

CHAPTER 4  
CABLE TELEVISION

SECTION

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1. DEFINITIONS

- 1.1 Additional Insureds shall have the same meaning as “Indemnities” in Section 7.2.
- 1.2 Affiliate (and its variants) shall mean any entity controlling, controlled by or under common control with the entity in question.
- 1.3 Authorized Area shall mean the entire area of the City
- 1.4 Cable Gross Revenues or Gross Revenues shall mean all revenue received directly or indirectly by Company derived from the operation or the distribution of any cable service over the Cable System. Gross Revenue shall also include all revenue which is received by Company from any other person, including, without limitation, any Leased Access Channel programmer, and which is derived from or in connection with the distribution of Cable Service over the Cable System. Gross Revenue, for purposes hereof, shall also specifically include any revenue derived from the operation of the Cable System to provide cable services received by its affiliates subsidiaries, parent, or any person or entity in which Company has financial interest, which has the effect of avoiding the payment of compensation that would otherwise be payable as a percentage of Gross Revenue to the City for the Franchise granted herein. Gross Revenue shall also include home shopping revenue, leased access revenue, and advertising revenue which is received directly or indirectly by Company, persons affiliated with them or any persons in which has a Company financial interest, from or in connection with the distribution of any cable service over the Cable System. Gross Revenue shall not include: (1) any taxes, fee or assessment collected by the Company from Subscribers for pass-through to a government agency, including the FCC User Fee; (2) un-recovered bad debt; and (3) any PEG or I-Net amounts recovered from Subscribers. Gross Revenue shall include franchise fees collected from subscribers.
- 1.5 Cable Services shall mean only:

- 1.5.1 The one-way transmission to subscribers of (i) video programming or (ii) other programming services; and Subscriber interaction, in any, which is required for the selection or use of such video programming or other programming service.
- 1.5.2 Cable Television Business shall mean the provision by the Company of Cable Services solely by means of the Cable System.
- 1.6 Cable System or System shall mean a facility consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Services which is provided to multiple subscribers within the Authorized Area, but such term does not include (i) a facility that serves only to re-transmit the television signals of one or more television broadcast stations; (ii) a facility that serves subscribers without using any public right of way; (iii) 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 a facility shall be considered a Cable System (other than for purposes of Section 621 of such 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; (iv) and open video system that complies with Section 653 of Title VI of the Communications Act of 1934, as amended, or (v) any facilities of any electric utility used solely for operating its electric utility system.
- 1.7 Company shall have the meaning set forth in the introduction to this Franchise Agreement
- 1.8 Drop shall mean the cable or wire that connects the distribution portion of a Cable System to a customer's premises.
- 1.9 Effective Date shall have the meaning set forth in Part 15.8.
- 1.10 Event of Default shall have the meaning defined in Part 12.
- 1.11 FCC shall mean Federal Communications Commission.
- 1.12 Franchise or Franchise Agreement shall mean this document.
- 1.13 Franchise Fee shall have the meaning set forth in Part 8.
- 1.14 City shall have the meaning set forth in the introduction to this Franchise Agreement.
- 1.15 Normal Business Hours shall have the meaning set forth in Part 5.
- 1.16 PEG Channels shall have the meaning set forth in Part 6.
- 1.17 Public Ways shall mean all dedicated public right-of-way, streets, highways, and alleys. "Public Ways" shall not include property of City which is not a dedicated public right-of-way, street, or highway, or alley.
- 1.18 System shall have the same meaning as Cable System.
- 1.19 Telecommunications Service shall mean the offering of telecommunications directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used, where the term "telecommunications" means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received. "Telecommunications Services" shall not include Cable Services.
- 1.20 Uncured Event of Default shall have the meaning defined in Part 12.

2. GRANT OF RIGHTS

2.1 Permission Granted.

2.1.1 Subject to all the terms and conditions contained in this franchise, the charter of City and applicable ordinances of City as from time to time in effect, City hereby grants Company permission to erect, construct, install and maintain a Cable System to provide Cable Services in the Authorized Area, to transact a Cable Television Business in such area. Company agrees through the term of this Franchise Agreement (a) to erect, construct, install and maintain such a Cable System, (b) to transact such a Cable Television Business in the Authorized Area, and (c) the City reserves the right to regulate cable modem service in the event the FCC or a court of competent jurisdiction determines that cable modem service is considered to be Cable Service.

2.1.2 The Company is responsible for ensuring that its billing practices and rates comply with federal law and regulation.

2.2 Nonexclusive. This Franchise and all rights granted hereunder are nonexclusive. City reserves the right to grant such other and future franchises as it deems appropriate. This Franchise does not establish any priority for the use of the public right-of-way by Company or by any present or future franchisees or other permit holders. In the event of any dispute as to the priority of use of the public rights-of-way the first priority shall be the public generally, the second priority to City in the performance of its various functions, and thereafter, as between franchisees and other permit holders, as determined by City in the exercise of its powers, including the police power and other powers reserved to and conferred on it by the state of Tennessee.

2.3 Compliance with Applicable Law. In constructing, maintaining, and operating the Cable System, Company will act in a good and workmanlike manner, observing high standards of engineering and workmanship and using materials, which are of good and durable quality. Company shall comply in all respects with all applicable codes, including the National Electrical Safety Code (latest edition); National Electric Code; all standards, practices, procedures and the like of the National Cable Television Association; the requirements of other utilities whose poles and conduits it uses; and all applicable Federal, State, and local laws.

2.4 Maintenance and Repair. Company shall keep and maintain a proper and adequate inventory of maintenance and repair parts for the Cable System and a workforce of skilled technicians for its repair and maintenance.

2.5 Easement Usage. To the extent allowed by applicable State and Federal law, this Franchise Agreement authorizes the construction of the Cable System over the Public Ways, and through easements, within the Authorized Area and which have been dedicated for compatible uses, subject to the requirements in the balance of this Section and this Franchise Agreement. In using all easements, Company shall comply with all Federal, State, and local laws and regulations governing the construction, installation, operation, and maintenance of a Cable System. Without limitation, Company shall ensure that:

2.5.1 The safety, functioning and appearance of the property and the convenience and the safety of other persons not be adversely affected by the installation or construction of facilities necessary for the Cable System;

2.5.2 The cost of the installation, construction, operation, or removal of such facilities be borne by Company; and

2.5.3 The owner of the property be justly compensated by Company for any damages caused by the installation, construction, operation, removal of such facilities by Company.

2.6 Other Permits. This Franchise does not relieve Company of the obligation to obtain permits, licenses and other approvals from the City necessary for the construction, repair or maintenance of the Cable System or provision of Cable Services or compliance with other codes; ordinances and permissions, such as compliance with right-of-way permits, building permits and the like.

### 3. PUBLIC WAYS

3.1 No Burden on Public Ways. Company shall not erect, install, construct, repair, replace or maintain its Cable System in such a fashion as to unduly burden the present or future use of the Public Ways. If City in its reasonable judgment determines that any portion of the Cable System is an undue burden, Company at its expense shall modify its System or take such other actions as City may determine are in the public interest to remove or alleviate the burden, and Company shall do so within the time period established by City.

3.2 Minimum Interference. The Cable System shall be erected and maintained by Company so as to cause the minimum interference with the use of the Public Ways and with the rights or reasonable convenience of property owners who adjoin any of the Public Ways.

3.3 Restoration of Property. Company shall immediately restore at its sole cost and expense, in a manner approved by City, any portion of the Public Ways that is in any way disturbed by the construction, operation, maintenance or removal of the Cable System to as good or better condition than that which existed prior to the disturbance, and shall at its sole cost and expense immediately restore and replace any other property, real or personal, disturbed, damaged or in any way injured by or on account of Company or by its acts or omissions, to as good or better condition as such property was in immediately prior to the disturbance, damage or injury. Such a restoration shall start promptly but no more than fifteen (15) days from Company becoming aware of the problem in question.

3.4 Relocation of Facilities. Company shall at its own cost and expense, protect, support, disconnect or remove from the Public Ways any portion of the Cable System when required to do so by City due to street or other public excavation, construction, repair, grading, regarding or traffic conditions; the installation of sewers, drains, water pipes, or publicly-owned facilities of any kind; or the vacation, construction or relocation of streets or any other type of structure or improvement of a public agency or any other type of improvement necessary for the public health, safety or welfare.

3.5 Joint Use. Company shall permit the joint use of its poles, conduits and facilities located in the Public Ways by utilities and by City or other governmental entities to the extent reasonably practicable and upon payment of a reasonable fee.

3.6 Private Property. Company shall be subject to all laws and regulations regarding private property in the course of constructing, installing, operating or maintaining the Cable System in City. Company shall comply with all zoning and land use restrictions as may hereafter exist or may hereafter be amended.

3.7 Underground Facilities. Company's cable wires, and other equipment shall be placed underground wherever existing utilities are underground. If City in the future requires that, in a specific area or areas of City, utilities shall place their cables, wires, or other equipment underground, then Company also shall place its existing and its future cables, wires, or other equipment underground within a reasonable period of time, not to exceed six (6) months, of notification by City and without expense or liability therefore to City. In those developing areas where underground facilities are required and meet the standard of Section 4.5, Company shall install the necessary cables, wires or other equipment at the same time and utilize the same trenches as other utility companies, such as telephone or electric utilities.

3.8 RESERVED

3.9 Temporary Relocation. Upon fifteen (15) business days notice Company shall temporarily raise or lower its wires or other equipment upon the request of any person including without limitation, a person holding a building moving permit issued to City. Company may charge a reasonable rate for this service not to exceed its actual direct costs.

3.10 Vacation. If a street or Public Way where Company has facilities is vacated, eliminated, discontinued or closed, Company shall be notified of same and all rights of Company under this Franchise Agreement to use same shall terminate and Company shall immediately remove the Cable System from such street or Public Way unless Company obtains all necessary easements from the affected property owners to use the former street or Public Way or a court orders the provision of such easements. Where reasonably possible and to the extent consistent with the treatment of other utility facilities in the former street or Public Way. Company shall bear the cost of any removal or relocation of the Cable System unless the vacation is primarily for the benefit of a private party, in which case the private party shall bear such costs. Company shall be provided thirty (30) days notice of any proposed vacation proceeding involving its facilities.

3.11 Discontinuance and Removal of the Cable System. Upon the revocation, termination, or expiration of this Franchise, unless an extension is granted, Company shall immediately (subject to the notice provision of Section 15.2) discontinue the provision of the Cable Services and all rights of Company to use the Public Ways shall cease. Company, at the direction of City, shall remove its Cable System, including all supporting structures, poles, transmission and distribution system and other appurtenances, fixtures or property from the Public Ways, in, over, under, along, or through which they are installed within six (6) months of the revocation, termination, or expiration of this Franchise. Company shall also restore any property, public or private, to the condition in which it existed prior to the installation, erection or construction of its Cable System, including any improvements made to such property subsequent to the construction of its Cable System. Restoration of property including but not limited to the Public Ways shall be in accordance with the directions and specifications of City, and all applicable laws, ordinance and regulations, at Company's sole expense. If such removal and restoration is not completed within six (6) months after the revocation, termination, or expiration of this Franchise, all of Company's property remaining in the affected Public Ways shall, at the option of City, be deemed abandoned and shall, at the option of the City, become its property or City may obtain a court order compelling Company to remove same. In the event Company fails or refuses to remove its Cable System or to satisfactorily restore all areas to the condition in which they existed prior to the original construction of the Cable System, City, at its option, may perform such work and collect the costs thereof from Company. No surety on any performance bond nor any letter of credit shall be discharged until City has certified to Company in writing that the Cable System has been dismantled, removed, and all other property restored, to the satisfaction of City.

3.12 Underground Street Crossing; Whenever Company must place the Cable System or other facilities beneath the traveled or paved portion of the streets of Public Ways, unless otherwise approved in advance by City, Company shall do so by boring (directional or otherwise) and not by excavation of a trench in which to place cable conduit. Boring (directional or otherwise) shall be done wherever possible so that the excavations necessary for it are not in the paved portion of the right-of-way.

3.12.1 If Company does a bore (directional or otherwise) underneath a street or Public Way, involving distribution cable or fiber, then Company shall make its best efforts to notify City in advance of such bore. If City so desires, Company will then increase the size of the bore (directional or otherwise) with City to pay only the incremental cost of making the bore (directional or otherwise) larger. City may then use any additional space or capacity created

by increasing the size of the bore (directional or otherwise), complying with the National Electric Safety Code, for non-competitive uses.

3.13 Tree Trimming. Company may trim trees upon and overhanging the Public Ways so as to prevent branches of such trees from coming into contact with the Cable System. Company shall minimize the trimming of trees to trimming only those trees which are essential to maintain previously informing City. All trimming of trees, except in an emergency, on public property shall have the prior approval of City and except in an emergency all trimming of trees on private property shall require the consent of the property owner.

3.14 Bond.

3.14.1 Company shall provide City no later than thirty (30) days after the acceptance of this Franchise, a performance bond in the amount of Fifty Thousand Dollars (\$50,000) from a Security Company meeting the standards of Section 7.9 in a form reasonably acceptable to City as security for the faithful performance by Company of the provisions of the Agreement, and compliance with all orders, permits and directions of any agency of City having jurisdiction over its acts or defaults under this Franchise, and the payment of Company of any claims, liens or taxes due City which arise by reason of the construction, operation, maintenance or repair of the Cable System or provision of Cable Services.

3.14.2 The Condition of such bond should be that if Company fails to make timely payment to City or it's designee of any amount or sum due under this Franchise; or fails to make timely payment to City of any taxes due; or fails to repay City within ten (10) days of written notification that such repayment is due, any damages, costs or expenses which City shall be compelled to pay by reason of any act or default of Company in connection with this Franchise; or fails, after thirty (30) days notice of such failure from City, to comply with any provisions of this Franchise which City reasonably determines can be remedied by an expenditure of the money (including, without limitation, the assessment of liquidated damages), then City may demand and receive payment under such bond.

3.14.3 The rights reserved by City with respect to this section, are in addition to all other rights of City whether reserved by this Franchise or authorized by law, and no action, proceeding or exercise of a right with respect to such articles shall affect any other rights City may have.

#### 4. CABLE SERVICE

4.1 Programming Services: Company shall include in the video programming it offers subscribers the following:

4.1.1 All local television stations including public educational television stations subject to Federal Must Carry and Retransmission laws, rules and regulations.

4.1.2 In the non-premium, non-pay TV service offered by Company, for each of the following broad categories of programming, at least one (1) channel twenty (20) hours or more of whose daily programming (to the extent available) is in the category in question:

4.1.2.1 National and local weather programming

4.1.2.2 News programming

4.1.2.3 Public affairs programming

4.1.2.4 Sports programming

- 4.1.2.5 Children and family entertainment programming
  - 4.1.2.6 Programming oriented especially to minority residents
  - 4.1.2.7 Federal government proceedings.
  - 4.1.2.8 PEG channels as defined under Section 6.1
- 4.2 Cable System Description: Company's cable System shall conform to the design requirements set forth on Exhibit A.
- 4.3 Service Provided: Cable Service shall at all times include at least twenty five (25) activated channels of programming
- 4.4 Access to Service: Company shall not deny service, deny access, or otherwise discriminate on the availability or rates, terms or conditions of Cable Services provided to actual or potential subscribers on the basis of race, color, creed, religion, ancestry, national origin, sex, disability, age, marital status with regard to public assistance, income level, or other demographics. Company shall comply at all times with all applicable Federal, state and local laws and regulations relating to nondiscrimination.
- 4.5 Service/Line Extension for Existing and New Developments:
- 4.5.1 No line extension charge or comparable charge shall be imposed on any current or potential subscriber for extensions of the Cable Television System whenever the Company receives requests for service by a potential subscriber and there are at least five (5) dwelling units within One Thousand Three Hundred Twenty (1,320) cable bearing strand feet (one quarter mile) of Company's trunk or distribution cable, and Company shall extend its Cable System to such potential subscriber(s) at no cost to said potential subscriber(s). The preceding figures shall be pro-rated upward or downward for distances more or less than One Thousand Three Hundred Twenty (1,320) feet. The One Thousand Three Hundred Twenty (1,320) feet distance or any multiple or fraction thereof shall be measured in extension length of Company's trunk and feeder cable required for service which is located within the Public Ways or an existing available easement.
  - 4.5.2 A potential subscriber located beyond the area where the Cable System is extended free of charge under the preceding provisions may obtain service by making a one time contribution in aid to construction to extend the Cable System to reach the potential subscribers home, less a credit of the amount that the company would have expended to extend cable up to 264 feet had normal density levels been met. Example set forth in Exhibit B.
  - 4.5.3 The preceding shall apply whether the Cable System would be located in Public Ways or in private ways/easements.
- 4.6 Drops: Company's standard installation charge shall include a one hundred fifty (150) foot drop from the Cable System, such that current or potential subscribers shall only be charged for a Drop to the extent the Drop serving them exceeds on hundred fifty (150) feet, measured from the tap on the distribution portion of the Cable System to the subscriber's premises. Whenever possible Drops shall be made from a pole, not from mid-span.
- 4.6.1 Upon the termination of service, Company shall either entirely remove its Drop or secure the Drop according to industry standards.
- 4.7 Free Service: Company shall provide without any installation charge or monthly charge one free Cable system outlet in each public building or facility; in each building used by a state-accredited public, private, charter and parochial K-12 school and shall allow City and each such school without

additional charge, to extend such service to some or all rooms, classrooms and auditoriums (so long as FCC signal leakage standards are met). None of the preceding entities shall be charged any fee during the Term of this Franchise Agreement for any basic or expanded basic channels, excluding premium channels (such as HBO or Showtime) or pay per view channels.

- 4.7.1 A list of public building and schools within the Authorized Area meeting the preceding description as the Effective Date of this Franchise Agreement is set forth on Exhibit C.
- 4.7.2 In addition, One (1) service outlets to the City Administration unless otherwise specified by City shall receive without charge all programming (and any other services) provided by Company whether of a premium or other nature. Such service shall be provided in such a manner that City may monitor the programming and use of the Cable System for compliance with this Franchise Agreement, the Cable Ordinance, FCC Technical Standards, and other applicable law. The services provided according to the preceding sentence shall be in an office location and not in a location conducive to public viewing.
- 4.7.3 In addition, within six (6) months of the execution of this agreement, Company without charge shall provide a cable service connection to a location where cable is available upon request of the City. The City may designate additional locations in the future and Company shall have a reasonable time to install such wiring and outlets. The facilities must be City owned or leased and meet normal cable density requirements.
- 4.7.4 Company shall not charge for the installation of service pursuant to this section except to the extent that its cost for the initial installation exceeds Five Hundred Dollars (\$500). None of the preceding locations shall be charged any fee during the Term of this Franchise Agreement for any channels or programming, excluding premium channels (such as HBO or Showtime) or pay per view channel.
- 4.7.5 RESERVED
- 4.7.6 Except as provided in this Franchise Agreement, Company shall not provide free or discounted service to elected or appointed officials of City or to City's employees, agents or officers. The term "free or discounted service" shall mean any service on terms and conditions other than those available to residents of City generally.

4.8 Continuity of Service/Outages: Throughout the Term Company shall operate the Cable System and provide Cable Service twenty-four (24) hours per day, seven (7) days per week. Company shall voluntarily interrupt the provision of Cable Service only with good cause and for the shortest time possible and, except in emergency situations (or as otherwise provided herein), only after periodic cable-casting notice of significant service interruption, including at the same time of day as the anticipated interruption. Service may be interrupted between 12:00 midnight and 6:00 A.M. for routine testing, maintenance and repair, without notification, any night except Friday, Saturday, or Sunday, or the night preceding a holiday.

- 4.8.1 The City shall be notified in advance of (a) all significant scheduled outages involving the Cable System, (b) all Significant Service Interruptions within Company's control, and (c) all significant interruptions in the delivery of PEG Channel programming.

4.9 Emergency Alert System: Company shall provide without charge to City an emergency alert system ("Emergency Alert System") consisting of the following:

- 4.9.1 An Emergency Alert System ("EAS") or successor to that system complying with all requirements imposed from time to time by the FCC including without limitation the requirement currently set forth in the FCC regulations that a cable television systems transmit a visual EAS message on at least one channel and that cable systems also provide video interruption and audio EAS message on all channels with video further stating which channel

is carrying the visual message. Company shall transmit on the EAS system Federal, state and local EAS messages. In establishing its EAS system, Company shall, in accordance with FCC or other applicable regulations, cooperate with City on the use and operation by City of the Emergency Alert System.

4.10 System Reliability: Upon completion of system construction, Company shall meet or exceed a 99% standard for system reliability as measured on a six (6) month rolling average. Until completion of the system construction, Company shall meet or exceed 99.0% standard. Company shall submit a quarterly report of Cable System reliability. Each report shall report the actual system reliability for the six (6) month period in question based on the following formula:

4.10.1 
$$\frac{[(\text{Total Subscriber Minutes} - \text{Total Subscriber Outage Minutes}) / \text{Total Subscriber Minutes}]}{\text{System Reliability}}$$

4.10.2 Total Subscriber Minutes equals the total subscribers served by Company at mid-month multiplied by 1440 multiplied by the number of days in the month. Total Subscriber Outage Minutes equals the sum of the number of subscribers affected in each separate outage multiplied by the total down time in minutes for such outages.

## 5. CABLE CUSTOMER SERVICE

5.1 Customer Service Standards: Company shall at all times comply with the more stringent of the provisions of the customer service and consumer protection provisions of the Cable Ordinance, this Franchise Agreement, and those from time to time adopted by the FCC. This requirement is in addition to the specific provisions of subsequent sections of Part 5. The Company and City agree to review the Company's performance under this Part 5 on a semi-annual basis.

5.2 Reservation: City reserves the right by ordinance to make reasonable changes to the customer service and consumer protection matters set forth in this Part which may be allowed by future amendment or adoption of FCC regulations, including adopting ordinances stricter than or covering items not presently set forth in this Part. City agrees to meet with Company on the matters in question prior to taking such action, and to provide Company with at least forty-five (45) days prior notice of such action.

5.3 Undergrounding: For new installations, excluding locations where all utilities are underground, if a subscriber requests underground Cable Service, Company may in addition to the installation charge which would otherwise apply charge the subscriber the differential between the cost of aerial and underground installation of the Drop to the subscriber. This provision shall not apply where undergrounding is required by ordinance or policy for all utilities.

5.4 Lockout Device: Company without additional charge beyond that for a set top converter shall make available for pick up by all subscribers a device by which the subscribers can prohibit the viewing of a particular cable service during periods selected by the subscriber.

5.5 RESERVED.

5.6 RESERVED.

5.7 Notification: Company shall provide written information on at least each of the following areas at the time of installation or reinstallation of service, at least annually to all subscribers, and at any time upon request.

- 5.7.1 Products and services offered.
  - 5.7.2 Prices (rates) and options for Cable Services and conditions of subscription to Cable Service. Prices shall include those for programming, equipment rental, program guides, installation, disconnection, late fees and optional services, fees, and charges charged by Company
  - 5.7.3 Installation and service maintenance policies.
  - 5.7.4 Instructions on how to use Cable Services, including procedures and options for pay per view and premium channels.
  - 5.7.5 Channel positions of programming carried on the Cable System, including a listing specific to City showing the channel names and numbers actually available to subscribers in City.
  - 5.7.6 Billing and complaint procedures, including the address and phone number of the person or position at City responsible for cable matters.
  - 5.7.7 The Company's address and phone number for the subscriber to initially contact Company with complaints and questions.
  - 5.7.8 Applicable privacy requirements as set forth in this Franchise Agreement, the Cable Ordinance, or otherwise provided for by the law.
- 5.8 Notice of Changes: Subscribers and City shall be notified of any increases in rates, or changes in Cable Services or channel positions as soon as possible in writing. Notice must be given to subscribers a minimum of thirty (30) days in advance of such changes (and to City thirty (30) days in advance) if the change is within the control of Company and as soon as possible if not within the control of Company.
- 5.9 Program Guide: Upon request, Company shall provide subscribers with a periodic (e.g. –monthly) written or electronic program guide listing the specific programs available, their times and (when applicable) ratings. Company may charge a fee for this service.
- 5.10 Converters: Company shall make available for rental by subscribers the converter equipment necessary for subscribers (such as those with “non-cable ready” television sets) to receive the services offered by Company.
- 5.11 Telephone Service Standards:
- 5.11.1 Company shall have a local or toll-free number available for use by subscribers toll-free twenty-four (24) hours per day, seven (7) day per week.
  - 5.11.2 Company's numbers shall be listed, with appropriate explanations, in the directory published by the local telephone company or companies and in significant private directories (Talking Directories and the like).
  - 5.11.3 Trained Company representatives shall be available to respond to subscriber telephone inquires twenty-four (24) hours per day, seven (7) days per week.
  - 5.11.4 Under Normal Operating Conditions, telephone answer time by a customer representative, including wait time, shall not exceed thirty (30) seconds from when the connection is made. If the call needs to be transferred, transfer time shall not exceed thirty (30) seconds. These standards shall be met no less than ninety percent (90%) of the time under Normal Operating Conditions, measured on a quarterly basis.

5.11.5 Under Normal Operating Conditions, the subscriber shall receive a busy signal less than three percent (3%) of the time, measured on a quarterly basis.

5.11.6 Under Normal Operating Conditions, no more than three percent (3%) of subscribers calls measured on a quarterly basis shall be abandoned.

5.12 Office/Home Delivery-Pick Up:

5.12.1 Company shall maintain either (1) the physical office described in 5.12.2 or (2) a "virtual office" consisting of (a) a toll-free telephone number which all subscribers in City can access twenty-four (24) hours per day, seven (7) days per week to register complaints or ask questions concerning Cable Service, billing matters or the Cable System, (b) one or more conveniently located bill payment offices where subscribers can pay their bills, and (c) delivery and pickup of converter boxes, remotes and similar Company-provided customer premises equipment at no charge to subscribers.

5.12.2 The Physical office of Company shall be a place where subscribers may pay their bills, return converter boxes and comparable items and receive information on Company and its services. Any such office shall be open at least 8 hours each day, Monday through Friday, to meet the needs of residents of City excepting on national holidays.

5.12.3 Company shall deliver to and pick up converter boxes, remotes, and similar customer premises equipment from subscribers. Under Normal Operating Conditions, such deliveries and pick-ups shall occur within five (5) business days of a subscriber request no less than ninety-five percent (95%) of the time, measured on a quarterly basis. A subscriber may allow the Company additional time to comply with this requirement.

5.13 Installation Standards: Under Normal Operating Conditions, installations located up to one hundred fifty (150) aerial feet from the existing distribution Cable System shall be performed within seven (7) business days after an order has been placed no less than ninety-five percent (95%) of the time, measured on a quarterly basis. The preceding requirement shall not apply to commercial subscribers, multiple dwellings served by a single Drop, or inside "wall fish" installations.

5.14 Installations/Service Calls: The following shall apply to subscribers (current or new) requesting installations or service:

5.14.1 Service calls shall be available at minimum 8:30 AM to 7:00 PM Monday through Friday and 8:30 AM to 1:30 PM on Saturday to meet the needs of resident of City. Installations shall be available at minimum 8:30 AM to 7:00 PM or dusk whichever is earlier Monday through Friday and 8:30 AM to 1:30 PM on Saturday to meet the needs of residents of City. Company shall at the subscriber's option either (1) schedule the subscriber to be the first call of the day or last call of the day on a first come, first served basis. At the Franchisee's option, it may (2) schedule the appointment for a date certain on a "call to meet" basis (for example, where the service technician finishes his/her prior task, the technician calls the subscriber and arranges to meet the subscriber shortly thereafter), or (3) establish an appointment window of no more than four (4) hours with the subscriber (or adult representative of the subscriber), or another appointment window mutually agreed upon between the subscriber and Company.

5.14.2 Company shall respond to the request for service in accordance with the option selected by the subscriber.

5.14.3 Company shall not cancel an appointment with a subscriber after 5:00 PM on the business day prior to the scheduled appointment.

- 5.14.4 If Company's technician is running late for an appointment with a subscriber and will not be able to keep the appointment as scheduled, the subscriber shall promptly be contacted. The appointment shall be rescheduled, as necessary, at a time certain which is convenient for the subscriber.
- 5.14.5 In the event access to the subscriber's premises is not made available to Company's technician when the technician arrives during the established appointment window, the technician shall leave written notification stating the time of arrival and requesting that Company be contacted again to establish a new appointment window.
- 5.14.6 Notwithstanding the foregoing, if Company's technician or service representative telephones the subscriber during or prior to the appointment window and is advised that the technician will not be given access to the subscriber's premises during the appointment window, then the technician shall not be obliged to travel to the subscriber's premises or to leave the written notification referred to above, and the burden shall again be upon the subscriber (or adult representatives of the subscriber) to contact Company to arrange for a new appointment.
- 5.14.7 Except as otherwise provided above, Company shall be deemed to have responded to a service or installation request under the provisions of this section when a technician begins work on the request or is advised by telephone no access will be given.
- 5.14.8 Under Normal Operating Conditions, Company shall meet the standards of Section 5.11 through 5.13 no less than ninety-five percent (95%) of the time, measured semi-annually.

5.15           Service Call Charges: As to Company owned and Company maintained equipment, no charge shall be made to the subscriber for any service call after the initial installation of Cable Service unless the problem giving rise to the service request can be demonstrated by Company to have been:

- 5.15.1 Caused by subscriber negligence, or
- 5.15.2 Caused by malicious destruction of cable equipment, or
- 5.15.3 A problem established as having been non-cable in origin.

5.16           Service Interruptions:

- 5.16.1 Under Normal Operating Conditions, Company shall meet the standard of Section 5.16 and 5.17 no less than ninety-five percent (95%) of the time measured on a semi-annual basis.
- 5.16.2 Excluding conditions beyond Company's control, Company shall begin working on a Service Interruption promptly and in no event later than twenty-four (24) hours after the interruption becomes known to Company.
- 5.16.3 "Service Interruption" means the loss of picture or sound on one or more cable channels, affecting one or more subscribers.
- 5.16.4 Excluding conditions beyond Company's control, Company shall begin working on subscriber complaints involving impairment or degradation of signal quality (other than a Service Interruption) promptly and in no event later than the next business day after the problem becomes known to Company.
- 5.16.5 Company shall be deemed to have begun work under the provisions of this section when a technician begins work on the problem in question.

- 5.17 Log of Complaints: Company shall maintain a written log, or an equivalent stored in computer memory and capable of access and reproduction in printed form, of all cable-related subscriber complaints requiring a service call or further corrective action by Company. Such log shall at a minimum list the date and time of each such complaint, identifying the subscribers (to the extent allowed by law) and describing the nature of the complaints and when and what actions were taken by Company in response thereto. The log shall be kept at Company's office in or near City for a period of at least two (2) years and shall be available for inspection during regular business hours by City upon request.
- 5.18 Payment Options:
- 5.18.1 Company shall provide all individual, residential subscribers with the option of paying for Cable Service by (1) cash, (2) check, or at a company's options (3) an automatic payment plan, where the amount of the bill is automatically deducted from a checking account designated by the subscriber.
- 5.19 Bills: Company shall comply with the following on Cable Service billing:
- 5.19.1 Bills shall be issued monthly to each subscriber with a balance due or charge of service
- 5.19.2 Company shall maintain records of the date and place of mailing of bills and upon request shall certify in writing to count the date of mailing of each group of bills mailed to subscribers.
- 5.19.3 Bills shall be clear, concise and understandable. Bills shall be fully itemized, with itemizations including, but not limited to, basic and premium service charges and equipment charges. Bills shall also clearly delineate all activity during the billing period, including optional charges, rebates, credits and late charges.
- 5.19.4 In the case of a billing dispute, Company shall respond to any complaint from a subscriber within fifteen (15) days.
- 5.19.5 Company shall provide City with written notice thirty (30) days in advance of any change in the form of subscriber bills, including in particular any matters that relate either to payment information, addresses, phone numbers, franchise fees, or external costs.
- 5.20 Refunds and Credits: Refund checks for Cable Service shall be issued promptly, but no later than either:
- 5.20.1 The subscriber's next billing cycle following resolution of the request or thirty (30) days, whichever is earlier.
- 5.20.2 Credits for Cable Service or the return of equipment shall be issued no later than the subscriber's next billing cycle following a determination that a credit is warranted.
- 5.21 Late Payments for Cable Service:
- 5.21.1 Each bill shall specify on its face in a fashion emphasizing same (such as bold face type, underlined type or a larger font): "For payments received after [date] a \$ (intentionally blank late fee may be charged." No customer may be charged a late fee unless this notification requirement is complied with.
- 5.21.2 No late payment charges, however denominated, shall be added to a subscriber's bill less than twenty-one (21) calendar days after the mailing of the bill to the subscriber
- 5.21.3 No late payment charges, however denominated, shall be added to a subscriber's bill by reason of delay in payment other than those described in this Section 5.24. All such charges

shall be separately stated on the subscriber's bill and include the word "late" in the description of them.

5.21.4 Late payment charges imposed by Company upon subscribers shall be fair and shall be reasonably related to Company's cost of administering delinquent accounts.

5.21.5 Late payment charges imposed by the Company upon subscribers shall comply with all Federal, State or local laws concerning the imposition of late fees.

5.22 Disconnection:

5.22.1 Company shall only disconnect a subscriber for failure to pay if at least thirty five (35) days have elapsed after the due date for payment of the subscriber's bill and Company has provided at least ten (10) days notice separate from the monthly bill to the subscriber prior to disconnection, specifying the effective date after which Cable Services are subject to disconnection.

5.22.2 Company shall not disconnect a subscriber for failure to pay amounts that are legitimately in dispute during a billing dispute.

5.22.3 Company may disconnect a subscriber at any time if Company in good faith believes the subscriber has tampered with or abused Company's equipment, that there is a signal leakage problem (or other non-compliance with FCC rules or other standards which poses a risk to lives or property) on the subscriber's premises, or that the subscriber is or may be engaged in theft of Cable Services.

5.22.4 Company shall promptly disconnect any subscriber who so requests disconnection. No charge shall be imposed upon the subscriber for or related to disconnection of for any Cable Service beyond the date of the disconnect request (unless there is a delay in returning Company equipment). If the subscriber fails to specify an effective date for disconnection, the effective date of disconnect shall be deemed to be the 7<sup>th</sup> business day following the date the disconnect request is received by Company.

5.22.5 The term "disconnect" shall include customers who elect to cease receiving Cable Service from Company and to receive Cable Services or other multi-channel video service from another person or entity.

5.23

Privacy and Monitoring: Company shall not tap or monitor, or arrange for the tapping or monitoring, or permit any other person to tap or monitor, any cable, line, signal, input device, or subscriber facility for any purpose, without the written authorization of the affected subscriber except to the extent allowed by applicable law or pursuant to a valid court order. Such authorization shall be revocable at any time by the subscriber without penalty by delivering a written notice of revocation to Company; provided, however, that Company may conduct Cable System-wide or individually addressed "sweeps" solely for the purpose of verifying Cable System integrity, checking for illegal taps or billing.

5.24

Subscriber Information: Company shall not record or retain any information not allowed by 47 USC 551. Company shall destroy all subscriber information of a personally-identifiable nature after a reasonable period of time except as authorized not to do so by the affected subscriber. Company shall not sell or otherwise provide to other persons, without the specific written authorization of the subscriber involved, or otherwise make available to any person or entity, lists of some or all of the names or addresses of subscribers.

5.25

Complaints Referred by City: If City refers a Cable Service complaint from a subscriber to Company for resolution, then in five (5) business days of Company's receipt of such referral it shall investigate (including attempting to contact the subscriber) and respond to City in writing (on a form provided by City) as to its resolution of same.

5.26

Reports: Company shall provide reports to City quarterly as follows:

5.26.1 The reports shall be in form and substance acceptable to City, showing on a consistent basis, fairly applied the matters set forth below so as to measure Company's compliance with the standards of the referenced sections and such other matters as City shall from time to time specify. Such reports shall show Company's performance excluding periods of abnormal operating conditions, and if Company contends any such conditions occurred during the period in question, it shall also describe the nature and extent of conditions and show Company's performance both including and excluding the time periods Company contends such conditions were in effect.

5.26.2 The reports shall show the number of phone calls originating from within City. The reports may be for a larger area than City if company can demonstrate that they are, in fact, representative of the phone service provided to subscribers within City, such as where Company's call center receives call from numerous areas with no ability to distinguish between calls from one area or City over another. The reports shall measure and report on Company's compliance with all of Section 5 and its subparts, where quarterly or annual compliance monitoring is a requirement.

5.27 FCC Technical Standards: The following shall apply to Company's implementation of and compliance with the rules and regulations relating to cable television technical standards for signal quality, currently set forth 47 CFR § 76.601 and following, and subsequent amendments thereto:

5.27.1 Company will upon request provide City with a report of testing for compliance with such standards annually or upon request (but no more than twice a year). Such report shall state, in pertinent part, that the person doing the testing has been provided a copy of and reviewed the rules and regulations of the FCC, the FCC order(s) adopting such rules and regulations, and all industry standards and other materials referenced herein; and that such testing when done fairly, in full compliance with the FCC rules and regulations show full compliance with such rules and regulations; or in the alternative setting forth in detail all areas of non-compliance, their actual or likely scope and causes, and Company's professional recommendation of the best corrective measures to immediately and permanently correct the non-compliance.

5.27.2 Company shall establish the following procedure for resolving complaints from subscribers about the quality of the television signal delivered to them: All complaints shall go initially to Company. All matters not resolved by Company shall at Company's or the subscriber's option be referred to City for it to resolve.

5.28 Remedies for Franchise Violations

5.28.1.A Notification

If the Franchising Authority believes that the Grantee has committed a substantial violation of any material provision of this Franchise ("violation"), and the Franchising Authority wished to impose penalties under this Section, the Franchising Authority shall notify Grantee in writing, stating with reasonable specificity the nature of the alleged violation. Grantee shall have a Cure Period following receipt of such notice to:

- 1) Respond to Franchising Authority, contesting Franchising Authority's assertion that a violation has occurred and request a hearing in accordance with Section D below; or

- 2) Cure the violation; or
- 3) Notify the Franchising Authority that Grantee cannot cure the violation within the Cure Period because of the nature of the violation, and notify the Franchising Authority in writing of what steps the Grantee shall take to cure the violation, including the Grantee's projected completion date for such cure. In such case, the Franchising Authority shall, within thirty (30) days of receipt of such response, either a) accept the Grantee's plan and schedule for curing the violation, or b) set a hearing in accordance with B. below.

The Cure Period, for purposes of Section 1, shall be thirty (30) days, unless Franchising Authority specifies a longer cure period.

If a Grantee fails to demonstrate to the reasonable satisfaction of Franchising Authority that no violation exists, or if Grantee fails to correct the violation within the time prescribed, or if a Grantee is unable to correct the violation and fails to commence corrective action within the time prescribed and to diligently remedy such violation thereafter, the Grantee shall then be given written notice of not less than ten (10) days of a public hearing to be held before the Commission, pursuant to Section 1.1.E. of this Agreement. Said notice shall indicate with reasonable specificity the violation alleged to have occurred. This procedure shall apply to all alleged Franchise violations. Minimum public notice of any hearing under this Section 1 shall be by publication at least once in a newspaper of general circulation in the area at least ten (10) days prior to the meeting.

5.28.1.B. Plan for Cure

In the event that the Grantee notified the Franchising Authority that it cannot cure the violation within the Cure Period, and proposes a plan and schedule for cure which is not accepted by the Franchising Authority, Franchising Authority may, within thirty (30) days of Grantee's receipt of such notice, set a hearing before the City Commission. At the hearing, the Franchising Authority shall review and determine whether the Grantee has taken reasonable steps to cure the violation and whether the Grantee's proposed plan and completion date for cure is reasonable. In the event such plan and completion date are determined by mutual consent to be reasonable, the same may be approved by the Franchising Authority, who may waive all or part of the penalties for such extended cure period in accordance with the criteria set forth in Section F.

5.28.1.C. Imposition of Penalties

In the event that the Grantee fails to cure the violation within the Cure Period, or within an extended cure period approved by the Franchising Authority pursuant to Section B the Franchising Authority may impose penalties in accordance with this Section 1, but may do so only in accordance with the requirements of this section and only after it holds a hearing before the City Commission to determine what penalties, if any or revocation, shall be applied. Any such penalties shall not begin to accrue until after the Franchising Authority renders a decision pursuant to the hearing.

5.28.1.D. Contest of Violation

In the event that the Grantee contest the Franchising Authority's assertion that a violation has occurred, and request a hearing in accordance with Section A (1) above, the Franchising Authority shall set a hearing within sixty (60) days of the Franchising Authority's receipt of the hearing request to determine whether the violation has occurred, and if a violation is found to have occurred, what remedies under this Section 1 shall be applied.

5.28.1.E. Opportunity to be Heard

In the case of any hearing pursuant to this Section 1, Franchising Authority shall notify Grantee of the hearing in writing at least ten (10) days prior to the hearing date. At the hearing, Grantee shall be provided an opportunity to be heard, examine Franchising Authority's witnesses, and to present evidence in its defense. The Franchising Authority may also hear any other Persons interested in the subject, and may provide additional hearing procedures as Franchising Authority deems appropriate. After the hearing is closed, Franchising Authority shall issue written findings and a decision based on the evidence presented. In the event Franchising Authority determines that a violation has occurred, Grantee may appeal the decision to a court of competent jurisdiction for a judicial review. A hearing under this Section 1 prohibits the accumulation of penalties only until a final decision is rendered by a court of competent jurisdiction.

5.28.1.F. Reduction of Penalties

The penalties set forth in Section 1.2 of this Franchise may be reduced at the discretion of the Franchising Authority, taking into consideration the nature, circumstances, extent and gravity of the violation as reflected by one or more of the following factors:

- 1) Whether the violation was unintentional;
- 2) Whether substantial harm resulted;
- 3) Whether there is a history of prior violations of the same or other requirements;
- 4) Whether there is a history of overall compliance, and/or;
- 5) Whether the violation was voluntarily disclosed, admitted or cured.

5.28.1.G. Nature of Remedies

If, after the hearing, Franchising Authority determines that a violation exists, Franchising Authority may use one or more of the following remedies:

- 1) Order Grantee to correct or remedy the violation within a reasonable time frame as Franchising Authority shall determine;
- 2) Establish the amount of penalties set forth in Section 1.2, taking into consideration the criteria provided for in Section 1.1.F. as appropriate in Franchising Authority's discretion;
- 3) Pursue any other legal or equitable remedy available under this Franchise or any applicable law, including actual money damages.

5.28.2 Penalties

5.28.2.A. Amounts:

Should it be found, after notice, hearing, and appeal procedures, that the Grantee has committed a substantial violation of any material provision of this Franchise, the penalties shall be as follows:

- 1) For failure to extend Cable Service within the Franchise Area as required by this Franchise, Fifty Dollars (\$50) per day.

- 2) For failure to provide any capability for Public, Education and Government Access use of the Cable System required in this Franchise: One-Hundred Dollars (\$100) per day.
- 3) For violation of applicable customer service standards: Fifty Dollars (\$50) per day.
- 4) For failure to upgrade the Cable System as provided for in this Franchise: One Hundred Twenty Five Dollars (\$125) per day for the first 365 days of violation, and Two Hundred Fifty Dollars (\$250) per day thereafter.

5.28.2.B Collection of Penalties.

The collection of penalties by the Franchising Authority shall in no respect affect the Grantee's obligation to comply with all of the provision of this Franchise or applicable law.

5.28.2.C. Recourse to Securities.

In conformance with the procedural requirements herein, the Franchising Authority shall be entitled to draw upon the Franchising Authority's letter of credit, performance bond or any security to collect the foregoing damages.

5.28.3 Remedies Not Exclusive

The Franchising Authority has the right to apply any one or any combination of the remedies provided for in this franchise, including without limitation all remedies provided for in this Section, and may without limitation pursue any rights, remedies or actions that it may have in law or equity.

Notwithstanding the foregoing, if penalties are assessed against Grantee for any violation of its obligations under this Franchise, they shall be considered the full and final resolution of the violation and shall constitute a waiver of any future claims regarding the violation.

6.0 ACCESS TO THE SYSTEM

6.1 Public Education and Government (PEG) Channel. Company shall provide on the Cable System in the basic tier of service (and in the lowest tier of service if different) the following noncommercial channel known as "PEG Channel":

6.1.1 Pursuant to Section 611 of the Cable Act, upon the completion of the Cable System upgrade, Company shall provide one (1) channel of capacity to be designated for non-commercial public high school educational programming purposes, which channel shall be dedicated for the City's sole use. The City shall have the responsibility for administering and handling all matters pertaining to the use of the educational access channel, including without limitation, the programming of such channel, and the procurement, maintenance and general administration of all equipment and facilities required to operate such access channels except as hereinafter provided.

6.2 Charter's Obligations. Charter shall have the obligation of providing at no cost to the City or its designee the following support services pertaining to the City's use of said access channels:

- (2) City will provide request of capital, as a non pass thru item. Charter shall pay the city a one-time grant of \$5,000 for the purchase of audio and video equipment for the city/county high school. Company agrees that the equipment, services, and all other support to be provided by the Franchisee pursuant to this Agreement constitute capital costs which are incurred by the Company for educational, governmental or public access facilities and equipment within

the meaning of the Communications Act 47 U.S.C. Section 542 (g)(2)(c). Such grant shall not constitute a franchise fee within the meaning of the Communications Act, state law, the Cable Television Ordinance or this Agreement. The Company hereby waives, and shall not assert in any proceeding, any claim to the contrary.

- (3) The City may during the term of this agreement request Charter to institute an educational channel support fee of up to \$.25 per customer per month. The City shall give Charter a minimum of sixty-(60) days notice prior to the commencement of the collection of the fee.
- (4) Charter further agrees that the equipment, services, and all other support to be provided by the Franchisee pursuant to this Agreement constitute capital costs which are incurred by the Franchisee for educational access facilities and equipment within the meaning of the Communications Act 47 U.S.C. Section 542 (g)(2)(c). Such grant shall not constitute a franchise fee within the meaning of the Communications Act, state law, the Cable Television Ordinance or this Agreement. The Franchisee hereby waives, and shall not assert in any proceeding, any claim to the contrary.
- (5) At operator's sole discretion, all educational channel access fee payments may be passed through to the subscribers on their monthly invoices. All such access fees collected from customers shall not be considered revenue for purposes of calculating gross revenues. All such payments shall be made quarterly, simultaneous with franchise fees.

6.3 Company Use. City may from time to time adopt and revise rules and procedures as to when and how Company may use the PEG Channels for the provision of video programming when the PEG Channels are not being used for their respective purposes. Company will use the PEG Channels solely in accordance with such rules and procedures and otherwise shall have no responsibility or control with respect to the operation of such channels except as provided by law.

## 7.0 INDEMNITY AND INSURANCE

- 7.1 Disclaimer of Liability. City shall not at any time be liable for injury or damage occurring to any person or property from any cause whatsoever arising out of the Company's construction, maintenance, repair, use, operation (which includes rates, billing and collection practices) condition or dismantling of Company's Cable System or Company's provision of Cable Service.
- 7.2 Indemnification. Company shall at its sole cost and expense indemnify and hold harmless City and all associated, Affiliated, allied and subsidiary entities of City, now existing or hereinafter created, and their respective officers, boards, commissions, attorneys, agents, and employees (hereinafter referred to as "Indemnities"), from and against:
  - 7.2.1 Any and all liability, obligation, damages, penalties, claims, liens, costs, charges, losses and expenses (including, without limitation, reasonable fees and expenses of attorneys), whether legal or equitable, which may be imposed upon, incurred by or be asserted against the Indemnities by reason of any act or omission of Company, its personnel, employees, agents, contractors, subcontractors or Affiliates, which may arise out of or be in any way connected with the construction, installation, operation, maintenance or condition of the Cable System or other Company property (including those arising from any matter contained in or resulting from the transmission of signals over the System and including any claim or lien arising out of work, labor, materials or supplies provided or supplied to Company, its contractors or subcontractors), the provision of Cable Services, other services or Company's failure to comply with any Federal, State or local statute, ordinance or regulation.

- 7.3 Indemnification. Company hereby agrees to indemnify and hold harmless the Indemnitites against and from any claim asserted or liability imposed upon the Indemnitites for personal injury or property damage to any person arising out of the installation, operation, maintenance or condition of the Cable System. Company's failure to comply with any Federal, State or Local statute, ordinance, or regulation.
- 7.4 Defense of Indemnitites. In the event any action or proceeding shall be brought against the Indemnitites by reason of any matter for which the Indemnitites are indemnified hereunder, Company shall upon notice from any of the Indemnitites, at Company's sole cost and expense, resist and defend the same with legal counsel approved by City; provided, however, that Company shall not admit liability in any matter on behalf of the Indemnitites without the written consent of City.
- 7.5 Notice, Cooperation and Expenses. City shall give Company prompt notice of the making of any claim or the commencement of any action, suit or other proceeding covered by the provisions of this Section. Nothing herein shall be deemed to prevent City from cooperating with Company and participating in the defense of any litigation by City's own counsel.
- 7.6 Insurance. At all times during the term of this Franchise including any time for removal of facilities or restoration, Company shall obtain, maintain, and pay all premiums for all insurance policies described in this Section. Within thirty (30) days from the Effective Date of this Franchise, Company shall file with City certificates of insurance evidencing coverage. Failure to obtain and maintain any insurance policy required by this Section shall be deemed a material breach of this Franchise and may be grounds for termination of this Franchise.
- 7.6.1 Property Damage Liability. Two Million Dollars (\$2,000,000) per occurrence with a Five Million Dollar (\$5,000,000) umbrella policy. The property damage insurance required by this Section shall indemnify, defend and hold harmless Company and City and the respective officers, boards, commissions, agents, and employees of each from and against all claims made by any person for property damage caused by the operations of Company under the Franchise herein granted or alleged to have been so caused or alleged to have occurred.
- 7.6.2 Comprehensive Public Liability. Two Million Dollars (\$2,000,000) per occurrence with a Five Million Dollar (\$5,000,000) umbrella policy. The comprehensive public liability insurance required by this Section shall indemnify, defend, and hold harmless Company and City and the respective officers, boards, commissions, agents, and employees of each from any and all claims made by any person on account of injury to, or death of a person or persons caused by operations of Company under this Franchise, alleged to have been so caused or alleged to have occurred.
- 7.6.3 Comprehensive Automobile Liability. Two Million Dollars (\$2,000,000) per occurrence with a Five Million Dollar (\$5,000,000) umbrella policy. The comprehensive automobile liability insurance required by this Section shall indemnify, defend, and hold harmless Company and City and the respective officers, boards, commissions, employees and agents of each from any and all claims made by any person on account of collision, personal injury or property damage caused by use of any owned, hired, on non-owned motor vehicles used in conjunction with the rights herein granted or alleged to have been so caused or alleged to have occurred.

7.6.4 Workers' Compensation. Workers' Compensation coverage, which meets all requirements of any applicable Stat workers' compensation or comparable laws.

7.7 Cancellations or Change. The insurance policies called for herein shall require thirty (30) calendar days written notice to City and Company of any cancellation or change in the amount of coverage. Company shall in the event of any cancellation notice, obtain, maintain, pay all premiums for, and file with City written evidence of payments of premiums for an appropriate replacement insurance policies so canceled within thirty (30) calendar days following receipt by City or Company of notice of cancellation.

7.8 No Limitation of Liability. No recovery by City of any sum by reason of any insurance policy required by this Franchise shall be any limitation upon the liability of Company to City or to other persons.

7.9 Qualified Carriers. All insurance shall be effected under valid and enforceable policies insured by insurance carriers licensed to do business in the State of Tennessee or by surplus line carriers on the State Insurance Commissioner's approved list of companies qualified to do business in the State.

## 8.0 FEES AND PAYMENTS

8.1 Franchise Fee. Company shall pay City throughout the term of this Franchise an amount equal to five percent (5%) of Company's Cable Gross Revenues for the purpose of administering this franchise and any other related ordinance. Once per calendar year City by resolution may elect to reduce such percentage to a smaller percentage, and by resolution in a subsequent calendar year may change or revoke such election. Such changes shall take effect sixty (60) days after passage of the resolution and payments shall be made quarterly, and are due within forty-five (45) days after the end of each calendar quarter.

8.1.1 Each payment shall be accompanied by a written report to City, verified by an officer of Company containing a detailed breakdown of the various components of the total revenue reported, including the number of customers served by basic cable service. Each quarterly report shall also show the previous quarter report(s) on one summary page. On or before April 30<sup>th</sup> of each year of this agreement, Company shall provide City with a detailed summary of gross revenues received during the preceding year, certified by an Officer of the Company.

8.1.2 City may audit Company to verify the accuracy of Franchisee Fees paid City. Any additional amount due City shall be paid within thirty (30) days of City's submitting an invoice for such sum, and if such sum shall exceed five percent (5%) of the total Franchise Fee which the audit determines should have been paid for any calendar year, Company shall pay City's cost of auditing that calendar year as well. Any payments for previously unpaid franchise fees shall be subject to a penalty fee of Eight percent (8%) annually (prorated) or the present cost to the city to borrow funds, whichever is greater.

8.2 Other Payments. The preceding fees and payments are in addition to all sums, which may be due City for property taxes (real and personal), income taxes, license fees, permit fees or other fees, taxes or charges, which City may from time to time impose.

## 9 RATES AND REGULATION

9.1 Rates. Company's rates and charges for the provision of Cable Service (and for related services, such as equipment rental, deposits, and downgrade fees) shall be subject to regulation by City to the extent permitted by law.

9.2 Regulation. City reserves the right to regulate Company, the Cable System, and the provision of Cable Service to the extent permitted by Federal, State, or local law.

## 10 TERM

10.1 Initial Term. The term of this Franchise shall be fifteen (15) years.

10.2 Termination. This Franchise and all rights of Company there under shall automatically terminate on the expiration of the term of this Franchise, unless an extension is granted. City shall give Company sixty (60) days notice prior to taking action to enforce such termination.

10.3 Reopeners. City or Company at its option may reopen this Franchise as follows:

10.3.1 Within six months of the adoption of Federal or State legislation or FCC regulations, if such regulations affect City's ability to (a) regulate rates or (b) act to protect subscribers (such as on customer service matters, customer service standards or consumer protection matters). Such reopener shall be limited to the matters described in (a) and (b).

## 11 TRANSFERS, OWNERSHIP AND CONTROL

11.1 Management of the Cable System. Company shall personally manage the Cable System and the provision of Cable Services within City. It shall not directly or indirectly contract for, subcontract or assign, in whole or in part, the management of the Cable System or the provision of Cable Services.

11.2 Consent Required. This Franchise and the Cable System shall not be sold, transferred (as defined below), assigned, or otherwise encumbered, without the prior consent of City, such consent not to be unreasonably withheld. Such consent shall not be required for a transfer in order to secure indebtedness such as a transfer in trust, by mortgage, by other hypothecation, or by assignment of any rights, title, or interest of Company in the Franchise or Cable System. The foregoing requirements shall not apply to any sale, assignment or transfer which is to a wholly owned subsidiary or company controlled by the Grantee, or to any Person who wholly owns or is the controlling majority owner controls the Grantee. Grantee shall notify the City/City thirty (30) days prior to any sale, assignment or transfer.

11.1.1 The preceding prohibition shall not apply to the replacement or sale of components of the Cable System in the course of ordinary maintenance or day-to-day operation.

11.2 Transfer or Transferred. "Transfer" or "transferred" shall mean (a) any form of sale, conveyance, assignment, lease, sublease, merger, pledge, deed, grant, mortgage, transfer in trust, encumbrance or hypothecation, in whole or in part, whether voluntary or involuntary of any right, title or interest of company in or to this Franchise or to the Cable System, (b) any change in actual working control (by whatever manner exercised) or in the effective control of Company, such as that described in 47 C.F.R § 76.501 and following, including the notes thereto (but excluding footnote 2f), as in effect on the date of this Franchise (copy attached as Exhibit K), or (c) a change in limited partnership, limited liability corporation or similar interests representing ten percent (10%) or more of an equity interest in Company, including the right to require voting control without substantial additional consideration (such as compared to consideration previously provided).

11.3 If Company seeks to obtain the consent of City to any transactions or matters otherwise prohibited by this Part 11, Company shall submit an application for such consent in the form required by the FCC (currently Form 394), a copy of which is attached as Exhibit I.

11.3.1 City shall not unreasonably withhold its consent to any proposed transfer, and may grant its consent outright, may grant such consent with conditions which it finds are in the public

## 12 DEFAULTS

- 12.1 Events of Default. The occurrence at any time during the term of the Franchise, of any one or more of the following events, shall constitute an Event of Default by Company under this Franchise
- 12.1.1 Company's material breach or violation of any of the terms, covenants, representations or warranties contained herein or Company's failure to perform any obligation contained herein.
  - 12.1.2 Company's failure to pay or cause to be paid any governmentally imposed taxes of any kind whatsoever, including but not limited to real estate taxes income taxes, and personal property taxes on or before the due date for same; provided, however, Company shall not be in default hereunder with respect to the non-payment of taxes which are being disputed in good faith in accordance with applicable law.
  - 12.1.3 The entry of any judgment against Company in excess of twenty five percent of net worth which remains unpaid and is not stayed pending rehearing or appeal, for forty-five (45) or more days following entry thereof which may significantly impair Company's provision of Cable Service in City.
  - 12.1.4 The dissolution or termination, as a matter of law, of Company or any general partner of Company.
  - 12.1.5 If Company files a voluntary petition in bankruptcy; is adjudicated insolvent; obtains an order for relief under Section 301 of the Bankruptcy Code (11 U.S.C. §301); files any petition or fails to contest any petition filed against it seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief for itself under any laws relating to bankruptcy, insolvency or other relief for debtors; seeks or consents to or acquiesces in appointment of any trustee, receiver, master, custodian, or liquidator of Company, or any of Company's property and/or Franchise and/or any and all of the revenues, issues, earnings, profits or income thereof; makes an assignment for the benefit of creditors; or fails to pay Company's debts generally as they become due.
- 12.2 Uncured Events of Default. City shall give Company written notice of any Event of Default and Company shall have the following reasonable time period to cure same; For an Event Default which can be cured by the immediate payment of money to City or a third party, Company shall cure such default within thirty (30) days of the date such sum of money was due and payable; for and Event of Default by Company which cannot be cured by the immediate payment of money to City or a third party, Company shall have sixty (60) days from written notice from City to Company of an occurrence of such Event of Default. Company shall have the right to request an extension of the 30 or 60 day time period if the Event of Default cannot be reasonably cured in the time period.
- 12.3 If any Event of Default is not cured within the time period allowed for curing the Event of Default, as provided herein, such Event of Default shall, without notice, become an Uncured Event of Default, which shall entitle City to exercise the remedies provided for in Section 12.1 and Section 12.2. Prior to the City enforcing the remedies provided for in afforded due process and the right to present evidence and testimony on its behalf. Further, any decision made by the City shall be subject to appeal to a court of competent jurisdiction pursuant to the Administrative Procedures Act.

## 13 REMEDIES

- 13.1 Remedies. Upon the occurrence of any Uncured Event of Default as described in Part 12, City shall be entitled to exercise any and all of the following cumulative remedies:

13.1.1 City shall have the right to forfeit and terminate the Franchise and upon the forfeiture and termination thereof the Franchise shall be automatically deemed null and void and have no force or effect, Company shall remove the Cable System from City as and when requested by City and City shall retain any portion of the Franchise Fee and other fees or payments paid to it, or which are due and payable to it, to the date of the forfeiture and termination. City's right to forfeit and terminate the grant of the Franchise pursuant to this section is not limitation on City's right of revocation.

13.1.2 The commencement of an action against Company at law for monetary damages.

13.1.3 The commencement of action in equity seeking injunctive relief or the specific performance of any of the provisions, which, as a matter of equity, are specifically enforceable.

13.2 Remedies Not Exclusive. The rights and remedies of City set forth in this Franchise shall be in addition to and not in limitation of, any other rights and remedies provided by law or in equity,. City and Company understand and intend that such remedied shall be cumulative to the maximum extent permitted by law and the exercise by City of any one or more of such remedies shall not preclude the exercise by City, at the same or different times, of any other such remedies for the same Uncured Event of Default.

#### 14 PROVISION OF INFORMATION

14.1 Filings. Upon request Company shall provide City with copies of all documents, which Company sends to the FCC or to the State public service commission (or comparable State agency) and all records required by Company to be maintained under Section 76 of the FCC regulations (47 C.F.R. § 76) or successor sections, which relate to the Cable System.

14.2 Lawsuits. Upon request of City, Company shall provide City with copies of all pleadings in all lawsuits pertaining to the granting of this Franchise and the operation of the Cable System to which it is a party. Copies shall be provided within thirty (30) days of City's request.

14.3 Books and Records. City may review such of Company's books and records during regular business hours and on a non-disruptive basis, as are reasonably necessary to monitor compliance with the terms hereof. Such records shall not be limited to, records required to be kept by Company pursuant to the rules and regulations of the FCC, and financial information underlying the summary report pertaining to the Franchise Fee. Notwithstanding anything to the contrary set forth herein, Company is not required to disclose personally identifiable subscriber information without the subscriber's consent in recognition of Section 631 of the Cable Act, 47 U.S.C. § 551, regarding the protection of subscriber privacy; nor shall Company be required to disclose its income tax returns or information underlying the preparation of any such returns. To the extent permitted by law, City agrees to treat on a confidential basis any information disclosed by Company to it under this Section. In so according confidential treatment, to the extent permitted by law, disclosure of Company's records by City shall be limited to only those of its employees, representatives and agents that have a need to know, and that are in a confidential relationship with City.

#### 15 GENERAL

15.1 Entire Agreement. This Franchise Agreement including the Exhibits attached hereto, contains the entire agreement between the parties and all prior franchises, negotiations and agreements are merged herein and hereby superseded, except that any obligation of Company to indemnify City under a prior franchise or agreement shall be continuing as to those matters (if any) occurring during the term of said prior franchise or agreement on which Company was obligated to indemnify City.

- 15.2 Notices. Except as otherwise specified herein, all notices, consents, approvals, requests and other communications (herein collectively "Notices") required or permitted under this Franchise Agreement shall be given in writing and mailed by registered or certified first-class mail, return receipt requested addressed as follows:

If to City:  
City Manager  
100 N Caldwell Ave.  
Paris, TN 38242

If to Company:  
Vice President Government Relations,  
Charter Communications  
12405 Powerscourt Drive  
St. Louis, MO 63131

or

Charter Communications  
906 South 12<sup>th</sup> Street  
Murray, KY 42071

All notices shall be deemed given on the day of mailing. Either party to this Franchise Agreement may change its address for the receipt of Notices at any time by giving notice thereof to the other as provided in this Section. Any notice given by any party hereunder must be signed by an authorized representative of such party.

- 15.3 Conferences. The parties hereby agree to meet at reasonable times on reasonable notice to discuss any aspect of this Franchise Agreement, the provision of Cable Services or the Cable System during the term of this Franchise Agreement.
- 15.4 Governing Law. This Franchise Agreement shall be construed pursuant to the laws of the State of Tennessee and the United States of America.
- 15.5 Waiver of Compliance. No failure by either party to insist upon the strict performance of any covenant, agreement, term or condition of this Franchise Agreement, or to exercise any right to term or remedy consequent upon a breach thereof shall constitute a waiver of any such breach or such covenant, agreement, term or condition. No waiver of any breach shall affect or alter this Franchise Agreement, but each and every covenant, agreement term or condition of this Franchise Agreement shall continue in full force and effect with respect to any other then existing or subsequent breach thereof.
- 15.5.1 City may waive any obligation of Company under this Franchise Agreement, in whole or in part, at any time. This includes, but is not limited to, instances of a claim or showing by a Company that the costs associated with the provision being waived would increase the rates Company is legally allowed to charge subscribers, such as a claim that such costs are an "external cost" which allow Company to increase its rates under the FCC rules.
- 15.6 Independent Contractor Relationship. The relationship of Company to City is and shall continue to be an independent contractual relationship, and no liability or benefits, such as worker's compensation, pension rights or liabilities, insurance rights or liabilities or other provisions or liabilities, arising out of or related to a contract for hire or employer/employee relationship, shall arise or accrue to either party or either party's agents or employees as a result of the performance of this Franchise Agreement.
- 15.7 Severability. If any section, paragraph, or provision of this Franchise Agreement shall be held to be invalid or unenforceable for any reason, the invalidity or unenforceability of such section, paragraph, or provision shall not affect any of the remaining provisions of this Franchise Agreement.

- 15.8 Effective Date. This Franchise Agreement shall be effective as of ("Effective Date"). Any prior franchise shall terminate as of midnight of the day immediately preceding the Effective Date of this Franchise Agreement.
- 15.9 FCC Rules. A copy of FCC Rule 76.309 as in effect on the date of this Franchise Agreement is attached hereto as Exhibit L. A copy of FCC Rule 76.501 as in effect on the date of this Franchise Agreement is attached hereto as Exhibit K.
- 15.10 Captions. All captions are for convenience of use and have no substantive effect, except for those captions in the Definitions Section of this Franchise Agreement.
- 15.11 Conflicts. In the event of a conflict between this Franchise Agreement and the provision of any prior franchise or any franchise, permit, consent agreement or other agreement with Company, the provisions of this Franchise Agreement shall control.
- 15.12 Force Majeure. In the event Company's performance of any to the terms, conditions or obligations required by this Franchise Agreement is prevented by a cause or event, not within Company's reasonable control, it shall be deemed excused for the period of such inability and no penalties or sanctions shall be imposed as a result thereof. Causes or events not within the control of Company shall include acts of God, strikes, sabotage, riots or civil disturbances, failure or loss of utilities, explosions, acts of public enemies and natural disasters.
- 15.13 Franchise Agreement Accepted. Company further acknowledges by acceptance of this Franchise Agreement that it has carefully read the terms and conditions of this Franchise Agreement and any applicable cable ordinance of City and accepts the obligations imposed thereby regardless of whether such obligations are contained in the Franchise Agreement or such cable ordinance, or both. As of the Effective Date, and without waiving any rights Company may have to challenge the lawfulness or enforceability of this Franchise Agreement or ordinances in the future, Company does not contend that any provisions of the Franchise Agreement is unlawful or unenforceable, nor is it aware of any ordinance which contends is lawful or unenforceable.
- 15.14 Waiver of Compliance. No failure by either party to insist upon the strict performance of any covenant, agreement, term or condition of this Franchise Agreement, or to exercise any right, term or remedy upon a breach thereof shall constitute a waiver of any such breach or such covenant, agreement, term or condition. No waiver of any breach shall affect or alter this Franchise Agreement, but each and every covenant, agreement, term or condition of this Franchise Agreement shall continue in full force and effect with respect to any other then existing or subsequent breach thereof.
- 15.15 Specific Rights Reserved by City. In addition to any other rights reserved to City this Franchise Agreement is subject to the right City:
- 15.15.1 To revoke the Franchise Agreement for misuse, non-use, or the failure to comply with the material provisions of any applicable cable ordinance of City, as such may be supplemented or amended from time to time, or any other material local, State or Federal laws or regulations, subject to the procedures set forth in Parts 11, 12, and 13.
  - 15.15.2 To require proper and adequate extensions of the Cable System and Cable Services and maintenance thereof at the highest practicable standard of efficiency.
  - 15.15.3 To establish reasonable standards of Cable Service and quality of products, and to prevent unjust discrimination in Cable Service or rates.
  - 15.15.4 To require continuous and uninterrupted service to the public in accordance with the terms of this Franchise Agreement throughout the entire period hereof.

15.15.5 To control and regulate the use of its streets, alleys, bridges, streets. Public Ways, and public places and other public property and the space above and beneath them.

15.15.6 Through its appropriately designated representatives, to inspect all construction or installation work performed subject to the provisions of this Franchise Agreement or any cable ordinance of City and to make such inspections as it shall find necessary to insure compliance with the terms of this Franchise Agreement, such cable ordinance, and other pertinent provisions of law.

15.15.7 At the expiration of the term for which this Franchise Agreement is granted, and absent a renewal of it, or upon the revocation of the Franchise Agreement, to require the Company to remove at its own expense any and all aerial portions of the Cable System from the streets and Public Ways within City.

16 This ordinance and Franchise Agreement shall be signed and executed by a duly authorized representative of Charter Communications LLC and shall take effect upon third reading approval of City Council.

PARIS CITY COMMISSION

By: \_\_\_\_\_  
Mayor

First Reading: \_\_\_\_\_

Second Reading: \_\_\_\_\_

CHARTER COMMUNICATIONS, LLC

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

**EXHIBIT A  
CABLE SYSTEM DESCRIPTION**

The Cable System shall meet the requirements set forth below.

1. For both analog and digital multicast service the video signal delivered to the subscriber shall meet or exceed the FCC standards for signal quality set forth at 47 CFR § 76.601.
2. Subscribers shall be grouped into nodes that are arranged geographically. Node sizing shall average no more than 1,000 homes served. From each node, coaxial cable shall be used to deliver all information streams to and from subscribers; optical cable shall be used to carry upstream and downstream communication from Company's headend to the node.

**EXHIBIT B  
CONTRIBUTIONS IN AID OF CONSTRUCTION**

Example 1: Subscriber 1 pays \$1,000 for a line extension in year one. In year two, a second subscriber is added to the extension. Even with both subscribers the homes per mile standard for a free extension is not met. Company in year two collects \$333 ( $\$1,000/2$  less 33%) from subscriber 2 and pays it to subscriber 1.

Example 2: Subscriber 1 pays \$1,000 for a line extension in year 1. In year 3, two subscribers are added to the extension and with both the homes per mile standard for a free extension it met. Company in year three collects zero from subscribers 2 and 3 but refunds \$333 ( $\$1,000$  less 66%) to subscriber 1.

**EXHIBIT C**

W. G. Rhea Elementary School  
115 South Wilson Street  
Paris, TN

Paris Elementary School/Paris Civic Center  
650 Volunteer Drive  
Paris, TN

W. O. Inman Middle School  
400 Harrison Street  
Paris, TN

Henry County High School  
315 South Wilson Street  
Paris, TN

Henry County High School/Grove Campus  
215 Grove Boulevard  
Paris, TN

Tennessee Technology Center  
312 South Wilson Street  
Paris, TN

W. G. Rhea Public Library  
400 West Washington Street  
Paris, TN

City of Paris/City Hall  
100 North Caldwell Street  
Paris, TN

City of Paris/Police Department  
100 North Caldwell Street  
Paris, TN

City of Paris/Fire Department  
303 Tyson Avenue  
Paris, TN

Henry County Sheriff's Department  
210 Forrest Heights  
Paris, TN

Paris-Henry County Heritage Center  
614 North Poplar Street  
Paris, TN

(Ord. #1009, 03/06/03)