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January 8, 2020

20-00006

Hon. Robin L. Morrison, Chairman  
c/o Ectory Lawless, Docket Manager  
Tennessee Public Utility Commission  
502 Deaderick Street, 4<sup>th</sup> Floor  
Andrew Jackson Building  
Nashville, TN 37243

VIA ELECTRONIC FILING: [TPUC.DocketRoom@tn.gov](mailto:TPUC.DocketRoom@tn.gov)

RE: PETITION SEEKING REVOCATION OF CERTIFICATE OF  
FRANCHISE AUTHORITY HELD BY SPIRIT BROADBAND, LLC

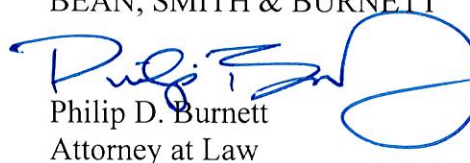
Dear Chairman Morrison:

Enclosed for filing please find the following:

- 1) Petition Seeking Revocation of the Certificate of Franchise Authority Held by Spirit Broadband, LLC, along with 8 attached exhibits (including Exhibit 7 being Direct Testimony of Nathan Brock, Director of Finance for Cumberland County). This Certificate was issued to Spirit Broadband LLC on October 12, 2017 in **Docket No. 17-00110**; and,
- 2) Check written to Tennessee Public Utility Commission for \$25.00 as filing fee.

This cover letter shall accompany both the electronic filing and the **original with four copies** and the check, which are being mailed via USPS forthwith.

Sincerely,  
BEAN, SMITH & BURNETT

  
Philip D. Burnett  
Attorney at Law

Enclosures

Cc: Allen Foster, Mayor of Cumberland County.

**BEFORE THE TENNESSEE PUBLIC UTILITY COMMISSION  
NASHVILLE, TENNESSEE**

CUMBERLAND COUNTY, TENNESSEE, )  
A POLITICAL SUBDIVISION OF THE STATE )  
OF TENNESSEE )

PETITIONER, )

VS. )

SPIRIT BROADBAND, LLC and VINCENT )  
KING, individually, and d/b/a, SPIRIT )  
BROADBAND, LLC )

RESPONDENT. )

DOCKET NO. 20-00006

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**PETITION SEEKING REVOCATION OF CERTIFICATE OF FRANCHISE  
AUTHORITY HELD BY SPIRIT BROADBAND, LLC**

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Comes Cumberland County, Tennessee, (hereinafter “Petitioner”) and petitions the Commission to revoke the Certificate of Franchise Authority issued to the Respondent Spirit Broadband, LLC on October 12, 2017. In support of this petition, Petitioner would show as follows:

1. The Petitioner is a governmental entity, being a political subdivision of the State of Tennessee. The Chief Executive Officer for the Petitioner is Mayor Allen Foster, whose principal address is 2 North Main Street, Suite 203, Crossville, Tennessee 38555.
2. The Respondent Spirit Broadband, LLC (hereinafter “Spirit”) is a now dissolved limited liability company formed under the laws of the State of Tennessee, but now being effectively dissolved since December 10, 2018. Spirit’s principal address is 8279 Horton Highway, College Grove, Tennessee 37046-9183 with a local place of business reported in Docket No. 17-00110 to be 302 Woodlawn Road, Crossville, Tennessee 38555. The

Principal Executive Officer and registered agent for the now dissolved Spirit Broadband, LLC was Vincent King.

3. Respondent Vincent King is named in this Petition because he is believed to be the sole owner or majority owner of the now dissolved Spirit Broadband, LLC and as such, has been providing customers with cable television video service without a Certificate of Franchise Authority in violation of 7-59-101 et. seq. and 7-59-301 et. seq.
4. Petitioner has not granted a franchise license to any of the Respondents pursuant to T.C.A. § 7-59-102. Vincent King's affidavit on behalf of Spirit found in Docket No. 17-00110 erroneously states that "Applicant is an incumbent cable service provider because it provided cable service in a municipality or unincorporated area of a county on July 1, 2008, under a franchise." I am attaching as ***Exhibit 1*** a franchise agreement that was approved by Resolution No. 1298-1 between the Petitioner and a franchisee company known as Midsouth Cable TV. As you can see on page 3 of that agreement, the franchise award could not be assigned without written approval by the Petitioner. Spirit Broadband, LLC purchased Midsouth Cable around the year 2007 and continued thereafter for many years to service the area without a written agreement with the Petitioner.
5. Pursuant to T.C.A §§ 7-59-102 and 7-59-301 et. seq., Spirit can only provide cable, video, and broadband services through a franchise license locally with the county or through a Certificate of Franchise Authority given by the Tennessee Public Utility Commission (hereinafter "The Department").
6. The Petitioner allowed Spirit Broadband to continue providing cable and video services inside the Petitioner's boundaries with the understanding that Spirit would abide by the

agreement previously held with Midsouth Cable. Unfortunately, Spirit failed to pay franchise fees and on April 12, 2016, Petitioner was forced to file suit against Vincent King and Spirit Broadband. That lawsuit resulted in a Mutual Settlement Agreement that thereafter was filed as a Final Judgement against Spirit Broadband and Vincent King in the amount of one hundred thousand dollars (\$100,000.00) for unpaid franchise fees. See attached as ***Exhibit 2, 3, and 4*** the Complaint, Settlement Agreement, and Final Judgement.

7. As you can see by looking at *Exhibits 2, 3, and 4*, during the middle of this lawsuit, knowing that the county would not enter into a new franchise agreement, Spirit Broadband, LLC and Vincent King decided to seek a Certificate of Franchise Authority through The Department. The Spirit Broadband, LLC application found in Docket No. 17-00110 was filed under false and misleading pretenses and therefore should have never been granted and should now be revoked. In support, Petitioner would show:
  - A. The Respondent falsely asserted that Spirit was an incumbent cable service under the statute. To be an incumbent cable service, the cable provider must have been working under a franchise agreement with a city or county prior to July 1, 2008. As stated above, and as seen in *Exhibit 1*, that was not true.
  - B. Spirit used that falsehood to fall under T.C.A. § 7-59-305(D)(3) to avoid having The Department do an analysis of its managerial, financial, and technical qualification to provide cable or video service. Had the Department performed the managerial, financial, and technical qualification analysis, Spirit would have never been granted the Certificate of Franchise Authority. In support:

- I. Spirit owed the Petitioner at least one hundred thousand dollars (\$100,000.00) in back franchise fees (See *Exhibit 3* and *4*).
  - II. On April 12, 2017, four months before the application was filed in Docket No. 17-00110, a Federal Tax Lien was registered against Spirit Broadband for failure to pay self-employment tax (See *Exhibit 5*- Notice of Federal Tax Lien)
  - III. On December 9, 2015, Spirit had been administratively dissolved and remained dissolved until April 26, 2016. During those four and a half months, services were provided under the Spirit Broadband, LLC name even though the entity was dissolved. (See *Exhibit 6*- Filing Information for Spirit Broadband, LLC from Division of Business Services Department of State)
  - IV. On October 1, 2017, while Docket No. 17-00110 was pending, a Notice of Determination was sent out by the Secretary of State because, once again, Spirit had failed to file an annual report. The Department issued its Certificate of Franchise Authority on October 12, 2017, and seven weeks later after the Certificate of Franchise Authority was issued, Spirit was again administratively dissolved.
8. From the date the Certificate of Franchise Authority was issued in Docket No. 17-00110, Spirit has paid zero dollars (\$0) in franchise fees to the Petitioner. See Direct Testimony of Nathan Brock, Director of Finance for the Petitioner attached hereto as *Exhibit 7*. As stated before, seven weeks after the Certificate of Franchise Authority was issued, Spirit Broadband, LLC was dissolved and remained dissolved until March 29, 2018. Therefore,

Spirit operated for the first three out of four months under The Department's Franchise Authority as a dissolved non-entity.

9. As further proof of Spirit's lack of managerial, financial, and technical competence, on January 16, 2018, approximately three months after the Certificate of Franchise Authority was issued in Docket No. 17-00110, said Certificate of Franchise Authority subjecting said Authority to the lawful operation of the cable and video service, a Federal Tax Lien was again filed against Spirit for failure to pay self-employment tax. (See *Exhibit 8*- Notice of Federal Tax Lien filed with Williamson County Register of Deeds, January 16, 2018)
10. For a second time since the Certificate of Franchise Authority was issued, on December 6, 2018, the Secretary of State administratively dissolved Spirit Broadband, LLC and four days later on December 10, 2018, Spirit Broadband, LLC was dissolved due to issues with labor and workforce development. **Since December 10, 2018, Spirit Broadband, LLC has remained a dissolved Limited Liability Company and therefore has no legal ability to act as an entity in the State of Tennessee. (See *Exhibit 6*)**
11. One of the primary reasons found in T.C.A. § 7-59-301, to create a regulatory framework and place the operation of a cable or video business under the regulatory authority of The Tennessee Public Utility Commission is so that the managerial, financial, and technological competency can be guarded for the benefit of the public and the city and county entities. The reason for this regulatory oversight is specifically to preclude businesses that fail to pay franchise fees, fail to pay federal taxes, and fail to maintain the business in good standing with the Secretary of State. The Tennessee Public Utility Commission's authority to revoke this Certificate of Franchise Authority is found in

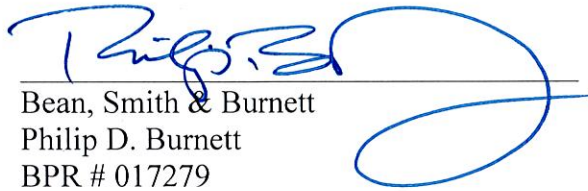
several areas of the statute. First, the statute plainly allows a county to bring a complaint to The Department regarding the payment of franchise fees. See T.C.A. § 7-59-306(d)(2)(A). Second, the grant of Franchise Authority to provide cable, video, and broadband internet services is specifically subject to the lawful operation of the cable and video service. That grant subjecting the grant of Authority to the lawful operation is found in both the Certificate of Franchise Authority and in the Code. See T.C.A. § 7-59-305(c)(1) and § 7-59-305(e)(3).

12. Further proof of The Department's authority to revoke a Certificate of Franchise Authority is found in the Codes requirement that the applicant specifically swear under oath as part of the application that the business will be operated in compliance with all applicable Federal and State laws. T.C.A. § 7-59-305
13. It is evident from the assertions above and the exhibits supporting those assertions that Spirit mislead The Department in its application and that had its managerial and financial competency been reviewed at that time, Spirit would not have received the Franchise Authority.
14. It is evident by the statements above and the exhibits in support that Spirit has failed to operate its business lawfully. Spirit is required under the Code to pay franchise fees, which it has not. See T.C.A § 7-59-306(a). Further, the holder of the Certificate of Franchise Authority, Spirit Broadband, LLC, is no longer a legal entity in good standing under the laws of the State of Tennessee.

**WHEREFORE**, the Petitioner respectfully requests that The Department terminate and/or revoke the Certificate of Franchise Authority previously issued to Spirit Broadband, LLC in Docket No. 17-00110. In addition, or in the alternative, the Petitioner respectfully

requests The Department to commence a contested case and thereafter find sufficient grounds to terminate and/or revoke the Certificate of Franchise Authority, or in the alternative to order Spirit Broadband, LLC to open its books so that the Petitioner can audit the gross revenues since the date the Certificate of Franchise Authority was issued.

Respectfully submitted this 8<sup>th</sup> day of January, 2020.



Bean, Smith & Burnett  
Philip D. Burnett  
BPR # 017279  
Attorney for Cumberland County  
300 Thurman Ave.  
Crossville, TN 38555  
(931) 484-7549



CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true and exact copy of the foregoing document has been served upon counsel and parties listed below for the parties in this cause by placing same in the United States Mail with postage to carry same to its destination.


Vincent King  
Registered Agent for Spirit Broadband, LLC  
8279 Horton Highway  
College Grove, TN 37046-9183

Vincent King  
CEO for Spirit Broadband, LLC  
P.O. Box 249  
College Grove, TN 37046

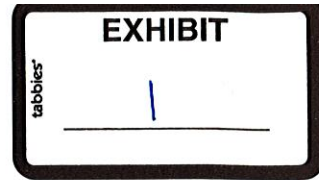
Vincent King  
CEO for Spirit Broadband, LLC  
302 Woodlawn Road  
Crossville, TN 38555

Mr. Daniel H. Rader, IV  
Attorney for Spirit Broadband, LLC  
Moore, Rader, Fitzpatrick & York, P.C.  
P.O. Box 3347  
46 North Jefferson Avenue  
Cookeville, TN 38502

This the 8<sup>th</sup> day of January, 2020.

  
Philip Burnett  
Attorney at Law  
BPR # 017279  
Attorney for Cumberland County  
300 Thurman Ave.  
Crossville, TN 38555  
(931) 484-7549

**Jule Bryson**  
Cumberland County Clerk

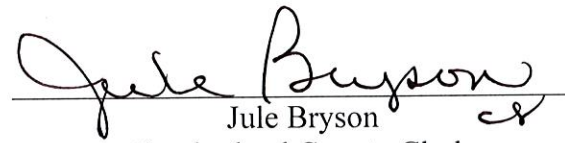


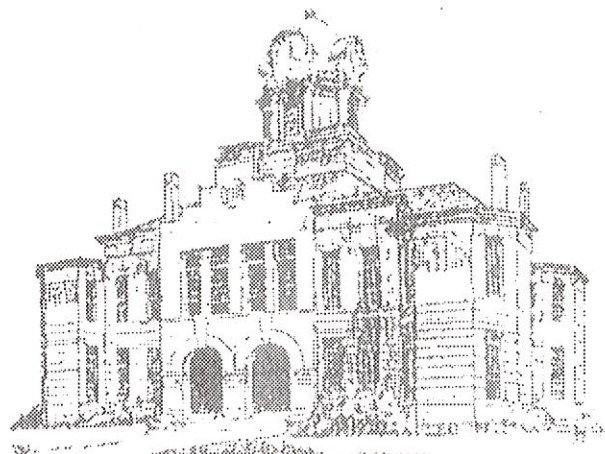
2 North Main Street, Suite 206 • Crossville, TN 38555 • (931) 484-6442 • Fax (931) 484-6440

STATE OF TENNESSEE, CUMBERLAND COUNTY

I, Jule Bryson, County Clerk of Cumberland County, Tennessee, do hereby certify that the foregoing copy of Resolution 1298-1, granting a franchise to Mid-South Cable T.V., Inc. to build, construct, operate and maintain a cable television system in Cumberland County, Tennessee, is a full, true, and perfect copy of same as appears in Quarterly Minutes Book Number 38, page 279, now on file in my office.

Witness my hand and official seal at office in Crossville, Tennessee, this 8<sup>th</sup> day of January 2020.

  
Jule Bryson  
Cumberland County Clerk



A Resolution granting a franchise to Mid-South Cable T.V., Inc., to build, construct, operate and maintain a cable television system in the Cumberland County, Tennessee and setting forth conditions accompanying the granting of this franchise:

BE IT RESOLVED BY THE CUMBERLAND COUNTY COUNTY COMMISSION meeting in its regular session on the 21st day of December, 1998, hereby adopts the following Cable Television Franchise:

SECTION 1. Title: This Franchise shall be known and may be cited as the Terms and Conditions of the Cable Television Franchise.

SECTION 2. Definitions: For the purpose of this Franchise and when not inconsistent with the context, words used herein in the present tense include the future; words in plural include the singular, and vice versa. The word "shall" is always mandatory. The captions supplied herein for each section are for convenience only. Said captions have no force of law, are not part of the section, and are not to be used in construing the language of the section. The following terms and phrases, as used herein, shall be given the meaning set forth below:

(a) "County" or "Grantor" is Cumberland County, Tennessee, a duly organized and existing political subdivision of the State of Tennessee, or any successor.

(b) "Grantee" or "Company" is Mid-South Cable T.V., Inc. It is the grantee of the rights granted under this franchise.

(c) "Franchise" are the rights granted to any person by Cumberland County, Tennessee under the terms of this or any agreement entered into, by and between Cumberland County, Tennessee and such person according to the terms of this Resolution.

(d) "The Cumberland County County Commission" is the governing legislative body of Cumberland County, Tennessee.

(e) "Person" is any person, firm, partnership, association, corporation, company or organization of any kind.

(f) "Cable System" or "Cable Television System" means a facility consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Television Service and/or other communication services to multiple subscribers within a community, not including a facility or combination of facilities that serves only to retransmit the television signals of one or

more television broadcast stations; or a facility or combination of facilities that serves only subscribers in one or more multiple unit dwellings under common ownership, control or management, unless such facility or facilities use any public right-of-way or public utility easement.

(g) "Cable Television Service" means the provision of television reception for direct or indirect compensation, or as otherwise provided in this Resolution, and distributing the same over a Cable Television System.

(h) "CATV System" shall mean cable system.

(i) "Franchise Boundaries" shall include all areas described on Exhibit "A" attached hereto and made a part hereof by reference.

(j) "Federal Communications Commission" or "FCC" is the Federal Commission or Agency created pursuant to the Communications Act of 1934 or its successor agency.

(k) "Channels" shall mean a group of frequencies in the electromagnetic spectrum capable of carrying an audio-data or an audio-video television signal.

(l) "Basic Cable Service" means any service tier which includes the retransmission of local television broadcast signals, and which tier also meets the definition of Basic Service contained in 47 U.S.C. 543(b)(7).

(m) "Gross Annual Receipts" shall mean all revenue derived directly by the Grantee and its subsidiaries, from or in connection with the operation of the Cable Television System pursuant to this Resolution; including, but not limited to, gross annual basic cable service receipts, gross annual premium channels receipts, all other service receipts, gross annual advertising receipts, gross annual receipts from use of commercial channels; provided, however, that this shall not include any franchise fees, copyright fees, uncollected bad debt, and/or any taxes on services furnished by the grantee herein, imposed directly upon any subscriber or user by the state, city or other governmental entity and collected by the grantee on behalf of said governmental unit.

(n) "Ordinance" or "Franchise Ordinance" means this Resolution which grants a franchise and defines the specific rights and obligations of each party pursuant to the general authority, powers and restrictions of this Franchise.

(o) "Streets" shall mean the surface of and all rights-of-

way and the space above and below any public street, road, highway, bridge, freeway, lane, public way or place, sidewalk, alley, court, boulevard, parkway, drive, waterway, dock, wharf, pier, or easement now or hereafter held by the County for the purpose of public travel and shall include other easements or rights of way as shall be now held or hereafter held by the County which shall, within their proper use and meaning, entitle the franchisee to the use thereof for the purposes of installing or transmitting cable television service transmissions and/or other telecommunication systems over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments, and other property as may be ordinarily necessary and pertinent to a cable television system.

Grantee shall repair and replace to its original condition any damage occasioned by their installation, transmission, and maintenance of the "Streets" set out above.

(p) "Year" means the remaining portion of any calendar year in which a franchise is granted. Thereafter, "Year" means a full calendar year.

### SECTION 3. Grant of Authority:

(a) The County warrants it has a right to issue a franchise and the Grantee, by acceptance, acknowledges and accepts the right of the County to issue the same.

(b) The County hereby grants to Grantee, subject to the right of amendment as hereinafter provided, the right and privilege to construct, erect, operate and maintain, in, upon, along, across, above, over and under the streets, alleys, public ways and public places not laid out or dedicated, and all extensions thereof, and additions thereto, in the County poles, wires, cables, underground conduits, manholes, and other conductors and fixtures necessary for the maintenance and operation in the County of a Cable System for the interception, retransmission, sale, and distribution of television signals, radio, data, or other electronic signals as may be deemed appropriate by the Grantee, upon the limitations, terms, and conditions in this Resolution contained, as the same may be from time to time amended.

(c) This franchise award shall not be sublet, assigned or leased, nor shall any of the rights or privileges therein granted or authorized be transferred or assigned, either in whole or in part, nor shall title thereto, either legal or equitable, or any right, title, interest or property therein pass to or vest in any person except the Grantee, either by act of the Grantee or by operation of law, without the prior consent of the County expressed by resolution, which consent will not be unreasonable withheld. The County shall take such consent or denial action

within the limits prescribed in 47 U.S.C. 537(e)

(d) The right for Grantee to use and occupy said street, alleys, public ways and places for the purposes herein set forth is not exclusive.

4. Additional County Rights in Franchise:

(a) The County reserves the right upon reasonable notice to require the Grantee at its expense to protect, support, temporarily disconnect, relocate or remove from the Streets any property of the Grantee by reason of traffic conditions, public safety, street construction or excavation, change or establishment of street grade, installation of sewers, drains, water pipes, power or communication lines, tracts, or other types of structure or improvements by governmental agencies. Reasonable notice for this provision of the Resolution shall be construed to mean at least thirty (30) days except in the case of emergencies where no specific notice period shall be required.

(b) In the event of the failure by the Grantee to complete any work required by subsection (a) above or any work required by County law or ordinance within the time established, the County may cause such work to be done and the Grantee shall reimburse the County the reasonable costs thereof within thirty (30) days after receipt of an itemized list of such cost.

(c) The County reserves the right during the life of any Franchise hereunder to inspect, upon reasonable notice, at all reasonable hours, the Grantee's contracts and engineering records dealing with Gross Revenue and technical service provided by Grantee, provided that information pertaining to service to individual subscribers will be available pursuant to Section 631 of the Cable Act.

(d) The County reserves the right during the life of any franchise granted hereunder, to reasonably inspect all construction or installation work performed subject to the provisions of the Resolution to ensure compliance with the terms of the Resolution. At its own expense and to the extent permitted by law, the County may also perform measurements upon and randomly inspect any portion of a Grantee's system to ensure compliance with the technical standards under which the Grantee is authorized to operate provided that such measurement or inspection does not interfere with the operation of the Cable Television System.

(e) At any time during the term of the Franchise, and upon thirty (30) days notice, the County reserves the right to hold a public hearing for the express purpose of reviewing the general and specific performance of the Grantee with regard to all

Franchise provisions contained herein and to revoke if in violation.

(f) Any right or power in or duty impressed upon any officer, employee, department, or board of the County shall be subject to transfer by the County Executive by law to any other officer, employee, department or board of the County. The County reserves all rights not specifically granted herein, and the enumerations of the rights herein shall not be construed to be a limitation of any right or power the County may otherwise have.

#### SECTION 5. Service Area

(a) Subject to the provisions of paragraph (b) of this Section, the Grantee shall offer Cable Television Service to all potential residential subscribers who are located within the county limits as of the effective date of the Franchise. Subject to the provisions of paragraph (b) of this Section, the Grantee shall offer Cable Television Service to all potential residential subscribers within any area described in any annexation ordinance passed after the passage of this Ordinance, within one (1) year of the effective date of the said annexation ordinance.

(b) The Grantee of any Franchise hereunder shall offer "upon request" Cable Television Service to all potential residential subscribers located within One Hundred Fifty (150) feet of Grantees feeder cable where there exists a minimum density of thirty-five (35) dwelling units per mile excluding homes receiving competitive services. The Grantee may elect, but has no obligation, to offer Cable Television Service to areas not meeting the above standard.

(c) In the event the continued use of a Street is denied for any reasonable purpose related to public health, safety or welfare, the Grantee will make every reasonable effort to provide residential service over alternate routes.

SECTION 6. Time For Providing Service: Unless otherwise authorized by the County Commission, all areas meeting the requirements of Section 5(b) subsequent to the effective date of this Franchise granted pursuant to this Ordinance shall be offered Cable Television Service within twelve (12) months of the effective date of the annexation.

#### SECTION 7. Condition of Use of Streets:

(a) The poles used for a distribution system shall be, to the extent possible, those erected and maintained by either a power company or a telephone company, or both. Notwithstanding any other provisions of this Ordinance, no poles except replacements for existing poles shall be erected by or for the Grantee, in any Street, except when necessary to service a

subscriber. Any poles, wires, cable or other facilities to be constructed or installed by Grantee on or within the Streets shall be constructed or installed only at such locations and depths and in such a manner as to comply with all state statutes and rules and regulations of the State of Tennessee, the County, and any other agency of competent jurisdiction.

(b) The installation of trunk and distribution lines, including service drops to subscribers, shall be made underground in areas where both telephone and power lines are underground or are placed underground and the service poles are removed.

SECTION 8. System Design and Channel Capacity: The Cable Television System shall be constructed and operated in a manner as set forth in this Ordinance. The Cable Television System shall make available at least 300 MHz bandwidth and shall be constructed and operated in a manner as set forth in this Ordinance.

SECTION 9. Interconnection: Where economically reasonable and technically possible, Grantee may connect its system with other cable systems adjoining it so as to provide the widest possible combination of programming in the most efficient manner.

SECTION 10. Service to Government Buildings: The Grantee shall, upon request therefore, provide and furnish without charge to all public educational institutions and governmental buildings within the County that are within 150 feet of Grantee's existing distribution cable, one (1) service outlet. The institutions shall be entitled to receive, free of charge, the Grantee's basic cable television service.

SECTION 11. Parental Control Devices: The Grantee shall at all times have available parental control devices for the purpose of controlling premium television programming on individual subscriber television sets. The Grantee shall have the right to charge reasonable fees for the use of such devices.

SECTION 12. Construction Standards:

(a) Grantee shall construct, install, operate and maintain the Cable Television System in a manner consistent with all laws, ordinances, construction standards, governmental requirements and the construction and operational standards contained in this Ordinance and any Franchise Agreement.

(b) All installation and maintenance of electronic equipment shall be of a permanent nature, durable and installed in accordance with the applicable sections of the National

Electric Safety Code, the National Electrical Code of the



National Bureau of Fire Underwriters and all state and local codes where applicable.

(c) Antenna 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 applicable local or state codes and regulations.

(d) All construction methods and standards shall conform to standard industry practices at the time of construction, and as specified herein and in any Franchise Agreement.

(e) Any contractor used by a Grantee for construction, installation, operation, maintenance, or repair of system equipment must be properly licensed under the laws of the State to which the contractor is licensed, and all local ordinances.

(f) The County 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 locations shall be verified by excavation.

SECTION 13. Compliance with Applicable laws:

(a) Grantee, at all times during the life of its Franchise, shall be subject to all lawful exercise of the police power by the County. Unless otherwise prohibited by state or Federal law, or where jurisdiction has been or shall be conferred upon a State or Federal commission, board or body, the County reserves a right by resolution to regulate such cable system as to installation fees, if any; rates and charges to be paid by the subscribers for the service; the quality of service to be provided subscribers; the rate of construction of facilities so as to serve the territorial area referred to hereinafter; to promulgate rules and regulations and other necessary supervisory procedures to assure prompt completion of the system; to provide service for all citizens of the County and its police jurisdiction wherever located, subject to Sections V and VI; to set a schedule of construction that will attain the said completion of such system as hereinabove last stated; and to adopt such other rules and regulations it may now or hereafter lawfully impose in keeping with and not in conflict with applicable State or Federal law, or the lawful rules and regulations heretofore or hereafter adopted by any Federal commission, board or body and/or any lawful State rules and/or regulations lawfully adopted by any State commission, board, or body.

(b) Grantee, its successors and assigns granted a Franchise hereunder, shall be subject to lawful regulations heretofore or hereafter adopted by the Federal Communications Commission and, should it now be or hereafter become subject to the jurisdiction

of any other commission and also to the lawful rules and regulations adopted by any similar Federal commission or State regulatory body, having jurisdiction. If the Grantee, its successor or assigns, shall fail to comply with any applicable Federal and/or State statute, rules, regulations, orders or conditions lawfully vested in any State regulatory body and/or rules, regulations, orders and conditions lawfully vested in the County, the County shall have the right to terminate or cancel any franchise granted hereunder after written notice to the default continues for a period of time specified in such notice, not less than ninety (90) days. In the event such failure or default cannot reasonable be corrected within the period of time from County noting reasons for requesting an extension and a projected completion date. County shall not withhold approval of reasonable requests.

SECTION 14. Franchise and Area: Any franchise granted hereunder relates to the present County boundaries; and also to any area hereafter added thereto during the term of any franchise granted hereunder.

SECTION 15. Services: The cable television system provided by the Grantee shall be capable of delivering a minimum of thirty-six (36) channels to all customers.

SECTION 16. Customer Service and Signal Quality Requirements: The Grantee shall:

(a) Comply with the technical standards provided by the Federal Communications Commission at 47 C.F.R. 76.601 through 76.609, as from time to time amended.

(b) Limit failures which leave 2 or more subscribers with no cable service to a minimum by responding to such malfunctions properly and promptly, but in no event longer than twenty-four (24) hours after notice, unless prevented by an act of God. Any repairs or corrections which shall take over twenty-four (24) hours shall be reported immediately to County along with a projected timetable for completion.

(c) Upon request of the County, Grantee shall demonstrate, by instruments or otherwise to the County that a signal meeting or exceeding those standards in 47 C.F.R. Part 76, Sub-Part K, Section 76.601-76.610 are being delivered.

(d) In the case of any outage, other than an outage beyond the control of the Grantee, in which one or more customers are completely without cable service for 24 hours or more, the Grantee shall upon subscriber request calculate a pro rata reduction in the charge for cable service, to be included in such subscriber's next regular bill. In the case of a system-wide failure, reduction of bill shall be made automatically by Grantee

for all affected customers.

(e) Comply with the Customer Service and Consumer Protection Standards at 47 C.F.R. 76.309, as from time to time amended by the Federal Communications Commission.

(f) Franchisee agrees to maintain a local business office either within the corporate limits of the City of Crossville or within the boundaries of the County and further agrees that said office will be staffed at all times during normal business hours, Monday, through Friday. Franchise further agrees to provide a message or telephone answering service during all times outside of normal business hours, which will be available toll-free to County telephone customers. Franchisee agrees that any calls received outside of normal business hours will be returned by an authorized employee or agent of the Franchise within the first half (4 hours) of the next business day.

SECTION 17. Public, Educational & Governmental Access Channels and Emergency Broadcast Services Required:

(a) The Grantee shall provide, subject to the rules and regulations of the Federal Communications Commission, public emergency broadcast capabilities whereby the County can designate channels and interrupt service in order to make such public emergency communications as are reasonable and necessary.

SECTION 18. Public, Educational & Governmental Access Channels and Emergency Broadcast Services Required:

(a) The Grantee shall provide, subject to the rules and regulations of the Federal Communications Commission, public emergency broadcast capabilities whereby the County can designate channels and interrupt service in order to make such public emergency communications as are reasonable and necessary.

(b) Grantee shall reserve a minimum of one channel for public, educational and governmental (PEG) access use. With prior approval of the County such channel(s) may be used by Grantee for other purposes when not required by PEG users. The County shall assume all responsibility for regulation and/or scheduling the use of PEG channels by any and all users.

(c) Grantee shall reserve an additional channel for the exclusive use and operation of the County. This channel shall be used by the County or its assigns for the purpose of promoting Cumberland County, its products, people and attractions. The County shall assume all responsibility for regulation and/or scheduling the use of both public channels reserved in this paragraph and paragraph (b) immediately preceding this paragraph.

Grantee shall not charge any fee, charge, or expense to the

County or its assigns for the use of the two (2) channels reserved by the County in this Section 8.

SECTION 18. Indemnification: Grantee shall save the County harmless from all loss sustained by the County on account of any suit, judgment, execution, claim or demand whatsoever against the County resulting from negligence on the part of Grantee in the construction, operation or maintenance of its cable television system in the County ; and for this purpose Grantee shall carry property damage and personal injury insurance with a responsible insurance company or companies qualified to do business in the State of Tennessee. The amounts of such insurance to be carried for liability due to property damage shall be \$100,000.00 as to any one occurrence; and against liability due to injury to or death of person, \$250,000.00 as to any one person and \$500,000.00 as to any one occurrence. The Grantee shall provide proper documentation to the County that the County is an additional insured within ten (10) days of the purchase and/or renewal of said insurance policies. The County shall notify Grantee, in writing, within ten days after the presentation of any claim or demand, either by suit or otherwise, made against the County on account of any negligence as aforesaid on the part of Grantee. Where any such claim or demand against the County is made by suit or legal action, written notice thereof shall be given by the County to Grantee not less than five (5) days prior to the date upon which an answer to such legal action is due or within ten (10) days after the claim or demand is made upon the County, whichever notice period yields Grantee the larger amount of time within which to prepare an answer. The foregoing liability and indemnity obligations of the Grantee pursuant to this section shall not apply to damages occasioned by acts of the County, its agents or employees, nor shall this be deemed a waiver of any defense of contributory negligence which the Grantee may assert against the County, its agents or employees, nor shall this be deemed a waiver of any defense of contributory negligence which the Grantee may assert against the County, its agents or employees.

SECTION 19. Construction & Maintenance:

(a) All structures, lines and equipment erected by Grantee within the County shall be so located as to cause minimum interference with the proper use of streets, alleys, public ways and places and to cause minimum interference with the rights or reasonable convenience of property owners.

Existing poles, posts, conduits, and other such structures of any electric power system, telephone company, or other public utility located in the County shall be used to the extent practicable in order to minimize interference with travel and avoid unnecessary duplication of facilities. The County shall actively assist Grantee to the fullest extent necessary in

obtaining reasonable joint pole or conduit use agreements from the owners of existing poles or conduits. To the extent that existing poles, posts, conduits, and other such structures are not available, or are not available under reasonable terms and conditions, including excessive cost or unreasonable limitation upon the use of Grantee's Cable Television System. Grantee shall have the right to purchase, lease, or in any other manner acquire land rights-of-way, or public utility easements upon or under which to erect and maintain its own poles, conduits, and other such structures as may be necessary for the construction and maintenance of its Cable Television System. Where all other existing utilities are underground, Grantee shall locate its facilities underground.

(b) In case of any disturbance by Grantee of pavement, sidewalk, driveway or other surfacing, Grantee shall, at its own cost and expense and in a manner approved by the County, replace and restore all paving, sidewalk, driveway or surface so disturbed in as good condition as before said work was commenced.

(c) Grantee shall, upon a minimum of seventy-two (72) hours prior notice, on the request of any person holding a building moving permit used by the County, temporarily raise or lower its lines to permit the moving of the building. The expense of such temporary removal shall be paid by the person requesting the same, and Grantee shall have the authority to require such payment in advance.

(d) All poles, lines, structures and other facilities of Grantee in, on, over and under the streets, sidewalks, alleys, public utility easements and public grounds or place of the County shall be kept by Grantee at all times in a safe condition.

(e) When the County undertakes any reconstruction, realignment or any other work on County roads which would require relocation or modification of Grantee's poles, wires or other facilities, County shall notify Grantee a minimum of seventy-two (72) hours in advance, and Grantee shall be responsible for such relocations of Grantee's facilities.

SECTION 20. Service Extension Subject to the provisions of this Section, the Grantee shall offer Cable Television Service to all potential residential subscribers located within the boundary of the County as of the effective date of the Franchise. Within ten (10) months of the effective date of new residential home development in the County, Grantee agrees to extend its cable to provide additional service so as to make the service available to all potential residential subscribers which can be connected to Grantee's existing Cable System using a drop of One Hundred Fifty (150) feet or less and provided there exists a minimum density of thirty-five (35) homes per cable mile excluding homes receiving competitive services in such area. The Grantee may elect, but

has no obligation, to offer Cable Television Service to areas not meeting the minimum standards.

SECTION 21. Amendments & Supplemental Agreements It shall be the policy of the County to amend the Franchise, upon application of the Grantee, when necessary to enable the Grantee to take advantage of any opportunities or developments in the field of transmission of television and radio signals or communications and/or entertainment services which will afford it an opportunity to more efficiently, effectively, or economically serve its customers. Provided, however, that this section shall not be construed to require the County to make any amendment.

SECTION 22. Filings & Communications with Regulatory Agencies. Upon request of the County, copies of all petitions, applications, registrations and responses to complaints submitted by the Grantee to the Federal Communications Commission shall also be submitted simultaneously to the County.

SECTION 23. Maps, Plats & Reports.

(a) The Grantee shall file with the County Recorder a true and accurate map or plat of all existing and proposed installations. Upon request such map or plat shall be updated at least annually.

(b) The Grantee shall file annually with the County, or its designee, not later than ninety (90) days after the end of the Company's fiscal year, a Gross Annual Receipts statement signed by officer, shall be submitted along with it such other reasonable information as the County shall reasonably request with respect to the company's properties and expenses related to its CATV operations within the County.

(c) The Grantee shall at all times keep on file with the County recorder a current list of its partners and stockholders with an interest of 10% or greater, its officers and directors and bond holders.

SECTION 24. Franchise Term and Renewal: This franchise shall take effect and be in full force from January 1, 1999 and, after acceptance by Grantee as provided in a term of ten (10) years. The term of the Franchise shall be automatically extended for an additional three (3) years provided that the Grantee has performed the terms and conditions of this Franchise and the applicable laws listed in Section 4. To the extent deemed necessary, the County shall have the right to require a public hearing to conduct a "performance and compliance review". Such public hearing shall be held on or before the end of the tenth year of the franchise term. Should the County elect not to hold such a public hearing, the Franchise term shall be deemed to have been automatically extended.

SECTION 25. Forfeiture: If Grantee should violate any terms, conditions, or provisions of this Franchise or if Grantee should fail to comply with any provisions of any resolution of the County regulating the use by Grantee of the streets, alleys, public utility easements or public ways of the County, and should Grantee further continue to violate or fail to comply with the same for a period of ninety (90) days after Grantee shall have been notified in writing by the County to cease and desist from any such violation or failure to comply so specified, then Grantee shall be deemed to have forfeited and annulled and shall thereby forfeit and annul all the rights and privileges granted by this Franchise; provided, however, that such forfeiture shall be declared only by written decision of the Cumberland County Commission in consultation with the County Executive containing findings of fact and stating specific grounds for forfeiture after an appropriate public proceeding held after the end of such ninety (90) day period before the Cumberland County County Commission affording Grantee due process and full opportunity to be heard and to respond to any such notice of violations or failure to comply; and provided further that the Cumberland County County Commission may, in its discretion and upon a finding of violation or failure to comply, impose a lesser penalty than forfeiture of this franchise or excuse the violation or failure to comply upon a showing by Grantee of mitigating circumstances. Grantee shall have the right to appeal any finding of violation or failure to comply with any resultant penalty to any court of competent jurisdiction, as provided in 47 U.S.C. 555. In the event that forfeiture is imposed upon Grantee, it shall be afforded a period of eighteen (18) months within which to sell, transfer, or convey this cable television system to a qualified purchaser at fair market value. During this eighteen (18) month period, which shall run from the effective date of the final order or decision imposing forfeiture including any appeal, Grantee shall have the right to operate this Cable Television System pursuant to the provisions of this Franchise.

Grantee shall not be declared in default or be subject to forfeiture or any sanction under any provision of this Franchise in any case where the action justifying such default, forfeiture or sanction is without the Grantee's knowledge or authorization or outside its control.

SECTION 26. Surrender Right: Grantee may surrender this Franchise at any time upon filing with the County Court Clerk a written notice of its intention to do so at least six (6) months before the surrender date. On the surrender date specified in the notice, all of the rights and privileges and all of the obligations, duties and liabilities of Grantee in connection with this Franchise shall terminate. Further, should the Grantee, his and/or its successors and assigns discontinue the business for which this Franchise is granted, all poles, wires, cables and

other devices shall be removed without expense to the County within ninety (90) days after demand for such removal is made by the County.

SECTION 27. Transfers: All of the rights and privileges and all of the obligations, duties, and liabilities created by this Franchise shall pass to and be binding upon the successors of the County and the successors and assigns of Grantee; and the same shall not be assigned or transferred without the written approval of the Cumberland County County Commission, which approval shall not be unreasonably withheld, in compliance with the requirements of 47 U.S.C. 537; provided, however, that this Section shall not prevent the assignments or hypothecation of this Franchise by Grantee as security for debt without such approval; and provided further that transfers or assignments of this Franchise to a partnership with the same general partner as Grantee, between any parent and subsidiary corporation or between entities of which at least fifty percent (50%) of the beneficial ownership is held by the same person, persons, or entities shall be permitted without the prior approval of the County Commission.

SECTION 28. Franchise Fee: In consideration of the terms of this Franchise, and in conformity with 47 U.S.C. 542, Grantee agrees to pay the County a sum of money equal to five percent (5%) of Grantee's Gross Annual Receipts per year. Such sum shall be payable on the first business day following the first fiscal quarter. This payment shall be in addition to any other tax or payment owed to the County by Grantee, including ad valorem or business taxes.

SECTION 29.1 Gross Revenues Defined The term Gross Revenue as used in this Franchise is defined as all revenue of any kind generated by the Grantee due to the operation of its business pursuant to this Franchise.

SECTION 29.2. Failure to Pay Franchise Fee: Grantee's failure to pay the Franchise Fee as set out above shall be a material breach of this Franchise. Upon this non-payment County may at its option declare this Franchise void and of no further force and effect and expel the Grantee from its franchised area.

SECTION 30. Franchise Required: Consistent with Tennessee state law, all franchises granted by the County shall contain the same substantive terms and conditions.

SECTION 31. Effective Date and Acceptance: This Franchise shall become effective on January 1, 1999 and, after acceptance by Grantee, shall then be and become a valid and binding contract between the County and Grantee; provided, however, that this franchise shall be void unless Grantee shall, within ninety (90) days after the final passage of this Franchise as provided in Section 23, file with the County Clerk of the County a written



acceptance of this Franchise, agreeing that it will comply with all of the provisions and conditions hereof and that it will refrain from doing all of the things prohibited by this Franchise.

SECTION 32. Severability: If any section, subsection, sentence, clause, phrase or portion of this franchise is for any reason held invalid or unconstitutional by any Federal or state court of administrative or governmental agency of competent jurisdiction, specifically including the Federal Communications Commission, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions hereof.

SECTION 33. Passage and Effective Date For purposes of this Franchise becoming effective, this Franchise shall be effective fifteen (15) days from and after its first passage, the public welfare requiring it. For all other purposes, it shall be effective as provided for in Section 21 above.

FRANCHISOR:

FRANCHISEE:

CUMBERLAND COUNTY, TENNESSEE

MID-SOUTH CABLE T.V., INC.

BY: \_\_\_\_\_

BY: \_\_\_\_\_

ITS: \_\_\_\_\_

ITS: \_\_\_\_\_

## IN THE CIRCUIT COURT FOR CUMBERLAND COUNTY, TENNESSEE

CUMBERLAND COUNTY,  
TENNESSEE,

Plaintiff,

vs.

VINCENT KING, Individually, and  
d/b/a SPIRIT BROADBAND, LLC,  
and SPIRIT BROADBAND, LLC,

Defendants.

DOCKET NO. CC-2016-CV-6108  
Jury DemandedDATE FILED 4-12-2016  
*Larry Shull* PF  
Circuit Court ClerkCOMPLAINT FOR DAMAGES

COMES NOW, plaintiff, Cumberland County, Tennessee, and in support of the Complaint for Damages alleges as follows:

PARTIES

1. Plaintiff Cumberland County, Tennessee (hereafter "County") is a political subdivision of the State of Tennessee. At all times relevant herein County is a franchising authority within the meaning of 47 U.S.C. § 522(10).

2. Defendant Spirit Broadband, LLC (hereafter "Spirit") is a Limited Liability Company organized and existing under the laws of the State of Tennessee and doing business in County. At all times relevant herein Spirit is a cable operator within the meaning of 47 U.S.C. § 522(5) providing cable service to the residents of County within the meaning of 47 U.S.C. § 522(6) pursuant to a franchise agreement within the meaning of 47 U.S.C. § 522(7).

3. Upon information and belief, Vincent King is/was a member, director and manager of Spirit broadband, LLC, which was administratively dissolved by the State of Tennessee on or about December 9, 2015. Pursuant to Tenn. Code Ann. § 48-217-01(a)(3) King continues to operate in the Spirit name, but because Spirit is now dissolved, King is liable in his

individual capacity.

#### JURISDICTION

4. By virtue of the facts alleged herein, this Court has jurisdiction and venue over this matter pursuant to Tenn. Code Ann. §§ 16-10-101 and 16-10-113.

#### RELEVANT FEDERAL STATUTES

5. The Cable Communications Consumer Protection and Competition Act of 1992 codified in 47 U.S.C. § 521 *et seq.* (the "Cable Act of 1992") governs the performance of existing cable television franchises.

6. The Cable Communications Policy Act of 1984, codified in 47 U.S.C. § 545 *et seq.* (the "Cable Act of 1984"), governs the modification of existing cable television franchises.

7. The stated purposes of the Cable Acts of 1984 and 1992 (collectively referred to as the "Federal Acts") include the establishment of (i) a national policy concerning cable communications; (ii) franchise procedures and standards; (iii) guidelines for the exercise of local authority with respect to regulation of cable systems; and (iv) an orderly process for franchise modification that protects cable operators against unfair denials of modification where the operator's past performance and proposal for future performance meets standards established by the Acts.

#### COMMON ALLEGATIONS

8. Franchise agreements authorize a cable operator to construct and operate a system for providing cable service in a county and authorize the use of the public streets and rights of way for the cable operator's wires and other hardware. Franchise agreements also set forth the terms and conditions on which cable service is to be provided to the community in which the franchising authority is situated.

9. Under the Federal Acts, franchise agreements are to be individually tailored to the unique cable service needs of the community in which the franchising authority is situated. Accordingly, franchise agreements typically include provisions governing, among other things, where cable services are to be provided.

10. Under the Federal Acts, cable operators are required to obtain and have franchise agreements from the municipalities, including counties, in which they operate.

### FACTS

11. Effective January 1, 1999, County granted a cable service franchise to Mid-South Cable TV, Inc. by Resolution 1298-1 which contained the Franchise Agreement between the parties ("Franchise Agreement") (Exhibit A).

12. Upon information and belief, Mid-South Cable TV, Inc. was purchased by Cumberland County Cable, Inc. ("CCI") prior to 2007, but subsequently, CCI began operating under the assumed name of TV Broadband of Cumberland County.

13. Upon information and belief, during 2007 CCI was purchased by Spirit.

14. The Franchise Agreement, in part, requires Spirit to pay the County "a sum of money equal to five percent (5%) of [Spirit's] Gross Annual Receipts per year...[with]... [s]uch sum ...payable on the first business day following the first fiscal quarter" ("Franchise Fees"). (Exhibit A).

15. The Franchise Agreement requires, in part, that the cable operator, now Spirit, would supply cable service to the entirety of the County with slight exception irrelevant here, and to be responsible for the provision, installation and maintenance of equipment necessary for the delivery of such cable service. The Franchise Agreement is an exclusive agreement allowing only Spirit to provide cable service to the residents of the County. (Exhibit A).

16. The initial term of the Franchise Agreement was for 10 years with a renewable term for an additional three (3) years. The Franchise Agreement was scheduled to expire on December 31, 2012.

17. From December 31, 2012 through December 9, 2015 Spirit and now King from December 10, 2015 through the current date continue to provide cable service to residents of the County, which the County has allowed.

18. Defendants charge each County resident receiving cable service a Franchise Fee. The Franchise Fees are the property of the County, which Defendants collect from each County resident receiving cable service and holds as a fiduciary of the County until the same is due and payable from Defendants to County as per the Franchise Agreement. An example of Spirit's bill for cable service provided to a County resident is attached hereto as Exhibit B, which reflects the charge of the Franchise Fees.

19. Spirit paid the County the sum of \$37,335.51 in March 2010, which the County has applied to Franchise Fees Spirit owes to the County for the year of 2008.

20. Defendants collected from County residents receiving cable service the Franchise Fees that are due and owing to the County. Despite repeated requests by the County for Defendants to pay to the County the Franchise Fees they collected from the County residents for each year beginning 2008 and continuing through the current date, Defendants have failed to do the same, except as otherwise stated herein.

21. In February 2015, inclement weather damaged some hardware and wiring used by Spirit for the delivery of cable service to some of the residents of the County, and as a result some of the County residents are without cable service.

22. Despite the County's repeated requests for defendants to repair the equipment

used by them to provide cable service to the County's residents, they have failed and refused to do the same.

23. The conduct of the parties, as aforementioned, creates an enforceable contract implied in fact and implied in law. The Federal Acts require Defendants to have a valid Franchise Agreement with the County. Because Defendants do not have a Franchise Agreement with the County but continue to provide cable service to the County's residents, Defendants are considered "holdover tenants" and, therefore, bound by the 1999 Franchise Agreement until a new franchise agreement is negotiated between the parties or Defendants discontinue providing cable service in the County.

#### FIRST CLAIM FOR RELIEF

24. By virtue of the facts alleged herein, Defendants are guilty of materially breaching the Franchise Agreement.

25. As a result of Defendants' material breach of the Franchise Agreement, the County has suffered and continues to suffer injury.

26. The County is entitled to an award of damages in an amount equal to five percent (5%) of Spirit's Gross Annual Receipts for each year from 2008 through December 9, 2015 and similarly from King from December 10, 2015 through the current date collected by Defendants for delivery of cable service to the residents of the County and prejudgment interest on such amounts.

#### SECOND CLAIM FOR RELIEF

27. By virtue of the facts alleged herein, and in the event the Court does not find that there is an enforceable contract between the parties, then Defendants have been unjustly enriched.

28. As a result of Defendants' unjust enrichment, equity and law require that Defendants pay to the County an amount equal to five percent (5%) of Spirit's Gross Annual Receipts for each year from 2008 and continuing through the current date collected by Defendants and as applicable for delivery of cable service to the residents of the County and prejudgment interest on such amounts.

### THIRD CLAIM FOR RELIEF

29. Defendants and the County have a fiduciary relationship and Defendants owe County a duty of loyalty in the charging and collecting of the Franchise Fees.

30. By virtue of the facts alleged herein, defendants have violated their fiduciary obligations and breached their duties of loyalty owed to the County.

31. As a result of such breaches of duty, the County has suffered and continues to suffer injury.

32. The County is entitled to an award of damages in an amount equal to five percent (5%) of Defendants' Gross Annual Receipts for each year from 2008 and continuing through the current date collected by Defendants and as applicable for delivery of cable service to the residents of the County and prejudgment interest on such amounts and such other exemplary and compensatory damages.

### FOURTH CLAIM FOR RELIEF

33. By collecting the County's Franchise Fees, retaining the same and refusing to pay the County its property, Defendants have converted the County's property for their own use and benefit. Accordingly, Defendants are guilty of conversion.

34. As a result of Defendants' conversions, the County has suffered and continues to suffer injury.

35. The County is entitled to an award of damages in an amount equal to five percent (5%) of Defendants' Gross Annual Receipts for the years of 2008 and continuing through the current date collected by Defendants for delivery of cable service to the residents of the County and prejudgment interest on such amounts and exemplary and compensatory damages.

#### FIFTH CLAIM FOR RELIEF

36. By virtue of the facts alleged herein, Defendants acted maliciously, recklessly and intentionally without legal justification and with the knowledge that their actions violated the rights of the County. Accordingly, the County is entitled to an award of punitive damages.

37. In order to deter Defendants from repeating such conduct, as alleged herein, an award of \$1,000,000 in punitive damages is appropriate and necessary.

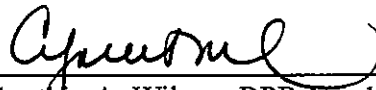
#### PRAYER

WHEREFORE, plaintiff prays that follows:

1. Plaintiff be granted a trial by jury on the causes of actions pled herein or by amended Complaint;
2. Plaintiff be granted compensatory damages in an amount equal to the five percent (5%) of Defendants' Gross Annual Receipts for each year from 2008 and through the current date of trial;
3. Plaintiff be granted prejudgment interest on all unpaid Franchise Fees;
4. Plaintiff be granted an award of punitive damages in the amount of \$1,000,000;
5. Plaintiff be granted exemplary and compensatory damages as proven at the trial of this cause; and
6. Plaintiff be granted such other and further equitable and legal relief to which it is entitled and/or the Court deems proper.




Respectfully Submitted,

  
Cynthia A. Wilson, BPR No. 13145  
Attorney for Plaintiff  
MADEWELL, JARED, HALFACRE, WILLIAMS & WILSON  
230 N. Washington Ave.  
Cookeville, TN 38501  
Phone: (931) 526-6101  
Fax: (931) 528-1909  
Email: caw1@citlink.net

  
Randal R. Boston, BPR No. 22025 *by chd w/person*  
Attorney for Plaintiff  
BOSTON & POORE  
60 N. Main St.  
Crossville, TN 38555  
Phone: (931) 707-7701  
Fax: (931) 707-7704  
Email: boston@bostonslaw.com

CERTIFICATE OF SERVICE

I, Cynthia A. Wilson, certify that the foregoing has been sent via email and/or by the United States Mail, postage pre-paid to ensure proper delivery to Randall A. York, randyyork@moorerader.com, and Daniel H. Rader, IV, danny@moorerader.com, 46 N. Jefferson Ave., Cookeville, TN 38501 this 11th day of April, 2016.

  
Cynthia A. Wilson

## Settlement Agreement

Wednesday, May 16, 2018 - 9:00

Cumberland County Circuit 2016CV6108

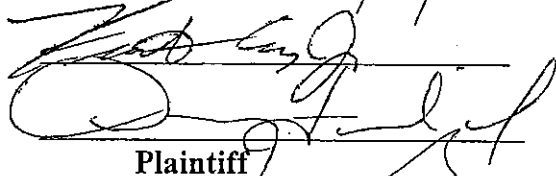
Cumberland County, TN v. King etc

The parties to this case have mutually agreed to a full and final settlement of all issues in the above styled case as follows:

1. The defendant, ~~by and through his/her liability insurance company~~, agrees to pay the sum of \$ 100,000<sup>00</sup> in full and final settlement of claims arising out of the accident which ~~occurred on~~ facts occurred on as shown in the pleadings. \$50,000<sup>00</sup> to be paid within 60 days, balance to be paid by Dec. 31, 2018 with 5% interest.
2. Plaintiff Cumberland County agrees to accept the sum of \$ 100,000 as full and final settlement of all claims arising from that accident. pleading to be paid as set out above.
3. Plaintiff ~~will be responsible for the payment of any and all subrogation claims as well as any medical expenses incurred for treatment arising from that accident.~~ Plaintiff further agrees to indemnify and hold harmless the defendant from any such claims.
4. The defendant will pay the court costs and plaintiff's discretionary costs in the amount of                     . Defense counsel will draw the order of dismissal.
5. Mediation costs will be paid as follows: 1/2 by each party

Dated: 5-16-18

Cumberland County by



Plaintiff

Spirit Broadband LLC

Dwight A. King Jr. Pres.

Daniel H. Rach IV

Defendant's Representative

John A. Turnbull  
John A. Turnbull, Attorney/Mediator

## IN THE CIRCUIT COURT FOR CUMBERLAND COUNTY, TENNESSEE

CUMBERLAND COUNTY  
TENNESSEE,

Plaintiff,

vs.

VINCENT KING, Individually, and  
d/b/a SPIRIT BROADBAND, LLC,  
and SPIRIT BROADBAND, LLC,

Defendants.

Docket No. CC1-2016-CV-6108

**FILED UNDER THE 5 DAY RULE**

DATE FILED 9-5-2018  
*Jessica Burgess*  
Circuit Court Clerk

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FINAL ORDER

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The parties having entered into a voluntary mediation with the Honorable John A. Turnbull and as a result of that mediation reached a written settlement agreement executed by the parties, a copy of which is attached hereto as Exhibit 1 and incorporated herein by reference; and

It appearing to the Court the agreement resolves the issues between the parties and is a fair and reasonable resolution;

It is hereby ORDERED, ADJUDGED and DECREED:

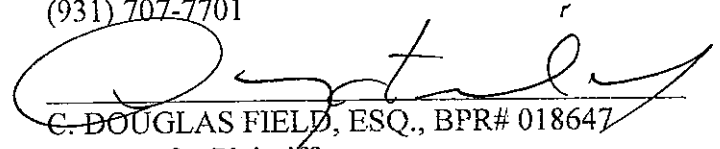
1. That Exhibit 1 is hereby adopted by the Court and hereby made an Order of the court and enforceable as a final disposition of this cause.
2. Any matters, claims or allegations raised outside the resolution made are waived and hereby dismissed.
3. Costs of this cause are taxed to Defendants.

ENTERED this the 4<sup>th</sup> day of Sept., 2018.

  
HONORABLE JONATHAN L. YOUNG

APPROVED FOR ENTRY:

Randal R. Boston by permission of  
RANDAL R. BOSTON, ESQ., BPR# 022025  
Attorney for Plaintiff  
Boston & Poore  
60 N. Main St.  
Crossville, TN 38555  
(931) 707-7701

  
C. DOUGLAS FIELD, ESQ., BPR# 018647  
Attorney for Plaintiff  
Fields & Tollett  
Association of Attorneys  
18 East Street  
Crossville, TN 38555  
(931) 456-4541

ENTERED  
Jessica Burgess

SEP 05 2018

CIRCUIT COURT CLERK


CERTIFICATE OF SERVICE

I, C. Douglas Fields, do hereby certify that a true and exact copy of the foregoing has been served upon:

Randall A. York and Daniel H. Rader, IV  
46 N. Jefferson Ave.  
Cookeville, TN 38501

by placing same in the United States Mail with sufficient postage thereupon to carry it to its destination.

This the 24<sup>th</sup> day of August, 2018.

  
C. DOUGLAS FIELDS, ESQ., BPR# 018647

## Form 668 (Y)(c)

(Rev. February 2004)

11874

Department of the Treasury - Internal Revenue Service

## Notice of Federal Tax Lien

## Area:

SMALL BUSINESS/SELF EMPLOYED AREA #5  
Lien Unit Phone: (800) 913-6050

## Serial Number

255406017

For Optional Use by Recording Office

As provided by section 6321, 6322, and 6323 of the Internal Revenue Code, we are giving a notice that taxes (including interest and penalties) have been assessed against the following-named taxpayer. We have made a demand for payment of this liability, but it remains unpaid. Therefore, there is a lien in favor of the United States on all property and rights to property belonging to this taxpayer for the amount of these taxes, and additional penalties, interest, and costs that may accrue.

Name of Taxpayer SPIRIT BROADBAND LLC

## Residence

PO BOX 249  
COLLEGE GROVE, TN 37046

**IMPORTANT RELEASE INFORMATION:** For each assessment listed below, unless notice of the lien is refiled by the date given in column (e), this notice shall, on the day following such date, operate as a certificate of release as defined in IRC 6325(a).

BK: 7048 PG: 602-602

17014030



1 PGS:AL-FEDERAL

485614

04/12/2017 - 08:01 AM

BATCH 485614

MORTGAGE TAX 0.00

TRANSFER TAX 0.00

RECORDING FEE 10.00

DP FEE 2.00

REGISTER'S FEE 0.00

TOTAL AMOUNT 12.00

STATE OF TENNESSEE, WILLIAMSON COUNTY

SADIE WADE

REGISTER OF DEEDS

Kind of Tax (a)	Tax Period Ending (b)	Identifying Number (c)	Date of Assessment (d)	Last Day for Refiling (e)	Unpaid Balance of Assessment (f)
940	12/31/2015	XX-XXX1690	09/12/2016	10/12/2026	304.57
941	09/30/2015	XX-XXX1690	09/05/2016	10/05/2026	4214.86
941	12/31/2015	XX-XXX1690	09/05/2016	10/05/2026	4830.56
941	03/31/2016	XX-XXX1690	09/05/2016	10/05/2026	4407.32
941	06/30/2016	XX-XXX1690	08/29/2016	09/28/2026	
941	06/30/2016	XX-XXX1690	10/24/2016	11/23/2026	1039.60

## Place of Filing

Register of Deeds  
Williamson County  
Franklin, TN 37065

Total \$ 14796.91

This notice was prepared and signed at NASHVILLE, TN, on this,

the 03rd day of April, 2017.

Signature

Joan Flach

for CHRIS GRIMES

Title

REVENUE OFFICER  
(615) 250-5006

25-06-2245

(NOTE: Certificate of officer authorized by law to take acknowledgment is not essential to the validity of Notice of Federal Tax Lien  
Rev. Rul. 71-466, 1971-2 C.B. 409)

Part 1 - Kept By Recording Office

Form 668(Y)(c) (Rev. 2-2004)  
CAT. NO 60025X



**Tre Hargett**  
Secretary of State

**Division of Business Services**  
**Department of State**  
State of Tennessee  
312 Rosa L. Parks AVE, 6th FL  
Nashville, TN 37243-1102

## Filing Information

Name: **SPIRIT BROADBAND, LLC**

### General Information

<b>SOS Control #</b>	<b>000546221</b>	Formation Locale: TENNESSEE
Filing Type:	Limited Liability Company - Domestic	Date Formed: 04/12/2007
	04/12/2007 3:07 PM	Fiscal Year Close 4
Status:	Inactive - Revoked (Labor & Workforce Dept)	Member Count: 10
Duration Term:	Perpetual	
Managed By:	Director Managed	

### Registered Agent Address

VINCENT KING  
8279 HORTON HWY  
COLLEGE GROVE, TN 37046-9183

### Principal Address

8279 HORTON HWY  
COLLEGE GROVE, TN 37046-9183

The following document(s) was/were filed in this office on the date(s) indicated below:

<u>Date Filed</u>	<u>Filing Description</u>	<u>Image #</u>
12/10/2018	Dissolution/Revocation - Labor & Workforce	*B0623-9385
	Filing Status Changed From: Inactive - Dissolved (Administrative) To: Inactive - Revoked (Labor & Workforce Dept)	
12/06/2018	Dissolution/Revocation - Administrative	B0624-1281
	Filing Status Changed From: Active To: Inactive - Dissolved (Administrative)	
	Inactive Date Changed From: No Value To: 12/06/2018	
10/01/2018	Notice of Determination	B0583-8718
03/29/2018	Application for Reinstatement	B0525-3160
	Filing Status Changed From: Inactive - Dissolved (Administrative) To: ACTIVE	
	Inactive Date Changed From: 12/07/2017 To: No Value	
01/24/2018	2017 Annual Report	B0480-7815
	Member Count Changed From: 15 To: 10	
12/07/2017	Dissolution/Revocation - Administrative	B0427-8651
	Filing Status Changed From: Active To: Inactive - Dissolved (Administrative)	
	Inactive Date Changed From: No Value To: 12/07/2017	
10/01/2017	Notice of Determination	B0427-6295
08/02/2016	2016 Annual Report	B0277-9761
04/26/2016	Application for Reinstatement	B0239-9655

## Filing Information

Name: **SPIRIT BROADBAND, LLC**

Filing Status Changed From: Inactive - Dissolved (Administrative) To: ACTIVE

Inactive Date Changed From: 12/09/2015 To: No Value

04/22/2016 2015 Annual Report B0239-6533

12/09/2015 Dissolution/Revocation - Administrative B0174-3267

Filing Status Changed From: Active To: Inactive - Dissolved (Administrative)

Inactive Date Changed From: No Value To: 12/09/2015

10/02/2015 Notice of Determination B0156-5439

10/09/2014 2014 Annual Report B0013-2398

10/02/2014 Notice of Determination B0001-0718

10/17/2013 2013 Annual Report A0203-0096

10/03/2013 Notice of Determination A0202-1687

08/06/2012 2012 Annual Report 7081-1283

Principal Address 1 Changed From: 8279 HORTON HIGHWAY To: 8279 HORTON HWY

Principal Postal Code Changed From: 37046 To: 37046-9183

Member Count Changed From: 14 To: 15

10/12/2011 2011 Annual Report 6947-1060

10/05/2011 Notice of Determination A0094-3229

10/08/2010 2010 Annual Report A0048-0332

Member Count Changed From: 1 To: 14

Managed By Changed From: Board Managed To: Director Managed

10/02/2010 Notice of Determination A0047-2799

08/04/2009 2009 Annual Report 6579-1194

09/10/2008 2008 Annual Report 6372-2212

11/30/2007 2007 Annual Report 6164-0733

10/01/2007 Notice of Determination ROLL 6134

04/12/2007 Initial Filing 6018-2518

Active Assumed Names (if any)	Date	Expires

**BEFORE THE TENNESSEE PUBLIC UTILITY COMMISSION  
NASHVILLE, TENNESSEE**

CUMBERLAND COUNTY, TENNESSEE, )  
A POLITICAL SUBDIVISION OF THE STATE )  
OF TENNESSEE )

PETITIONER, )

VS. )

SPIRIT BROADBAND, LLC and VINCENT )  
KING, individually, and d/b/a, SPIRIT )  
BROADBAND, LLC )

RESPONDENT. )

DOCKET NO. \_\_\_\_\_

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**DIRECT TESTIMONY OF NATHAN BROCK ON BEHALF OF CUMBERLAND  
COUNTY, TENNESSEE**

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**Q: Please state your name and business address.**

A: My name is Nathan Brock. My business address is 2 North Main Street, Suite 303,  
Crossville, Tennessee 38555.

**Q: By whom and in what capacity are you employed?**

A: I am employed by Cumberland County, Tennessee, as the Director of Finance.

**Q: Please describe your job duties and work history with Cumberland County as the  
Director of Finance.**

A: I have been the Director of Finance with Cumberland County for thirty-one and a half  
(31.5) years. I hold that position pursuant to T.C.A. § 5-21-101 et. seq. In the position of  
Director of Finance, I am in charge of, or assist in, budgeting, accounting, fiscal  
procedures, payroll accounts, purchasing, cash management and other fiscal matters of  
the county.



**Q: Have you previously offered testimony in any regulatory proceeding?**

A: No.

**Q: What is the purpose of your testimony in this case?**

A: I am testifying on behalf of Cumberland County in support of its Petition filed seeking revocation of Certification of Franchise Authority held by Spirit Broadband, LLC.

**Q: In your capacity as Director of Finance for Cumberland County, are you familiar with accounts receivable and payments received, and specifically any payments being received by any utility for any Franchise Agreement with the county?**

A: Yes. I am directly responsible for and oversee payments coming into the county, accounts receivable, and any other income stream or other assets being paid or brought into the Cumberland County budget.

**Q: Are you personally familiar with and/or have you specifically researched your books and/or electronic financial information concerning franchise fees paid or not paid by Spirit Broadband, LLC to Cumberland County, Tennessee, since October 12, 2017?**

A: Yes. I have personally researched all of our data concerning any franchise fee payments that could have been made or were made from Spirit Broadband, LLC to Cumberland County from October 12, 2017 until the present.

**Q: Based on your research, have any franchise fee payments been made from Spirit Broadband, LLC since October 12, 2017, the date Spirit Broadband, LLC was issued a Certificate of Franchise Authority?**

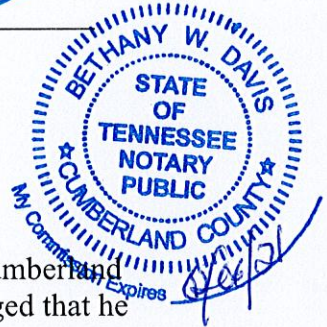
A: Cumberland County, Tennessee, has received NO franchise fee payments or any other payments from Spirit Broadband, LLC since October 12, 2017.

**Q: Do you have anything further to add to your testimony?**

**A:** Not at this time.

Respectfully submitted this 3RD day of JANUARY, 2020.

Nathan Brock  
Nathan Brock  
Directory of Finance  
Cumberland County, Tennessee



Personally appeared before me, Nathan Brock, Director of Finance for Cumberland County, Tennessee, with whom I am personally acquainted, and who acknowledged that he executed the above testimony for the purposes therein contained and who hereby verifies and swears under oath to the truth of the content of the above testimony to the best of his knowledge.

Sworn to and subscribed before me on this 3 day of January, 2020.  
Bethany W. Davis  
Notary Public or Clerk

My commission expires: 02/06/21

8

## Form 668 (Y)(c)

(Rev. February 2004)

11874

Department of the Treasury - Internal Revenue Service

## Notice of Federal Tax Lien

## Area:

SMALL BUSINESS/SELF EMPLOYED AREA #5

Lien Unit Phone: (800) 913-6050

## Serial Number

291885818

For Optional Use by Recording Office

As provided by section 6321, 6322, and 6323 of the Internal Revenue Code, we are giving a notice that taxes (including interest and penalties) have been assessed against the following-named taxpayer. We have made a demand for payment of this liability, but it remains unpaid. Therefore, there is a lien in favor of the United States on all property and rights to property belonging to this taxpayer for the amount of these taxes, and additional penalties, interest, and costs that may accrue.

Name of Taxpayer SPIRIT BROADBAND LLC

## Residence

PO BOX 249  
COLLEGE GROVE, TN 37046

**IMPORTANT RELEASE INFORMATION:** For each assessment listed below, unless notice of the lien is refiled by the date given in column (e), this notice shall, on the day following such date, operate as a certificate of release as defined in IRC 6325(a).

BK: 7275 PG: 208-208

18001724

1 PGS:AL-FEDERAL

525118

01/16/2018 - 08:01 AM

BATCH 525118

MORTGAGE TAX 0.00

TRANSFER TAX 0.00

RECORDING FEE 10.00

DP FEE 2.00

REGISTER'S FEE 0.00

TOTAL AMOUNT 12.00

STATE OF TENNESSEE, WILLIAMSON COUNTY

**SADIE WADE**  
REGISTER OF DEEDS

Kind of Tax (a)	Tax Period Ending (b)	Identifying Number (c)	Date of Assessment (d)	Last Day for Refiling (e)	Unpaid Balance of Assessment (f)
1065	12/31/2016	XX-XXX1690	11/13/2017	12/13/2017	2925.00
941	12/31/2016	XX-XXX1690	08/21/2017	09/20/2017	3031.39
941	06/30/2017	XX-XXX1690	11/13/2017	12/13/2017	1609.88
Place of Filing					
Register of Deeds Williamson County Franklin, TN 37065					
Total					\$ 7566.27

This notice was prepared and signed at NASHVILLE, TN, on this,

the 04th day of January, 2018.

Signature

*Jan Flach*  
for CHRIS GRIMES

Title

REVENUE OFFICER  
(615) 250-5006

25-14-2245

(NOTE: Certificate of officer authorized by law to take acknowledgment is not essential to the validity of Notice of Federal Tax Lien  
Rev. Rul. 71-466, 1971 - 2 C.B. 409)

Part 1 - Kept By Recording Office

Form 668(Y)(c) (Rev. 2-2004)  
CAT. NO 80025X



BEAN, SMITH & BURNETT, PLLC  
ATTORNEYS AT LAW  
CLIENT EXPENSE  
PH. 931-484-7549  
300 THURMAN AVENUE  
CROSSVILLE, TN 38555

1/8/2020

PAY TO THE ORDER OF TN Public Utility Commission

\$ \*\*25.00

Twenty-Five and 00/100\*\*\*\*\*

DOLLARS

TN Public Utility Commission

MEMO

*Jane E. Burnett*  
AUTHORIZED SIGNATURE

⑈002439⑈ ⑆064101233⑆ 518 104 5⑈