)(22) The Town does not guarantee the accuracy of any maps showing the horizontal or vertical location of existing substructures. In Public Rights-of-Way, where

necessary, the location of existing substructures shall be verified by excavation or by contacting “TN One-Call.”

4(a)(23) Above-ground equipment placed on private property shall be placed at the location reasonably requested by the property owner. The Franchisee shall undertake reasonable efforts to provide affected property owners with advance written notice of its plans to install such equipment, and shall make reasonable efforts to confer with property owners before any work is done. The written notice required hereunder shall be in a manner and substance solely determined by Franchisee, but, at a minimum, the Franchisee shall advise affected property owners of the location(s) where equipment will be installed on their property.

4(a)(24) Franchisee will work to undertake joint trenching in conjunction with other utilities or developers in accordance with federal, state and local regulations upon receipt of appropriate prior notice.

4(b) *System Tests and Inspections.*

4(b)(1) The Franchisee shall perform, at its sole cost, all tests necessary to demonstrate compliance with the requirements of the Franchise and other applicable technical and performance standards established by law or regulation. All such tests shall be conducted in accordance with federal rules.

4(b)(2) Tests shall be supervised by the Franchisee's engineer, who shall sign all records of tests provided to the Town.

4(b)(3) The Franchisee shall provide the Town with at least two business days' notice of, and opportunity to observe, any tests required under FCC regulations that are performed on the System in the Town. The Town may also conduct such reasonable inspections as may be necessary to assess compliance with the Franchisee's construction and installation

requirements under this Franchise. Inspection does not relieve the Franchisee of its obligation to build in compliance with all provisions of this Franchise.

4(b)(4) A written report of test results shall be filed with the Town within seven (7) days of a request by the Town. In addition, the Franchisee shall retain written reports of the results of any tests required by the FCC for a period of at least three (3) years, and such reports shall be submitted to the Town upon the Town's request.

4(b)(5) If any test indicates that any part or component of the System in the Town fails to meet applicable requirements, the Franchisee, without requirement of additional notice or request from the Town, shall promptly take corrective action, retest the locations and advise the Town of the action taken and results achieved.

4(b)(6) The Town reserves the authority to conduct its own reasonable tests necessary to determine compliance with this section upon reasonable notice to the Franchisee. If substantial and material noncompliance is found, the expense thereof may be considered by the Town and Franchisee in any ultimate resolution of such noncompliance issues. The Town will endeavor to arrange any request for such tests so as to minimize hardship or inconvenience to the Franchisee or to Subscribers.

4(c) *Restoration:* In case of any disturbance of pavement, sidewalk, driveway or other surfacing, or Town water, sewer, electric, or similar utility facilities, the Franchisee shall, in a manner reasonably approved by the Town, replace and restore all Town water, sewer, electric or similar utility facilities, paving, sidewalk, driveway, landscaping, or surface of any street or alley disturbed, in substantially the same condition as that which existed immediately prior to such disturbance and in a good workman-like, timely manner in accordance with generally applicable standards for such work set by the Town. With respect to fire and police department facilities

and equipment, and water and sewer facilities and other essential utilities and services, restoration shall be undertaken immediately and shall be completed promptly. In all other cases, restoration shall be undertaken within no more than five (5) business days after the disturbance is incurred, and shall be completed as soon as reasonably possible thereafter or as may be agreed to by the affected party. The Town shall be notified in writing upon completion of restoration of disturbance of any public Right-of-Way or public property. The Town reserves the right to inspect and approve the worksite and any restoration or other work thereon.

4(d) *Publicizing Proposed Construction Work:* The Franchisee shall notify the public prior to commencing construction, except emergency construction or emergency repairs that will significantly disturb or disrupt public property. The Franchisee shall publicize such construction work in a manner reasonably calculated to provide adequate notice. The Franchisee shall use reasonable best efforts to give prior notice to any adjacent private property owners who will be negatively affected or impacted by Franchisee's work in the Public Rights-of-Way.

4(e) *System Maintenance.*

4(e)(1) *Interruptions to be Minimized.* The Franchisee shall use its best efforts to schedule maintenance on its System so that activities likely to result in an interruption of service are performed during periods of minimum Subscriber use of the System.

4(e)2 *Maintenance Practices Subject to Regulation.* Maintenance of the System shall be performed in accordance with the technical performance and operating standards established by FCC rules and regulations.

## **5. SYSTEM FACILITIES, EQUIPMENT AND SERVICES.**

5(a) *General System Characteristics:* The Franchisee's Cable System shall, at all times during the Franchise term, meet or exceed the following requirements:

5(a)(1) *Compliance With FCC Rules.* All maintenance performed on the Cable System by the Franchisee shall be in accordance with the FCC rules and regulations governing the technical performance and operating standards for such System. The System shall at all times meet or exceed all applicable FCC technical performance standards, as amended from time to time, and any other applicable technical performance standards. End of the line performance must meet or exceed FCC specifications at the end of the Subscriber Drop.

5(a)(2) *Continuous 24-Hour Operation.* The System shall be capable of continuous twenty-four (24) hour daily operation without severe material degradation of signal during Normal Operating Conditions in the Town.

5(a)(3) *Standby Power.* The System shall have standby generating capacity at the headend. The Franchisee shall maintain motorized standby power generators capable of powering all headend equipment for at least twenty-four (24) hours. The back-up power supplies serving the System shall be capable of providing power to the System for not less than three (3) hours per occurrence measured on an annual basis according to manufacturer specifications in the event of an electrical outage. The Franchisee shall maintain sufficient portable motorized generators to be deployed in the event that the duration of a power disruption is expected to exceed three (3) hours.

5(a)(4) *Preventative Maintenance.* The System shall have facilities and equipment to properly test the System and to conduct an ongoing and active program of preventative maintenance and quality control.

5(a)(5) *Antenna Supporting Structures.* All antenna supporting structures used in the System shall be designed in accordance with all applicable rules and regulations of the

Federal Aviation Administration, the Federal Communications Commission and all other applicable codes and regulations.

5(a)(6) *No Deterioration to Access Signals.* The System shall be so constructed and operated that there is no perceptible deterioration attributable to Franchisee's System in the quality of Access Channel signals or commercial leased access signals, either upstream or downstream, as compared with any other Channel on the System.

5(a)(7) *Industry-accepted Equipment.* The System shall use equipment generally used in high-quality, reliable, modern systems of similar design. The Franchisee shall comply with all applicable laws and regulations concerning System compatibility with Subscribers' television receivers and/or videocassette recorders.

5(a)(8) *Clear Channels.* The Franchisee shall comply with all FCC regulations regarding scrambling or other encryption of signals.

5(a)(9) *Parental Control.* The Franchisee shall ensure that means are available by sale or lease to enable subscribers to block out audio and video signals on any undesired channels on the system. The Franchisee shall abide by 47 U.S.C § 544(d) and corresponding regulations regarding the blockage of any audio or video signal of any premium channel containing programming that is obscene, otherwise unprotected by the Constitution of the United States, or indecent; provided however, that such compliance shall not be separately charged to the Subscribers or the Town.

5(a)(10) *Handicapped Service.* All closed-caption programming retransmitted by the System shall include the closed-caption signal. The Franchisee shall comply with all applicable federal law and regulations regarding service or equipment for hearing impaired subscribers. For hearing impaired Subscribers, the Franchisee shall, upon request, provide

information concerning the cost and availability of equipment to facilitate the reception of all Basic Cable Services for the hearing impaired. Upon request, the Franchisee shall, consistent with 47 C.F.R. § 76.984 and 47 U.S.C. § 543(d), provide, for purchase or lease, a remote control device to those Subscribers who are mobility limited, or where a member of the Subscriber's household is mobility limited.

5(b) *Specific System Characteristics:* The Franchisee's Cable System shall, at all times during the Franchise term, meet or exceed the following requirements:

5(b)(1) The System shall continue to have a minimum bandwidth of 750 MHz and a minimum Channel capacity of at least 110 Channels, downstream to all Subscribers.

5(b)(2) The System shall maintain consistent audio volume levels over time and across Channels in a manner comparable to practices in effect on the Effective Date of this Franchise.

5(c) *Types of Service:* Any change in programs or services offered shall comply with all lawful conditions and procedures contained in this Agreement and in applicable Federal law.

5(d) *Commercial Leased Access Channels:* The Franchisee shall provide Commercial Leased Access Channels as required by federal law.

5(e) *Interconnection.*

5(e)(1) The Franchisee shall, at the Town's written request, use reasonable efforts to interconnect its System for Access Channel programming purposes only to other commonly owned, adjacent Systems where technically and economically feasible.

5(e)(2) In the event that Franchisee interconnects its Systems for Access Channels programming purposes, the Town and Franchisee agree to confer and mutually agree to the details of the interconnection. If there is such an interconnection link established, the parties agree to at least the following: All of the capacity on such an interconnection link shall be

for the exclusive use of the Town or for the use of such additional public institution to which Town in its sole discretion agrees to allocate capacity. The Town shall be responsible for allocating capacity on each interconnection link and shall resolve disputes concerning the use of capacity. All uses on such an interconnection link shall be subordinate to the Town's use, and the Town may reclaim interconnection capacity for its own applications. The Franchisee shall cooperate with any interconnection corporation, regional interconnection authority, state or federal regulatory agency which may be hereafter established for the purpose of regulating, facilitating, financing or otherwise providing for the interconnection for Access Channel programming purposes only beyond the boundaries of the Town.

5(f) *Customer Service Monitoring:* Subject to all applicable privacy laws, the Franchisee shall keep such records as are required to enable the Town to determine whether the Franchisee is complying with all telephone answering standards required by applicable customer service laws, ordinances and/or regulations, as amended from time to time.

5(g) *Emergency Alert System:*

5(g)(1) The Franchisee shall install and thereafter maintain for use by the Town an Emergency Alert System ("EAS") that complies with 47 C.F.R. Part 11.

5(g)(2) Franchisee will for the term of this Franchise comply with the EAS system and functions required by Federal regulation for a municipality of the size of Town or cities performing the same functions as Town.

5(h) *Additional Capacity:* The Franchisee shall use its best efforts to notify the Town reasonably in advance of major or new installations of fiber optic capacity for the purpose of providing an opportunity, which shall not delay Franchisee's construction, to the Town to fund additional fiber lines on an incremental cost basis for governmental and institutional use.



5(i) *Home Wiring:* The Franchisee shall comply with all applicable FCC requirements with respect to home wiring.

6. **CHANNELS AND FACILITIES FOR EDUCATIONAL AND GOVERNMENTAL USE.**

6(a) *Access Channels:*

6(a)(1) The Franchisee shall dedicate and make available two (2) Access Channels for Noncommercial educational and governmental programming. The two (2) Access Channels shall be allocated as follows:

6(a)(1)(A) Two full-time video Governmental Access Channel for use by the Town or its lawful governmental or educational designee (both parties acknowledge the Town's efforts to bring Motlow Community College to Town and Town's intent to dedicate, at its sole discretion, one of these two channels or the additional channel as provided for below for use by said community college); and

6(a)(1)(B) The Franchisee shall provide one (1) additional Government Access Channel whenever the video Access Channel set aside by the City for Governmental Access Channel programming is programmed with Qualified Programming at least eighty percent (80%) of the cumulative time for sixty (60) consecutive hours. All Qualified Programming shall count in this measurement for the actual running time shown. Such additional Access Channel shall be provided by the Franchisee within one hundred twenty days after a written request from the City when such criteria are fulfilled.

6(a)(2) The Town shall have the right to rename, reprogram or otherwise change the programming of the Access Channels specified in this Franchise, and any Access Channel added hereunder provided such programming is Noncommercial and is educational or governmental in nature.

6(a)(3) If, during the terms of this Franchise Agreement, the Franchisee opts to convert its Cable System to an all digital platform, and thus, provide all Channels as digital Channels and no longer offer an analog tier of Cable Service to Subscribers, Franchisee shall (i) give the Town at least 120 days prior written notice of such digital conversion, and (ii) replace, if necessary, any equipment that must be replaced in order to ensure the analog Access Channel programming and signals will be compatible with Franchisee's all digital platform.

6(a)(4) If Channels are selected through a menu system, the Access Channels shall be available for selection.

6(a)(5) Existing Government Access Channel assignments shall not be changed without advance written notice of such change to the Town. However, in any event, the Government Access Channel(s) shall not be moved from the Basic Tier. If the Franchisee desires to change the Channel designation for an Access Channel, the Franchisee must provide at least one hundred eighty (180) days notice to the Town prior to implementing the change, and shall reimburse the Town for any actual reasonable costs incurred as a result thereof, up to a maximum total of one thousand five hundred dollars (\$1,500). The Franchisee shall undertake reasonable efforts to promote and advertise on the System any such Access Channel relocation.

6(a)(6) The Franchisee shall carry Access Channel signals in their entirety, and shall deliver such signals to Subscribers so that they are viewable by the Subscriber, without the need to purchase or rent any additional equipment specifically necessary only to receive Access Channels.

6(a)(7) Franchisee will provide Town with PEG grants as follows:

6(a)(7)(A) Two Hundred Thousand Dollars (\$200,000) within thirty  
(30) days after the Effective Date of this Franchise

Agreement;

6(a)(7)(B) Fifty Thousand Dollars (\$50,000) on or after the fifth (5<sup>th</sup>) anniversary date of the Effective Date of this Franchise Agreement, upon Town's determination;

6(a)(7)(C) Fifty Thousand Dollars (\$50,000) upon or after Franchisee obtains a minimum of eight thousand (8,000) Basic Cable Subscribers;

6(a)(7)(D) Franchisee does not waive any rights to recover such costs from Subscribers. However, if a PEG fee is assessed, upon full recovery by Franchisee of PEG grants plus interest at prime, the PEG fee will remain in effect and receipts there from shall be transmitted to Town on a monthly basis to be utilized for PEG programming purposes by Town.

6(a)(8) Except as expressly permitted by federal law, the Franchisee shall not exercise any editorial control over the content of programming on the designated Educational and Governmental Access Channels nor shall Franchisee be liable for any programming thereon (except for such programming as the Franchisee may produce and cablecast on such Channels).

6(b) *Free Service Drops to Certain Facilities:* The Franchisee shall provide one activated Cable Drop and outlet and all equipment necessary to receive Basic Cable Service and cable programming services tier ("CPST") Cable Service at such outlet, at no charge, to the Town government occupied buildings identified on **Exhibit A**, attached hereto and incorporated herewith; provided however, the Actual Cost of delivering the physical plant of the subscriber network to said government buildings shall be split equally between the Town and the

Franchisee; provided further that Franchisee's obligation shall not to exceed \$12,500. All future Town government buildings, public libraries, K-12 public schools (Town and County), and any K-12 private schools currently receiving Cable Service shall receive the same services at no charge provided that the government building is located 125 feet or less from the distribution plant of Franchisee's Cable System.

6(b)(1) The Franchisee shall provide Basic Cable Service and CPST Cable Service, free of charge to those facilities specified in subsection 6(b) herein. Such facilities shall receive substantially the same service response timing as Subscribers are entitled to receive. Notwithstanding the foregoing, facilities receiving on the Effective Date of this Franchise Ordinance higher levels of video service free of charge shall continue to receive those same levels of service, or comparable services, free of charge.

6(b)(2) The cost of all inside wiring necessary to satisfy the requirements of this Section shall be the responsibility and the property of the Franchisee.

6(b)(3) Whenever necessary, or dictated by changes in the Franchisee's technology, the Franchisee shall, at no cost to any facility identified in this Section, replace or upgrade all equipment provided at the Franchisee's expense pursuant to this Section, in order to ensure that the locations being provided such free service can continue to receive the services offered by the Franchisee pursuant to this Franchise Agreement.

6(b)(4) Additional Drops and/or outlets will be installed at designated institutions by the Franchisee on an Actual Cost basis. Alternatively, said institutions may add outlets at their own expense, as long as the installation of such outlets meets the Franchisee's standards. The Franchisee shall have three (3) months from the date of Town designation of

additional institution(s) to complete construction of the Drop and outlet, unless weather or other conditions beyond the control of the Franchisee require more time.

6(c) *Institutional Network:*

6(c)(1) Franchisee will work with Town representatives to assess Institutional Network needs and existing infrastructure within sixty (60) days after the Effective Date of the Franchise, and within sixty (60) days thereafter, Franchisee will submit an Institutional Network proposal to the Town, which shall include I-Net service to those institutions listed in **Exhibit B**, attached hereto and incorporated herewith.

6(c)(2) In addition to the Franchise Fee and other PEG support the Franchisee shall commit a maximum of Two Hundred and Fifty Thousand Dollars (\$250,000) in a form acceptable to the Town in the Town's sole discretion in the form of cash or actual cost of in-kind support contribution, exclusive of Franchisee's initial design and engineering.

6(c)(3) Construction on the Institutional Network shall commence no later than thirty (30) days following acceptance of the Institutional Network proposal. The Institutional Network shall meet or exceed the design and performance standards as set forth in **Exhibit C**, attached hereto and incorporated herewith. The Institutional Network construction shall be completed no later than twelve (12) months after the commencement of construction.

6(c)(4) Franchisee shall own the Institutional Network and assume all costs for network maintenance, but the Town shall have an unrestricted and indefeasible right to use the Institutional Network for Noncommercial governmental or educational purposes. Should any factor cause the removal of the Franchisee from ownership of the Institutional Network, including but not limited to the Franchisee ceasing operation for any reason, both parties shall take all requisite steps to insure the continued operation of the Institutional Network and to

insure the unrestricted right of Town to use the Institutional Network, including if necessary transferring the ownership of the Institutional Network to Town without cost to Town or any public entity. Ultimately, should the Franchisee cease operation, the Town shall have clear title and unrestricted ownership to all equipment and facilities necessary to fully operate the Institutional Network, all at no cost or expense whatsoever to Town. The technical standards and response times for the Institutional Network shall be equivalent to the standards and response times that the Franchisee applies to its remaining System in Town.

6(c)(5) The future extension of the Institutional Network to any buildings not initially included in the Institutional Network shall be constructed by Franchisee and connected to the Institutional Network by the Franchisee at an Actual Cost of material and labor basis paid for by Town or applicable Institutional Network user.

*6(d) Costs and Payments Not An Offset Against Franchise Fees:* The parties agree that Franchisee will not offset against franchise fees its support for educational and governmental access and the I-Net pursuant to this Agreement, and any payments made to the Town pursuant to Sections 6 and 7 of this Agreement shall also not be offset against Franchise Fees, however nothing herein shall prevent Franchisee from recovering any such costs or expenses from any other lawful source.

## **7. FRANCHISE FEE.**

7(a) *Payment to Town:* Each year during the Franchise term, as compensation for use of Public Rights-of-Way, the Franchisee shall pay to the Town, on a quarterly basis, a Franchise fee of five percent (5%) of Gross Revenues. Such payments shall be made no later than forty-five (45) days following the end of each calendar quarter, and shall be delivered to the Town, at the address specified herein.

7(b) *Supporting Information:* Each Franchise fee payment shall be submitted with supporting detail and a statement certified by a financial officer of the Franchisee reflecting the total amount of monthly Gross Revenues for the payment period and a breakdown by major revenue categories (such as basic service, cable programming service, premium service, etc.). The Town shall have the right to request further supporting information.

7(c) *Late Payments:* In the event any Franchise fee payment or recomputation amount is not made on or before the required date, the Franchisee shall pay additional compensation and interest charges computed from such due date, at an annual rate equal to the commercial prime interest rate of the Town's primary depository bank during the period such unpaid amount is owed.

7(d) *Audit:* All amounts paid shall be subject to audit or review by the Town and acceptance of any payment shall not be construed as an accord that the amount paid is in fact the correct amount, provided, however, that any such audit/review shall take place within three (3) years from the date the Town accepts any such payment, after which period any such payment shall be considered final. The Franchisee shall be responsible for providing the Town all records necessary to confirm the accurate payment of franchise fees. The Franchise shall maintain such records for five (5) years, unless in the Franchisee's ordinary course of business specific records are retained for a shorter period, but in no event less than three (3) years. Upon completion of any such audit/review by the Town, the Town shall provide to the Franchisee a final audit/review report, which sets forth the Town's findings in detail, including, upon request any and all substantiating evidence. The Franchisee shall have thirty (30) days from receipt of the audit/review report to provide the Town with a written response to the audit/review report. In the event both parties agree upon a "Final Settled Amount" due to the Town as a result of such

audit/review, such Final Settled Amount shall be paid to the Town within thirty (30) days from receipt of written notice of the Final Settlement Amount from the Town. For purposes of this subsection, the term "Final Settled Amount" shall mean the agreed upon underpayment, if any, to the Town by the Franchisee as a result of such audit/review. In the event the parties do not agree on the amount of any underpayment of franchise fees discovered as a result of an audit/review, both parties reserve all of their rights under this Franchise Agreement and applicable law. The Town's audit/review expenses shall be borne by the Town, unless the Final Settled Amount is an underpayment to the Town by more than five percent (5%) in the audit/review period, in which case the costs of the audit/review shall be borne by the Franchisee as a cost incidental to the enforcement of the Franchise. If an audit/review determines that there has been an overpayment of franchise fees by the Franchisee, the Franchisee may credit any overpayment against its next quarterly franchise fee payment.

*7(e) No Limitation on Taxing Authority:*

7(e)(1) Nothing in this Agreement shall be construed to limit any authority of the Town to impose any tax, fee, or assessment of general applicability.

7(e)(2) The Franchise fee payments required by this Section 7 shall be in addition to any and all taxes or fees of general applicability. The Franchisee shall not have or make any claim for any deduction or other credit of all or any part of the amount of said Franchise fee payments from or against any of said Town taxes or other fees of general applicability, except as expressly permitted by applicable law. The Franchisee shall not apply nor seek to apply all or any part of the amount of said Franchise fee payments as a deduction or other credit from or against any of said Town taxes or fees of general applicability, except as expressly permitted by applicable law. Nor shall the Franchisee apply or seek to apply all or any



part of the amount of any of said taxes or fees of general applicability as a deduction or other credit from or against any of its Franchise fee obligations, except as expressly permitted by law.

**8. SALE OR TRANSFER OF FRANCHISE.**

8(a) No sale or transfer of or change in control of the Franchise, or Franchisee shall take place until a written request has been filed with the Town requesting approval of the sale, transfer or change of control and such approval has been granted or deemed granted; provided, however, that said approval shall not be required in the event of a mortgage, transfer in trust, hypothecation, or assignment of any rights, title or interest of Franchisee (or any parent or Affiliate) in the Franchise or in the Cable System in order to secure indebtedness; nor shall approval be required if Franchisee undertakes or is subject to changes to the corporate or partnership structures or ownership among or between its Affiliates, provided there is no change in the controlling interests which materially alter the financial responsibilities for the Franchisee. In any event, Franchisee will use reasonable efforts to notify the Town of any such change.

8(b) The term “change in control” means actual working control in whatever manner exercised.

8(c) The Franchisee shall file its request for approval reflecting the financial, legal and technical qualifications of transferee utilizing an FCC Form 394 Application for consent, including all documents, forms and information required to be filed by applicable federal and state law.

8(d) The Town shall be reimbursed in an amount not to exceed Seven Thousand Five Hundred Dollars (\$7,500.00) for all the actual reasonable out-of-pocket legal, administrative (including the value of any services rendered by the Town Attorney or Town staff or

employees), and consulting costs and fees associated with the Town's review of any request to transfer.

8(e) The Town shall have such time as is permitted by federal law in which to review a transfer request.

8(f) In no event shall a sale, transfer, corporate change or assignment of ownership or control pursuant to subsections (a) or (b) of this Section be approved without the Franchisee remaining, or (if other than the current Franchisee) transferee becoming a signatory to this Franchise and assuming or continuing to have all rights and obligations hereunder.

8(g) The approval of any transfer of ownership pursuant to this Section shall not be deemed to waive any rights of the Town to subsequently enforce noncompliance issues relating to this Franchise.

8(h) Any transfer or sale of the Franchise without the prior written consent of the Town shall be considered to impair the Town's assurance of due performance. The granting of approval for a transfer or sale in one instance shall not render unnecessary approval of any subsequent transfer or sale for which approval would otherwise be required.

## **9. REPORTS AND RECORDS.**

### **9(a) *Open Books and Records:***

9(a)(1) The Town shall have the right to inspect and to the extent necessary, subject to mutual agreement which shall not be unreasonably withheld, copy at its expense, upon prior written notice to the Franchisee, during Normal Business Hours at the Cable System office of the Franchisee, all books, strand and trench maps, financial information, service complaint logs, performance test results, records of requests for service, and other like material, which are relevant and necessary in order to monitor compliance with the terms of this Agreement, or applicable law. This includes not only the books and records of the Franchisee, but any books

and records of the Franchisee's Cable System regardless of by whom such records are maintained. If any such records are available in electronic format, the Franchisee shall make those records available to Town in electronic format, subject to other restrictions of this section regarding relevancy and protection from public disclosure.

9(a)(2) The Franchisee shall maintain financial records that allow analysis and review of its operations in the Town.

9(a)(3) Access to the Franchisee's books and records shall not be denied by the Franchisee on the basis that said records contain "proprietary," "confidential," or "trade secret" information. All confidential, proprietary and trade secret information inspected and/or copied by the Town shall remain confidential only to the extent permitted by applicable law.

9(a)(4) The Franchisee shall maintain a file of records open to public inspection in accordance with applicable FCC rules and regulations.

9(b) *Communication with Regulatory Agencies.*

9(b)(1) To the extent lawfully permitted to be disclosed to the Town, and upon receipt of a written request from the Town, the Franchisee shall file with the Town a copy of any such requested reports or other materials submitted by or on behalf of Franchisee to or received from the FCC, the Securities and Exchange Commission, or any other federal or State regulatory commission or agency having jurisdiction over any matter affecting operation of the Franchisee's System in the Town including, but not limited to, any proof of performance tests and results, Equal Employment Opportunity reports, and all petitions, applications, and communications of material consequence regarding the Cable System, or a group of Cable Systems of which the Franchisee's Cable System is a part, submitted or received by the Franchisee, or any other Person on the behalf of the Franchisee.

9(b)(2) *Annual Report:* Upon written request from the Town within ninety (90) days after the end of a calendar year, the Franchisee shall submit a written report to the Town within ninety (90) days of receipt of such request and in a form reasonably satisfactory to the Town, which shall include:

9(b)(2)(A) a summary of the previous year's activities in development of the Cable System within the Town;

9(b)(2)(B) a summary of complaints within the Town, identifying both the number and nature of the complaints received and an explanation of their dispositions, as such records are kept by the Franchisee, together with copies of any written complaints received. Where complaints involve recurrent System problems, the nature of each problem and the corrective measures taken shall be identified.

9(b)(2)(C) A report showing the number of service calls within the Town received by type during each quarter, to the extent such records are kept by the Franchisee in its ordinary course of business, and the percentage of service calls compared to the Subscriber base by such type of complaint.

9(b)(2)(D) A copy of the Franchisee's rules and regulations applicable to Subscribers of the Cable System within the Town, if such rules exist;

9(b)(2)(E) An annual list of officers and members of the Board of Directors or similar controlling body of the Franchisee;

9(b)(2)(F) An organizational chart showing all corporations or partnerships with more than a five (5) percent ownership interest in the Franchisee, and the nature of that ownership interest (limited partner, general partner, preferred shareholder, etc.);

9(b)(2)(G) An annual report and SEC 10(k) filing for each entity identified in subsection 9(b)(2)(F) of this Section that generates such documents;

9(b)(2)(H) A summary of the results of, and/or, at the Franchisee's option, copies of the System's technical tests within the Town and measurements performed during the past year;

9(b)(2)(I) A detailed copy of updated strand and trench maps depicting the location of all cable plant within the Town, showing areas served and locations of all trunk lines and feeder lines in the Town, and including changes in all such items for the period covered by the report;

9(b)(2)(J) a full schedule of Subscriber rates, fees and charges;

9(b)(2)(K) the Franchisee's policies regarding A/B switches;

9(b)(2)(L) the Franchisee's policies regarding Subscriber privacy;

9(b)(2)(M) A summary of Institutional Network facilities provided within Town, if any, including mileage of fiber installed, and the number of demarcation points; and

9(b)(2)(N) a summary of minority business policies, if required by generally applicable Town laws.

9(c) *Telephone Answering Reports:* The Company, upon request from the Town, will report customer service-related data on a Smyrna specific basis.

9(d) *Additional Reports:* The Franchisee shall cooperate with the Town to provide such additional reports with respect to its operation, affairs, transactions or property, as may be reasonably necessary or appropriate to the performance of any of the rights, functions or duties of the Town in connection with this Agreement.

9(e) *Records Required:*

9(e)(1) Without limiting any other obligations herein, the Franchisee shall maintain for a reasonable period of time:

9(e)(1)(A) Records of all complaints received. The term “complaints” as used herein and throughout this Agreement refers to complaints about any aspect of the Cable System in the Town or the Franchisee's operations in the Town, including, without limitation, complaints about employee courtesy. Complaints recorded may not be limited to complaints requiring an employee service call.

9(e)(1)(B) A full and complete set of strand or trench records showing the exact location thereof installed or in use in the Town, exclusive of Subscriber service Drops.

9(e)(1)(C) Records of Outages, indicating date, duration, area, and the exact number of Subscribers affected, type of Outage, and cause.

9(e)(1)(D) Records of service calls for repair and maintenance indicating the date service was required, the date of acknowledgment and date service was scheduled (if it was scheduled), and the date service was provided, and (if different) the date the problem was solved.

9(e)(1)(E) Records of Installation/reconnection and requests for service extension, indicating date of request, date of acknowledgment, and the date service was installed/reconnected or extended.

9(e)(2) The Town may require additional information, records, and documents from time to time.

9(e)(3) Notwithstanding the above, in no event shall Franchisee be required to generate new records, or records it would not have in the ordinary course of business, in order to comply with this subsection (9).

9(f) *Performance Evaluation:* At the option of the Town, the Town may conduct and the Company will cooperate in a periodic review on a five-year cycle in the Franchise term.

9(g) *Retention of Records; Relation to Privacy Rights:* The Franchisee shall take all steps that may be required to ensure that it is able to provide the Town all information which must be provided or may be requested under this Agreement, including the provision of appropriate Subscriber privacy notices. Nothing in this Section shall be read to require the Franchisee to violate 47 U.S.C. § 551. The Franchisee shall be responsible for redacting any data that federal law prevents it from providing to the Town. The Town retains the right to question any such redaction and to challenge it in any forum having jurisdiction over such a challenge. Records shall be kept for at least three (3) years.

9(h) *Waiver of Reporting Requirements:* The Town may, at its discretion, waive in writing the requirement of any particular report specified in this Section 9.

9(i) *Changes in Rates:* The Franchisee shall notify the Town in writing of all changes in service and equipment rates, except as otherwise permitted by applicable law. Such notice shall be provided to the Town at least thirty (30) days prior to the effective date of the rate change, unless applicable law or regulations prescribe a different notice period. The written notice specified in this paragraph shall be delivered to the Town, at the location specified in this Franchise.

## **10. INSURANCE, SURETY, AND INDEMNIFICATION.**

### ***10(a) Insurance Required:***

10(a)(1) The Franchisee shall maintain, and by its acceptance of the Franchise specifically agrees that it will maintain, throughout the entire length of the Franchise period, at least the following insurance coverages: workers' compensation and employer liability

insurance to meet all requirements of Tennessee law; liability insurance, covering errors and omissions and negligent acts and other operations of the Franchisee; and comprehensive general liability insurance with respect to the construction, operation, and maintenance of the Cable System, and the conduct of the Franchisee's business in the Town, in the minimum amounts of:

10(a)(1)(A) \$2,000,000 for property damage resulting from any one accident; \$2,000,000 for property damage aggregate;

10(a)(1)(B) \$2,000,000 for personal bodily injury or death for one person; \$2,000,000 for bodily aggregate per single accident and occurrence;

10(a)(1)(C) \$1,000,000 per claim and aggregate for broadcaster's/cablecaster's liability;

10(a)(1)(D) \$2,000,000 for all other types of liability; and

10(a)(1)(E) automobile liability insurance for owned or leased vehicles in the minimum amount of \$5,000,000 combined single limit.

Such general liability insurance must include coverage for all of the following: comprehensive form, premises-operations, explosion and collapse hazard, underground hazard, products/completed operations hazard, contractual insurance, broad form property damage, and personal injury.

10(b) *Qualifications of Sureties:* All insurance policies shall be with sureties qualified to do business in the State of Tennessee, with an A-1 or better rating of insurance by Best's Key Rating Guide, Property/Casualty Edition, and in a form approved by the Town. Any insurance coverage obtained by self-insurance shall guarantee payment of claims in the same manner and to the same extent as a commercial insurance policy.



10(c) *Certificates of Insurance:* The Franchisee shall keep on file with the Town certificates of insurance reflecting coverage in compliance with Section 10(a), above and which shall specify as additional insureds all classes of people designated in section 10(d), below. Franchise shall provide upon written request and upon reasonable basis the opportunity for reasonable review by Town of insurance policy endorsements required herein.

10(d) *Additional Insureds; Prior Notice of Policy Cancellation:* All required insurance policies, excluding workers' compensation coverage, shall name the Town, its officers, boards, commissions, commissioners, agents, and employees as additional insureds and shall further provide that any cancellation or reduction in coverage shall not be effective unless thirty (30) days' prior written notice thereof has been given to the Town. The Franchisee shall not cancel any required insurance policy without submission of proof within thirty (30) days thereafter that the Franchisee has obtained alternative insurance satisfactory to the Town that complies with this Agreement.

10(e) *Failure Constitutes Material Violation:* Failure to comply with the insurance requirements set forth in this Section shall constitute a material violation of the Franchise.

10(f) *Indemnification:*

10(f)(1) The Franchisee shall, at its sole cost and expense, indemnify, hold harmless, and defend the Town, its elected and appointed officials, officers, boards, commissions, commissioners, agents, and employees, against any and all claims, suits, causes of action (whether frivolous or otherwise), proceedings, and judgments for damages or equitable relief arising out of the Franchisee's exercise of its rights under this Franchise or out of the construction, maintenance, or operation of the Franchisee's Cable System. The Franchisee agrees not to seek monetary damages from the Town or the Cable Commission, including the

Persons and entities described in this subsection, in connection with the above-mentioned matters.

10(f)(2) The Franchisee shall also fully indemnify, defend, and hold harmless the Town, and its elected and appointed officials, officers, boards, commissions, commissioners, employees and agents from and against any and all claims, suits, or causes of action of any kind or nature, and the resulting losses, costs, expenses and reasonably necessary attorneys' fees, orders, decrees, liabilities and judgments, whether for damages or otherwise, subject to 47 U.S.C. § 558, arising out of or alleged to arise out of any claim against the Franchisee for invasion of the right of privacy, defamation of any Person, firm or corporation, or the violation or infringement of any copyright, trade mark, trade name, service mark, or patent, or of any other right of any Person, firm, or corporation. This indemnity does not apply to programming carried on any Channel utilized for educational or governmental access purposes.

10(f)(3) The indemnity provisions of this Section include, but are not limited to, the Town's reasonable and reasonably necessary attorneys' fees incurred in defending against any covered claims, suits, actions or proceedings, in addition to the reasonable value of any reasonably necessary services rendered by the Town Attorney or Town staff or employees.

10(f)(4) The indemnity provisions of this subsection (f) shall survive the term of this Agreement for acts the Franchisee committed while the Agreement was in effect or performed under color of the Agreement after the expiration, revocation, cancellation or termination of the Agreement.

10(f)(5) The indemnity provisions of this subsection (f) shall not apply to any claims, suits, causes of action, proceedings or judgments arising from the gross negligence or willful misconduct of the Town or any of its permitted designees.

10(f)(6) Nothing in this Agreement shall be construed to waive the tort or any other immunity, limitation of action, limitation of judgment or applicable defense of the Town, and its elected and appointed officials, officers, boards, commissions, commissioners, agents and employees under this Agreement.

10(g) *No Limit of Liability:* Neither the provisions of this Section nor any damages recovered by the Town shall be construed to limit the liability of the Franchisee for damages to the Town, its elected and appointed officials, officers, boards, commissions, commissioners, agents and employees under the Franchise.

## **11. PERFORMANCE GUARANTEES AND REMEDIES.**

11(a) *Performance Bond:* On the Effective Date of this Franchise, the Franchisee shall obtain and maintain during the entire term of the Franchise, and any renewal or extensions thereof, a performance bond in the Town's favor in the amount of Two Hundred Fifty Thousand Dollars (\$250,000) to ensure the Franchisee's faithful performance of its obligations.

11(a)(1) The performance bond shall provide the following conditions:

11(a)(1)(A) There shall be recoverable by the Town from the principal and surety, any and all fines and penalties due to the Town and any and all damages, losses, costs, and expenses suffered or incurred by the Town resulting from the failure of the Franchisee to faithfully comply with the material provisions of this Agreement. Such losses, costs and expenses shall include but not be limited to reasonable attorney's fees.

11(a)(1)(B) The total amount of the performance bond shall be forfeited in favor of the Town in the event the Franchisee abandons the System at any time during the term of its Franchise or any extension thereto.

11(a)(2) The performance bond shall be issued by a surety licensed to do business in Tennessee with an A-1 or better rating of insurance in Best's Key Rating Guide, Property/Casualty Edition; shall be subject to the approval of the Town; and shall contain the following endorsement:

“This bond may not be canceled, or allowed to lapse, until thirty (30) days after receipt by the Town, by certified mail, return receipt requested, of a written notice from the issuer of the bond of intent to cancel or not to renew.”

11(a)(3) Upon written application by the Franchisee, the Town may, at its sole option, in writing, permit the amount of the bond to be reduced or waive the requirements for a performance bond. Reductions granted or denied upon application by the Franchisee shall be without prejudice to the Franchisee's subsequent applications or to the Town's right to require the full bond at any time thereafter. However, no application shall be made by the Franchisee within one (1) year of any prior application.

11(a)(4) As applicable, Franchisee shall maintain a construction bond in accordance with the Town's generally applicable Town requirements for major construction projects. For example but not as limitation, Town requirements would require a separate performance bond of Two Hundred Fifty Thousand Dollars (\$250,000) during the construction of the Institutional Network.

11(b) *Reservation of Rights:*

11(b)(1) The rights reserved to the Town herein are in addition to all other rights of the Town, whether reserved herein or authorized by applicable law, and no action, proceeding, or exercise of a right with respect to the performance bond will affect any other right the Town may have. In no event shall Franchisee be subject to multiple remedies for the same default or violation.

11(b)(2) All rights and remedies given to the Town by this Franchise Agreement or retained by the Town herein or pursuant to applicable law shall be in addition to and cumulative with any and all other rights and remedies, express or implied, now or hereafter available to the Town, at law or in equity, and such rights and remedies shall not be exclusive, but each and every right and remedy specifically given by this Franchise Agreement or otherwise existing or given may be exercised from time to time and as often and in such order as may be deemed expedient by the Town and the exercise of one or more rights or remedies shall not be deemed a waiver of the right to exercise at the same time or thereafter any other right or remedy. In no event shall Franchisee be subject to multiple remedies or penalties provided for in this Franchise Agreement for the same default or violation.

11(b)(3) Neither the establishment of a performance bond, nor the receipt of any damages recovered by the Town there under, shall be construed to excuse faithful performance by the Franchisee or limit the liability of the Franchisee under the terms of this Franchise, either to the full amount of the letter of credit, the performance bond or otherwise.

11(c) *Failure Constitutes Material Violation:* Failure to maintain or restore the performance bond shall constitute a material violation of this Agreement.

11(d) *Remedies:* The Town may apply any one or a combination of the following remedies in the event the Franchisee violates this Franchise Agreement or applicable state or federal law:

11(d)(1) Apply any remedy provided for in this Agreement, the Municipal Code or other applicable laws or regulations.

11(d)(2) Revoke the Franchise or shorten the term pursuant to the procedures specified in this Agreement.

11(d)(3) Impose penalties available under this Franchise or other applicable federal, State and local laws for violation of Town ordinances.

11(d)(4) In addition to or instead of any other remedy, seek legal or equitable relief from any court of competent jurisdiction.

11(e) *Liquidated Damages:* Because the Franchisee's failure to comply with provisions of this Franchise Agreement will result in injury to the Town, and because it will be difficult to estimate the extent of such injury, the Town and the Franchisee agree to the following liquidated damages for the following violations of this Franchise, which represent both parties' best estimate of the damages resulting from the specified violation.

11(e)(1) For failure to submit any required plans indicating expected dates of installation of various parts of the System: \$150 per day for each violation for each day the violation continues;

11(e)(2) For failure to continue operations in accordance with the requirements of this Agreement: \$150 per day for each violation for each day the violation continues;

11(e)(3) For failure to comply with requirements for educational and governmental use of the System: \$150 per day for each violation for each day the violation continues, in addition to any monetary payment due under this Agreement;

11(e)(4) For failure to supply information, reports, or filings lawfully required under the Franchise Agreement or applicable law or by the Town: \$150 for each violation for each day the violation continues.

11(e)(5) For violation of customer service standards other than those covered by 11(e)(11): \$150 per violation or per day, as applicable;

11(e)(6) For failure to render payment for reimbursement of any Franchise expenses or failure to pay Franchise fees: \$150 per day, in addition to any monetary payment due under this Agreement;

11(e)(7) For failure to file, obtain or maintain any required insurance or performance bond in a timely fashion: \$150 per day;

11(e)(8) For violation of technical standards established by the FCC: \$150 per day;

11(e)(9) For failure to meet Institutional Network obligations: \$150 per day for each violation for each day the violation continues;

11(e)(10) For any other violations for which actual damages may not be ascertainable: \$150 per day for each violation for each day the violation continues; and

11(e)(11) For failure to comply with quarterly customer service requirements: \$1,000 for each quarterly violation.

The Town may reduce or waive any of the above-listed liquidated damages if it determines that such a waiver or reduction is in the best interests of the Town. Each violation of any provision of this Franchise shall be considered a separate violation for which liquidated damages will apply.

11(f) *Shortening, Revocation, or Termination of Franchise:* The Town shall have the right to revoke the Franchise, or to shorten the term of the Franchise to a term not less than thirty-six (36) months from the date of the action shortening the Franchise term, for the Franchisee's material failure to construct, operate, or maintain the Cable System as required by this Franchise Agreement; for defrauding or attempting to defraud the Town or Subscribers; or for any other material breach of this Agreement.

11(g) *Due Process:*

11(g)(1) To pursue liquidated damages or invoke any other remedies under this Agreement, including, but not limited to, revocation, shortening the Franchise, or utilization of the performance bond or letter of credit, the Town shall first give the Franchisee written notice of the alleged default in its performance. If within thirty (30) calendar days following such certified written notice from the Town to the Franchisee, or such other period as the Franchisee and the Town shall agree, the Franchisee has not cured the default or begun to have taken corrective action to the reasonable satisfaction of the Town, the Town shall give written notice to the Franchisee of default and its intent to pursue such remedies and identify the remedies sought.

11(g)(2) In no event shall Town obtain both actual and liquidated damages for the same default or violation. Further, in no event shall Franchisee be subject to multiple remedies for the same default or violation. The notice shall state, in reasonable detail its reasons, and including any evidence thereof; provided that no opportunity to cure shall be provided where the Franchisee is shown to have intentionally defrauded or attempted to have intentionally defraud the Town or its Subscribers.

11(g)(3) Prior to determination of default, the Town shall hold a public hearing, on at least fifteen (15) days' prior written notice, at which time the Franchisee and the public shall be given a reasonable opportunity to be heard and to present evidence. Following the public hearing, the Town shall make its decision based on the information and evidence presented at the hearing, and other information of record, or, where applicable, grant additional time to the Franchisee to effect any cure. If the Town determines that a default has occurred and determines to impose any liquidated damage or invoke any other remedy herein, it shall issue a



written decision setting forth in reasonable detail the reasons for its decision. A copy of such decision shall be transmitted to the Franchisee, either by hand delivery or by certified mail, return receipt requested. The Franchisee may appeal such decision to any tribunal of competent jurisdiction. Nothing in this section shall limit the Franchisee's rights to seek any other review of any decision by the Town in any tribunal of competent jurisdiction beyond the means for such review provided herein.

11(g)(4) If the Town revokes the Franchise Agreement, or if for any other reason the Franchisee abandons, terminates, or fails to operate or maintain Cable Service to its Subscribers, the following procedures and rights are effective:

11(g)(4)(A) The Town may require the Franchisee to remove its facilities and equipment at the Franchisee's expense and restore affected sites as required herein. If the Franchisee fails to remove its facilities and equipment within a reasonable period of time, the Town may have the removal done at the Franchisee's and/or surety's expense. The Town will not be liable to the Franchisee for damages resulting from such removal.

11(g)(4)(B) The Town may require the Franchisee to continue operating the Cable System as specified in Section 3(b).

11(g)(4)(C) If the Cable System is abandoned for seven (7) consecutive days by the Franchisee or the Franchisee fails to operate or maintain Cable Service to its Subscribers or otherwise terminates the Franchise Agreement, the ownership of all portions of the Cable System in Public Rights-of-Way shall revert to the Town and the Town may sell, assign, or Transfer all or part of the assets of the System.

11(g)(5) The Franchise Agreement may, at the option of the Town following a public hearing, be revoked by the Town one hundred twenty (120) calendar days

after an assignment for the benefit of creditors or the appointment of a receiver or trustee to take over the business of the Franchisee, whether in a receivership, reorganization, bankruptcy assignment for the benefit of creditors or other action or proceeding, unless within that one hundred twenty (120) day period:

11(g)(5)(A) Such assignment, receivership or trusteeship has been vacated; or

11(g)(5)(B) Such assignee, receiver or trustee has fully complied with the terms and conditions of the Municipal Code and this Agreement and has executed an agreement, approved by a court of competent jurisdiction, under which it assumes and agrees to be bound by the terms and conditions of this Agreement and the Municipal Code, and such other conditions as may be lawfully established or as are lawfully required under the Municipal Code.

11(g)(6) Notwithstanding paragraph (5) above, in the event of foreclosure or other judicial sale of any of the facilities, equipment or property of the Franchisee, the Town may revoke this Agreement, following a public hearing, by serving notice on the Franchisee and the successful bidder, in which event the Franchise Agreement and all rights and privileges of the Franchisee will be revoked and will terminate thirty (30) calendar days after serving such notice, unless:

11(g)(6)(A) The Town has approved the Transfer of the Franchise and the Franchise Agreement to the successful bidder; and

11(g)(6)(B) The successful bidder as covenanted and agreed with the Town to assume and be bound by the terms and conditions of this Agreement and the Town Code, and such other lawful conditions as may be lawfully established or as are lawfully required pursuant to the Municipal Code or this Agreement.

## **12. MISCELLANEOUS PROVISIONS.**

12(a) *Binding Acceptance:* This Franchise Agreement shall bind and benefit the parties hereto and their respective heirs, beneficiaries, administrators, executors, receivers, trustees, successors and assigns, and the promises and obligations herein shall survive the expiration date hereof.

12(b) *Severability:* If any term, condition, or provision of this Agreement shall, to any extent, be held to be invalid or unenforceable, the remainder hereof shall be valid in all other respects and continue to be effective. In the event of a subsequent change in applicable law so that the provision which had been held invalid is no longer invalid, said provision shall thereupon return to full force and effect without further action by the Town and shall thereafter be binding on the Franchisee and the Town.

12(c) *Preemption:* In the event that federal or state laws, rules or regulations preempt a provision or limit the enforceability of a provision of this Agreement, then the provision shall be read to be preempted to the extent and for the time, but only to the extent and for the time, required by law. In the event such federal or state law, rule or regulation is subsequently repealed, rescinded, amended or otherwise changed so that the provision hereof that had been preempted is no longer preempted, such provision shall thereupon return to full force and effect, and shall thereafter be binding on the parties hereto, without the requirement of further action on the part of the Town.

12(d) *Compliance With Federal and State Laws:* The Franchisee and Town shall, at all times during the term of this Franchise, including all extensions and renewals hereof, comply with all applicable federal and state laws and regulations.

12(e) *Force Majeure*: The Franchisee shall not be deemed in default of provisions of this Agreement where performance was rendered impossible by war or riots, labor strikes or civil disturbances, floods, or other causes beyond the Franchisee's control, and the Franchise Agreement shall not be revoked or the Franchisee penalized for such noncompliance, provided that the Franchisee takes immediate and diligent steps to bring itself back into compliance and to comply as soon as practicable under the circumstances with the Franchise Agreement without unduly endangering the health, safety, and integrity of the Franchisee's employees or property, or the health, safety, and integrity of the public, Public Rights-of-Way, public property, or private property.

12(f) *Governing Law*: This Franchise Agreement shall be governed in all respects by the law of the State of Tennessee.

12(g) *Notices*: Unless otherwise expressly stated herein, notices required under this Franchise Agreement shall be mailed first class, postage prepaid, to the addressees below. Each party may change its designee by providing written notice to the other party, but each party may only designate one entity to receive notice.

12(g)(1) Notices to the Franchisee shall be mailed to:

Vice President and General Manager  
Comcast Cablevision of Nashville II, LLC  
660 Mainstream Drive  
Nashville, TN 37228

With a copy to:

State Director of Government Affairs  
Comcast Cablevision of Nashville II, LLC  
660 Mainstream Drive  
Nashville, TN 37228

And a copy to: Cable General Counsel  
Comcast Cable Communications, Inc.  
1500 Market Street  
Centre Square  
Philadelphia, PA 19102

12(g)(2) Notices to the Town shall be mailed to:

Town Manager  
Town of Smyrna  
Town Hall  
315 South Lowry Street  
Smyrna, Tennessee 37167

12(g)(3) The Franchisee shall at all times keep the Town advised as to which individual(s) are authorized to act on behalf of the Franchisee and whose acts will be considered to bind the Franchisee.

12(g)(4) Unless otherwise provided by the Municipal Code or by this Agreement, notices shall be effective upon receipt.

12(h) *Time of Essence; Maintenance of Records of Essence:* In determining whether the Franchisee has substantially complied with this Franchise Agreement, the parties agree that time is of the essence. As a result, the Franchisee's failure to complete construction and to extend service in a timely manner may constitute material breaches.

12(i) *Captions and References:*

12(i)(1) The captions and headings of sections throughout this Agreement are intended solely to facilitate reading and reference to the sections and provisions of this Agreement. Such captions shall not affect the meaning or interpretation of this Agreement.

12(j) *Rights of Third Parties:* This Agreement is not intended to, and shall not be construed to, grant any rights to or vest any rights in third parties, except as expressly provided herein.

12(k) *Merger of Documents:* This Agreement supersedes all prior oral or written agreements, drafts, commitments, or understandings with respect to the matters provided for herein. The parties recognize, however, the right of the Town to establish and amend the Municipal Code and Town regulations from time to time, as empowered by the State of Tennessee, and the Franchisee agrees to abide by all such applicable laws and regulations, subject to the provisions of the Franchise Agreement.

PASSED, ADOPTED AND AGREED TO ON FIRST READING THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2004.

PASSED, ADOPTED AND AGREED TO ON SECOND READING THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2004.

TOWN OF SMYRNA, TENNESSEE

By: \_\_\_\_\_  
Bob Spivey, Mayor

ATTEST:

\_\_\_\_\_  
Diane Waldon, Town Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Chad White, Town Attorney

COMCAST CABLEVISION OF NASHVILLE II, LLC

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

12(k) *Merger of Documents:* This Agreement supersedes all prior oral or written agreements, drafts, commitments, or understandings with respect to the matters provided for herein. The parties recognize, however, the right of the Town to establish and amend the Municipal Code and Town regulations from time to time, as empowered by the State of Tennessee, and the Franchisee agrees to abide by all such applicable laws and regulations, subject to the provisions of the Franchise Agreement

PASSED, ADOPTED AND AGREED TO ON FIRST READING THIS 31<sup>ST</sup> DAY OF May, 2004.

PASSED, ADOPTED AND AGREED TO ON SECOND READING THIS 8<sup>TH</sup> DAY OF June, 2004.

TOWN OF SMYRNA, TENNESSEE

By: Bob Spivey  
Bob Spivey, Mayor

ATTEST:

Diane Waldon  
Diane Waldon, Town Clerk

APPROVED AS TO FORM:

Chad White  
Chad White, Town Attorney

COMCAST CABLEVISION OF NASHVILLE II, LLC

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

Michael J. Spivey  
Michael J. Spivey, Mayor

# TENNESSEE REGULATORY AUTHORITY



July 3, 2008

JUL 07 2008

460 James Robertson Parkway  
Nashville, Tennessee 37243-0505

**COPY**

City of Smyrna  
ATTN: Mayor Bob Spivey  
315 South Lowry  
Smyrna, Tennessee 37167

RE: **NOTICE of TRA Receipt of Application for Certificate of Franchise Authority and  
OFFICIAL REQUEST for Information**

Dear Mayor Spivey:

On July 1, 2008, Public Chapter 932,<sup>1</sup> also known as the Competitive Cable and Video Services Act (the "CCVSA"), which was enacted by the 105<sup>th</sup> Tennessee General Assembly became effective. Pursuant thereto, on July 1, 2008, the Tennessee Regulatory Authority ("TRA" or "Department") received an application for a state-issued certificate of franchise authority to provide cable or video service in your municipality or unincorporated area from BellSouth Telecommunications, Inc. d/b/a AT&T Tennessee ("AT&T").

In addition to conferring certain benefits, the CCVSA imposes specific obligations upon applicants, municipalities and counties, and the TRA. First, pursuant to § 6(a) and § 18(1) of the CCVSA, the applicant/service provider is required to provide a notice, contemporaneously with the filing of its application for a state-issued certificate of franchise authority with the TRA, to the local governments encompassed within its intended service area. Therefore, as an initial matter, you should have already received a notice from AT&T advising that it has filed such an application with the TRA.

Next, in order for the affected local governments to receive or continue receiving certain benefits related to public, educational, and governmental ("PEG") access channels, § 10(a) of the CCVSA states,

A county or municipality shall, within ten (10) days following receipt of an application for a state-issued certificate of franchise authority from a cable or video service provider seeking approval to provide cable or video service to the county or municipality, provide notice to the [TRA] regarding the number of [PEG] access channels. . . 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. . .<sup>2</sup>

Further, § 15(b)(1) of the CCVSA requires the TRA upon receipt of an application for a state-issued certificate of franchise authority to notify all municipalities or counties identified as part of the applicant's service area to obtain certain information related to PEG access channels. The TRA is required to "compile and keep current the information it receives from municipalities, counties, or local

<sup>1</sup> 2008 Tenn. Pub. Acts 932.

<sup>2</sup> CCVSA § 10(a).



governments for the use of holders of state-issued certificates of franchise authority<sup>3</sup> and the Tennessee General Assembly.

**IT IS IMPORTANT TO NOTE THAT,** according to the CCVSA, if a municipality or county fails to provide PEG information after being requested to do so by the TRA, a holder of a state-issued certificate of franchise authority shall not be held in violation or noncompliance with the requirements of § 10 of the CCVSA, as to any such municipality or county, until the TRA has received the information requested and the holder has been given adequate time to comply with such PEG provisions.<sup>4</sup> A notice in compliance with the requirements of § 10(a) of the CCVSA acts to trigger the franchise authority holder's obligation to make PEG access support payments,<sup>5</sup> starts the clock running on the deadline for designating PEG channels,<sup>6</sup> and initiates any other duties or obligations required of the state-issued franchise authority holder encompassed within § 10 of the CCVSA.

In light of the provisions of the CCVSA noted above, it is imperative that you respond promptly to this Notice by providing the TRA with the following information:

- (A) **The number of activated PEG channels for such municipality or county, as well as the number authorized to be activated, if different; and**
- (B) **The terms of any PEG support payments being provided by the incumbent service provider.<sup>7</sup>**

Please send the above information to:

**Tennessee Regulatory Authority  
ATTN: Docket Room (08-00115)  
460 James Robertson Parkway  
Nashville, TN 37243**

If you have already forwarded this information to the TRA upon receipt of the notice from the applicant service provider in accordance with § 10(a) of the CCVSA, please disregard this request. Should you have any questions or concerns regarding this matter, please feel free to contact me at (615) 741-2904 x150 or at the address listed above. Thank you for your cooperation and prompt attention in this matter.

Sincerest Regards,



Lisa Cooper  
TRA Programs Manager

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<sup>3</sup> CCVSA § 15 (b)(2).

<sup>4</sup> CCVSA § 15 (b)(2).

<sup>5</sup> See, CCVSA § 10(j).

<sup>6</sup> Pursuant to § 10(b) of the CCVSA, a state-issued franchise holder must designate PEG channels within 90 days of beginning to offer service.

<sup>7</sup> CCVSA § 15(b)(1).