

ORDINANCE NO. 12180

AN ORDINANCE GRANTING A FRANCHISE TO THE ELECTRIC POWER BOARD OF CHATTANOOGA, AN INDEPENDENT BOARD OF THE CITY OF CHATTANOOGA, TENNESSEE, TO CONSTRUCT, OPERATE AND MAINTAIN A CABLE SYSTEM IN THE CITY OF CHATTANOOGA, TENNESSEE, FOR THE PURPOSE OF PROVIDING CABLE SERVICE; SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OF THE FRANCHISE; PROVIDING FOR REGULATION AND USE OF THE SYSTEM AND THE PUBLIC RIGHTS-OF-WAY IN CONJUNCTION WITH THE CITY'S RIGHT-OF-WAY ORDINANCE, IF ANY; AND PRESCRIBING PENALTIES FOR THE VIOLATIONS OF THE PROVISIONS HEREIN.

THIS CABLE FRANCHISE ORDINANCE AND AGREEMENT (the "Franchise Agreement") is entered into by and between the City of Chattanooga, Tennessee ("City"), a municipal corporation, and the Electric Power Board of Chattanooga, an independent board of the City of Chattanooga, Tennessee ("Franchisee").

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

WHEREAS, the City has identified the future cable-related needs and interests of the City and its citizens, has considered the financial, technical and legal qualifications of Franchisee, and has determined whether Franchisee's plans for constructing, operating and maintaining its Cable System are reasonable to meet the future cable-related community needs and interests, in light of the costs of meeting such needs and interests, in a full public proceeding affording due process to all parties; and

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

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

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

NOW, THEREFORE,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHATTANOOGA, TENNESSEE,

SECTION 1. That the City of Chattanooga, Tennessee, and the Electric Power Board of Chattanooga, an independent board of the City of Chattanooga, Tennessee, hereby agree as follows:

In consideration of the City's grant of a new, nonexclusive Franchise to Franchisee;

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

1. DEFINITIONS.

The following terms, phrases, words, abbreviations and their derivations shall have the meaning given herein for the purposes of this Agreement. When not inconsistent with the context, words used in the present tense include the future tense; words in the plural number include the singular number; words in the singular number include the plural number; and the masculine gender includes the feminine gender. Unless otherwise expressly stated, words not defined herein shall be given the meaning set forth in Title VI of the Communications Act of 1934, as amended, 47 U.S.C. § 521, *et seq.*, Part 76 of the Federal Communications Commission Rules and Regulations, as amended, or other applicable law and, if not defined therein, the words shall be

given their common and ordinary meaning. The words "shall" and "will" are always mandatory and not merely directory. The word "may" is directory and discretionary, and not mandatory.

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

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

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

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

1(e) *Cable Act*: Title VI of the Communications Act of 1934, 47 U.S.C. §§ 521 *et seq.*, as amended from time to time.

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

1(g) *Cable Service*: One-way transmission to Subscribers of video programming or other programming services; and Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming services.

1(h) *Cable System or System*: A facility consisting of a set of closed transmission paths and associated signal generation, reception and control equipment that is designed to provide Cable Service which includes video programming and which is provided to multiple Subscribers within the City, but such term does not include (1) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (2) a facility that serves Subscribers without using any Public Rights-of-Way; (3) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Communications Act of 1934, as amended, except that such facility shall be considered a Cable System (other than for purposes of

Section 621(c) of the Cable Act) to the extent such facility is used in the transmission of video programming directly to Subscribers, unless the extent of such use is solely to provide interactive on-demand services; (4) an open video system that complies with 47 U.S.C. § 573; or (5) any facilities of any electric utility used solely for operating its electric utility system.

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

1(j) *City*: The City of Chattanooga, Tennessee, a municipal corporation in the State of Tennessee.

1(k) *City Code*: The Chattanooga Municipal Code, as amended from time to time.

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

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

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

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

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

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

1(r) *Franchise*: The nonexclusive authorization or renewal thereof granted pursuant to this ordinance and Agreement to operate and maintain a System along the Public Rights-of-Way within the Franchise Area. This Franchise does not include any license or permit generally required of any Person for the privilege of transacting and carrying on business within the City.

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

1(t) *Franchise Area*: The entire present territorial limits of the City and any area lawfully annexed thereto during the term of the Franchise, but not including any area outside the Franchisee's service area prescribed by Tennessee Code § 7-52-601.

1(u) *Franchisee*: The Electric Power Board of the City of Chattanooga and its lawful and permitted successors, assigns, and transferees.

1(v) *Gross Revenues*: Any and all revenue received or derived directly or indirectly by Franchisee, its affiliates, subsidiaries, parent, or any entity in which Franchisee has a financial interest from the operation of its Cable System to provide Cable Services within the City including, but not limited to, 1) all Cable Service fees, 2) Franchise Fees, 3) late fees, excluding external unrelated collection agency commissions, 4) Installation and reconnection fees, 5) premium services and pay-per-view services and revenues, 6) upgrade and downgrade fees, 7) advertising revenue with no deduction or offset for internal commissions earned by employees of Franchisee or its affiliates, subsidiaries, parent, or any entity in which the Franchisee has a financial interest, 8) home shopping commissions on sales to customers within the City, 9) Converter and remote control rental fees, 10) Lockout Device fees, 11) guides, and 12) production charges. The term Gross Revenue shall not include bad debts or any taxes on Services furnished by Franchisee imposed upon Subscribers by any municipality, state, or other

governmental unit and collected by Franchisee for such governmental unit. If cable modem service and the revenues derived therefrom may be legally included in Gross Revenues for the purpose of assessing a Franchise fee, City may immediately commence following public notice and a hearing, though on a reasonable implementation schedule, the assessment of a Franchise fee on cable modem service to the maximum amount allowable by applicable law.

1(w) *Noncommercial*: A description of any actions undertaken by the City or any Person which cannot reasonably be determined to provide or sell (whether audio, video or text) or promote the providing or selling of any products, programming or services which are or which may reasonably be expected to be provided, promoted or sold by Franchisee. This term shall not be interpreted to prohibit City or any Access Channel programmer from receiving financial support to produce programming for the Access Channels or from acknowledging a contribution. Nor shall this term be interpreted to prohibit in any way the City from providing services or products to itself or any other public institution through the utilization of the System to the extent otherwise authorized pursuant to this Franchise. By way of further elaboration, it is the intent of the City and Franchisee that Access Channel programming should not become a profit-making endeavor for the City or other person, but that any revenues or financial support received for Access Channel programming shall be used to support Access Channel programming. Additionally, unless otherwise required by State or Federal law, this Franchise Agreement shall be interpreted to prohibit the provision of Access Channel programming to any direct competitor of Franchisee unless said competitor has contributed on an equitable basis to the production of such Access programming pursuant to Section 2(d) of this Franchise.

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

1(y) *Person*: An individual, partnership, association, joint stock company, joint venture, domestic or foreign corporation, stock or non-stock corporation, limited liability

company, professional limited liability corporation, or organization of any kind or any lawful successor thereto or transferee thereof, but such term does not include the City.

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

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

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

2. GRANT OF AUTHORITY; LIMITS AND RESERVATIONS.

2(a) *Grant of Authority:*

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

2(a)(2) This Franchise authorizes the use of Public Rights-of-Way for the operation of a Cable System. The grant of this Franchise and the payment of Franchise fees hereunder shall not exempt the Franchisee from the obligation to pay any lawful fees for the use of City property, other than Public Rights-of-Way, or that the Franchisee wishes to occupy for purposes other than the provision of Cable Service in the City; provided, however, that such fees are lawfully required by City ordinance, regulation or policy and are not unlawfully discriminatory.

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

2(b) *Area Served:*

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

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

2(c) *Term:* The Franchise and this Franchise Agreement shall extend for a term of ten (10) years, commencing on the date this Ordinance is adopted, unless the Franchise is earlier revoked or otherwise lawfully shortened, in accordance with Section 11 herein.

2(c)(1) *Renewal:* Any renewal of this Franchise Agreement shall be governed by and comply with the provisions of Section 626 of the Cable Act, as amended.

2(c)(2) Notwithstanding any other provision in this Franchise, in the event any change to local, state or federal law occurring during the term of this Franchise eliminates the requirement for any persons desiring to construct, operate or maintain a cable system in the City to obtain a Franchise from the City for the construction, operation or maintenance of a cable system, then, at Franchisee's sole option, Franchisee shall have the right immediately to terminate this Franchise. If Franchisee chooses to terminate this Franchise pursuant to this provision, this Franchise shall be deemed to have expired by its terms on the effective date of any such change in law, whether

or not such law allows existing Franchise agreements to continue until the date of expiration provided in any existing Franchise. Furthermore, in the event any change to local, state or federal law occurring during the term of this Franchise materially alters the regime of cable franchising applicable to any persons desiring to construct, operate or maintain a cable system in the City in a way that reduces the regulatory or economic burdens for such person, then, at Franchisee's request, the City shall agree with Franchisee to amend this Franchise to similarly reduce the regulatory or economic burdens on Franchisee. It is the intent of this section that, at Franchisee's election, Franchisee shall be subject to no more burdensome regulation or provided lesser benefits under this Franchise than any other persons that might construct, operate, or maintain a cable system in the City.

2(d) *Grant Not Exclusive:* The Franchise and the right it grants to use and occupy the Public Rights-of-Way shall not be exclusive and the City reserves the right to grant other Franchises for similar uses or for other uses of the Public Rights-of-Way, or any portions thereof, to any Person, or to make any such use itself, at any time during the term of this Franchise Agreement, with or without a Franchise; provided, however, that the City shall not authorize or otherwise permit another Person to operate, construct or maintain a Cable System in the City, or provide Cable Service in the City, on terms or conditions more favorable or less burdensome than those in this Franchise Agreement, taken as a whole.

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

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

2(g) *Customer Service Standards:* The Franchisee shall, at a minimum, meet any current applicable federal customer service standards and any customer service standards and consumer protection standards set forth in this Agreement. The Franchisee will continue to maintain a staffed local business office in the City of Chattanooga, Tennessee. "Local" for purposes of this Section shall be understood to mean within the City of Chattanooga city limits for the first five (5) years of the Franchise term, and thereafter the Chattanooga Urban Growth Boundary Area or the City limits of the City of Chattanooga as they exist, as of March, 2001. The office will be operated during regular business hours.

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

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

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

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

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

2(j) *No Waiver:*

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

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

3. PROVISION OF CABLE SERVICE.

3(a) *New Build and Line Extension Requirement:*

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

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

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

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

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

3(a)(3) *Emergency Alert System.* The Franchisee shall provide, but without charge and subject to the rules and regulations of the Federal Communications Commission, public Emergency Alert System ("EAS") or successor to that system, complying with the requirements currently set forth in FCC Regulations.

3(b) *Continuity of Service.*

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

3(b)(2) The Franchisee shall use best efforts to ensure that all Subscribers receive continuous uninterrupted Cable Service. At the City's written request, the Franchisee shall, as trustee for its successor in interest, operate its System for a Transition Period following the termination, sale, or Transfer of its Franchise as may be necessary to maintain Cable Service to

Subscribers, and, in the event of termination, shall cooperate with the City to assure an orderly transition from it to another Franchisee.

3(b)(3) For the continued operation of the Cable System under the same terms and conditions of this Agreement during the renewal period (i.e. period between extension of the Prior Franchise and beginning of this Agreement) and/or transition period, the Franchisee shall be entitled to the revenues from the System and City shall be entitled to Franchise fees provided for hereunder.

3(b)(4) Subject to Section 12(e) herein, if the Franchisee ceases operation of its System during the Franchise term for more than seven (7) consecutive days or fails to operate its System in accordance with the terms of this Agreement during any Transition Period, the City, at its option, may (i) operate the System, (ii) temporarily designate any other Person to operate the System on behalf of the City until the Franchisee restores service under conditions acceptable to the City or until the Franchise is revoked and a new Franchisee selected by the City is providing service, or (iii) obtain an injunction requiring the Franchisee to continue operations. If the City is required to operate or designate another entity to operate the Cable System, the Franchisee shall reimburse the City or its designee for all reasonable costs and actual damages incurred that are in excess of the revenues from the Cable System, including reasonable legal fees and costs.

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

4. CONSTRUCTION AND MAINTENANCE.

4(a) *Construction Standards:*

4(a)(1) The construction, operation, maintenance, and repair of the System shall be in accordance with all applicable sections of the Occupational Safety and Health Act of 1970, as amended; the most current edition of the National Electrical Safety Code and National Electric Code, or most current Electric Code adopted by the City; Obstruction Marking and Lighting, AC

70/7460 i.e., Federal Aviation Administration; Construction, Marking and Lighting of Antenna Structures, Federal Communications Commission Rules Part 17; Franchisee's Construction Procedures Manual, if applicable; and other generally applicable federal, state, or local laws and regulations that may apply to the operation, construction, maintenance, or repair of a Cable System, including, without limitation, generally applicable local zoning and construction codes and laws, all as hereafter may be amended or adopted pursuant to the City's police powers as designated by the State of Tennessee.

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

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

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

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

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

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

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

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

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

4(a)(10) Subject to Section 4(c) herein, any and all Public Rights-of-Way, public property, or private property that is disturbed or damaged during the construction, repair, replacement, relocation, operation, maintenance, or construction of the Franchisee's System shall be promptly repaired to the reasonable requirements of the City Engineer by the Franchisee at no cost to the City.

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

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

4(a)(13) In the event of an emergency, or where the Cable System creates or is contributing to an imminent danger to health, safety, or property, and prior written notice to Franchisee is not reasonably practicable (however City will provide such written notice to

Franchisee at such time that such written notice is reasonably practicable), the City may remove, relay, or relocate any or all parts of the Cable System without prior notice.

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

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

4(a)(16) Where existing poles, underground conduits, ducts or other wire holding structures are available for use by the Franchisee, under reasonably negotiated terms and conditions, as may be reasonably determined by the Franchisee, but it does not make arrangements for such use, the City may require, through the established permit, or any other applicable procedure, the Franchisee to use such existing poles and wire holding structures if the City determines that the public convenience would be enhanced thereby.

4(a)(17) System cable and facilities may be constructed overhead where poles now exist and electric or telephone lines or both are now overhead. However, where no overhead

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

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

4(a)(19) No placement of any pole or wire holding structure of the Franchisee is to be considered a vested interest in the Public Rights-of-Way or in City property.

4(a)(20) Any contractor or subcontractor used for work or construction, installation, operation, maintenance, or repair of System equipment must be properly licensed under laws of the State and all applicable local ordinances, where applicable. The Franchisee shall ensure that

contractors, subcontractors and all employees who will perform work for it are qualified to perform such work. The Franchisee shall be responsible for: (i) ensuring that the work of contractors and subcontractors is performed consistent with this Agreement and applicable law; (ii) all acts or omissions of contractors or subcontractors; and (iii) promptly correcting acts or omissions by any contractor or subcontractor known by Franchisee.

4(a)(21) The City does not guarantee the accuracy of any maps showing the horizontal or vertical location of existing substructures. In Public Rights-of-Way, where necessary, the location of existing substructures shall be verified by excavation or by contacting "TN One-Call."

4(a)(22) Above-ground equipment placed on private property shall be placed at the location reasonably requested by the property owner. The Franchisee shall undertake reasonable efforts to provide affected property owners with advance written notice of its plans to install such equipment, and shall make reasonable efforts to confer with property owners before any work is done. The written notice required hereunder shall be in a manner and substance solely determined by Franchisee, but, at a minimum, the Franchisee shall advise affected property owners of the location(s) where equipment will be installed on their property.

4(a)(23) Franchisee will work to undertake joint trenching in conjunction with other utilities or developers in accordance with federal, state and local regulations upon receipt of appropriate prior written notice.

4(a)(24) *Conditions on Street Occupancy:*

4(a)(24)(A) All transmission and distribution structures, lines, and equipment erected by the Franchisee within the city shall be so located as to cause minimum interference with the proper use of streets, alleys, and other public ways and places, and to cause minimum interference with the rights and reasonable convenience of property owners who join any of the said streets, alleys or other public ways and places.

4(a)(24)(B) Any poles or other fixture placed in any public way by the licensee shall be placed in such manner as not to interfere with the usual travel on such public way.

4(a)(25) *Erection, Removal and Common User of Poles.* No poles or other wire-holding structures shall be erected and used solely for cable service purposes by the Franchisee without prior approval of the City Engineer with regard to location, height, type and any other pertinent aspect, which approval shall not be unreasonably withheld. However, no location of any pole or wire-holding structure of the Franchisee shall be a vested interest and such poles or structures shall be removed or modified by the Franchisee at its own expense whenever the governing body reasonably determines that the public convenience would be enhanced thereby.

4(b) *System Tests and Inspections.*

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

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

4(b)(3) The City may also conduct such reasonable inspections as may be necessary to assess compliance with the Franchisee's construction and installation requirements under this Franchise. Inspection does not relieve the Franchisee of its obligation to build in compliance with all provisions of this Franchise.

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

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

4(b)(6) The City reserves the authority to conduct at its own expense and upon not less than ten (10) business days of prior written notice to Franchisee its own reasonable tests necessary to determine compliance with this Section. If material noncompliance is found, the expense thereof may be considered by the City and Franchisee in any ultimate resolution of such noncompliance issues. The City will endeavor to arrange any request for such tests so as to minimize hardship or inconvenience to the Franchisee or to Subscribers.

4(c) *Restoration:* In case of any disturbance of pavement, sidewalk, driveway or other surfacing, or City water, sewer, electric, or similar utility facilities, the Franchisee shall, in a manner reasonably approved by the City, replace and restore all City water, sewer, electric or similar utility facilities, paving, sidewalk, driveway, landscaping, or surface of any street or alley disturbed, in substantially the same condition as that which existed immediately prior to such disturbance and in a good workman-like, timely manner in accordance with generally applicable standards for such work set by the City. With respect to fire and police department facilities and equipment, and water and sewer facilities and other essential utilities and services, restoration shall be undertaken immediately and shall be completed promptly. In all other cases, restoration shall be undertaken within no more than five (5) business days after the disturbance is incurred, and shall be completed as soon as reasonably possible thereafter or as may be agreed to by the affected party. The City shall be notified in writing upon completion of restoration of disturbance of any public Right-of-Way or public property. The City reserves the right to inspect and approve the worksite and any restoration or other work thereon.

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

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

5. SYSTEM FACILITIES, EQUIPMENT AND SERVICES.

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

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

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

5(a)(3) *Standby Power.* The System shall have standby generating capacity at the head end. The Franchisee shall maintain standby power generators capable of powering all head end equipment for at least twenty-four (24) hours. The back-up power supplies serving the System shall be capable of providing power to the System for not less than three (3) hours per

occurrence measured on an annual basis according to manufacturer specifications in the event of an electrical outage.

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

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

5(a)(6) *Industry-accepted Equipment.* The System shall use equipment generally used in high-quality, reliable, modern systems of similar design. The Franchisee shall comply with all applicable laws and regulations concerning System compatibility with Subscribers' television equipment.

5(a)(7) *Clear Channels.* The Franchisee shall comply with all FCC regulations regarding scrambling or other encryption of signals.

5(a)(8) *Parental Control.* The Franchisee shall ensure that means are available by sale or lease to enable subscribers to block out audio and video signals on any undesired Channels on the system. The Franchisee shall abide by 47 U.S.C. § 544(d) and corresponding regulations regarding the blockage of any audio or video signal of any premium Channel containing programming that is obscene, otherwise unprotected by the Constitution of the United States, or indecent; provided however, that such compliance shall not be separately charged to the Subscribers or the City.

5(a)(9) *Handicapped Service.* All closed-caption programming retransmitted by the System shall include the closed-caption signal. The Franchisee shall comply with all applicable federal law and regulations regarding service or equipment for hearing impaired Subscribers. For

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

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

5(b)(1) The System shall be capable of delivering a minimum Channel capacity of at least two hundred (200) Channels, downstream to all Subscribers.

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

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

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

5(e) *Customer Service Monitoring:* Subject to all applicable privacy laws, the Franchisee shall keep such records as are required to enable the City to determine whether the Franchisee is complying with all telephone answering standards required by this Franchise or FCC Rules and Regulations as they exist as of the Effective Date of this Franchise.

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

6. CHANNELS AND FACILITIES FOR EDUCATIONAL AND GOVERNMENTAL USE.

6(a) *Access Channels:*

6(a)(1) The Franchisee shall dedicate and make available, subject to applicable law, one (1) Access Channel for Noncommercial educational and governmental programming.

6(a)(2) In addition to the Access Channel specified above, the City may require the Franchisee to make available one (1) additional Access Channel pursuant to the criteria of this subsection. Such additional Access Channel shall be provided by the Franchisee within one hundred twenty (120) days after a written request from the City when the following conditions are met:

6(a)(2)(A) The Franchisee shall provide one (1) additional Government Access Channel whenever the Access Channel set aside by the City for Governmental Access Channel programming is programmed with Qualified Programming at least eighty percent (80%) of the cumulative time for sixty (60) consecutive hours measured over a calendar quarter. All Qualified Programming shall count in this measurement for the actual running time shown.

6(a)(3) The City shall have the right to rename, reprogram or otherwise change the programming of the Access Channels specified in this Franchise, and any Access Channel added hereunder provided such programming is Noncommercial and is educational or governmental in nature.

6(a)(4) If, during the terms of this Franchise Agreement, the Franchisee opts to convert its Cable System to an all digital platform, and thus, provide all Channels as digital Channels and no longer offer an analog tier of Cable Service to Subscribers, Franchisee shall (i) give the City at least one hundred twenty (120) days prior written notice of such digital conversion, and (ii) replace, if necessary, any equipment that must be replaced in order to ensure the analog Access Channel programming and signals will be compatible with Franchisee's all digital platform.

6(a)(5) If Channels are selected through a menu system, the Access Channels shall be available for selection.

6(a)(6) Existing Government Access Channel assignments shall not be changed without advance written notice of such change to the City. However, in any event, the Government Access Channel(s) shall not be moved from the Basic Tier. If the Franchisee desires to change the Channel designation for an Access Channel, the Franchisee must provide at least thirty (30) days notice to the City prior to implementing the change, and shall reimburse the City for any actual reasonable costs incurred as a result thereof, up to a maximum total of One Thousand Five Hundred Dollars (\$1,500). The Franchisee shall undertake reasonable efforts to promote and advertise on the System any such Access Channel relocation.

6(a)(7) The Franchisee shall carry Access Channel signals in their entirety, and shall deliver such signals to Subscribers so that they are viewable by the Subscriber, without the need to purchase or rent any additional equipment specifically necessary only to receive Access Channels.

6(a)(8) City reserves the right pursuant to this Section 6 to require Franchisee to collect from Subscribers and remit to the City a per Subscriber fee of up to ten cents (10¢) per month ("EG Access Capital Fee"), for the sole purpose of supporting EG Access programming. The City must request that the Franchisee begin collecting the EG Access Capital Fee within the first four (4) years from the Effective Date of this Franchise and the collection of the EG Access Capital Fee shall continue until such time as (i) the City provides notice to the Franchisee to stop collecting such fee or (ii) the expiration of the term of the Franchise, whichever occurs first. In the event the City does not request an EG Access Capital Fee pursuant to this Section 6(a)(8) within the first four (4) years from the Effective Date, Franchisee shall not be subject to this requirement for the remaining term of the Franchise. The EG Access Capital Fee shall not be deemed "Franchise Fees" within the meaning of Section 622 of the Cable Act (47 U.S.C. Section

542).

6(b) *Free Service Drops to Certain Facilities:* The Franchisee shall provide free “Basic” and “Expanded Basic” tier Cable Service, and free installation of one (1) outlet to each public library and accredited K through 12 public and private schools, not including “homeschools” as well as each City occupied government building located in the Franchise Area within one hundred twenty-five (125) feet of the Franchisee’s existing distribution cables as of the Effective Date of this Franchise.

6(b)(1) Such facilities shall receive substantially the same service response timing as Subscribers are entitled to receive.

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

6(b)(3) Upon request of the City, and Franchisee approval which shall not be unreasonably withheld, additional drops and/or outlets will be installed at City-designated City facilities at no cost to the City. Alternatively, at the City’s election, said institutions may add outlets at their own expense, as long as the installation of such outlets meets FCC and Franchisee’s standards. The Franchisee shall have three (3) months from the date of City designation of additional institution(s) to complete construction of the Drop and outlet, unless weather or other conditions beyond the control of the Franchisee require more time.

7. FRANCHISE FEE.

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

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

7(c) *Late Payments:* In the event any Franchise fee payment or re-computation amount is not made on or before the required date, the Franchisee shall pay additional compensation and charges computed from such due date at an annual rate equal to one percent (1%) per month or any portion thereof of the unpaid amount.

7(d) *Audit:* All amounts paid shall be subject to audit or review by the City and acceptance of any payment shall not be construed as an accord that the amount paid is in fact the correct amount, provided, however, that any such audit/review shall take place within three (3) years from the date the City accepts any such payment, after which period any such payment shall be considered final. The Franchisee shall be responsible for providing the City all the necessary records to confirm the accurate payment of Franchise fees. The Franchisee shall maintain such records for five (5) years. Upon completion of any such audit/review by the City, the City shall provide to the Franchisee in writing a final audit/review report, which sets forth the City's findings in detail, including, upon request any and all substantiating evidence. The Franchisee shall have thirty (30) days from receipt of the audit/review report to provide the City with a written response to the audit/review report. In the event both parties agree upon a "Final Settled Amount" due to the City as a result of such audit/review, such Final Settled Amount shall be paid to the City within thirty (30) days from receipt of written notice of the Final Settlement Amount from the City. For purposes of this subsection, the term "Final Settled Amount" shall mean the agreed upon underpayment, if any, to the City by the Franchisee as a result of such audit/review. In the event the parties do not agree on the amount of any underpayment of

Franchise fees discovered as a result of an audit/review, both parties reserve all of their rights under this Franchise Agreement and applicable law. The City's audit/review expenses shall be borne by the City, unless the Final Settled Amount is an underpayment to the City by more than five percent (5%) in the audit/review period, in which case the costs of the audit/review shall be borne by the Franchisee as a cost incidental to the enforcement of the Franchise. If an audit/review determines that there has been an overpayment of Franchise fees by the Franchisee, the Franchisee may credit any overpayment against its next quarterly Franchise fee payment.

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

7(e)(1) Nothing in this Agreement shall be construed to limit any authority of the City, subject to federal and state law, to impose any tax, fee, or assessment of general applicability, including, but not limited to, street cut fees.

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

8. SALE OR TRANSFER OF FRANCHISE.

8(a) No sale or transfer of or change in control of the Franchise, or Franchisee shall take place until a written request has been filed with the City requesting approval of the sale, transfer or change of control and such approval has been granted or deemed granted; provided, however,

that said approval shall not be required in the event of a mortgage, transfer in trust, hypothecation, or assignment of any rights, title or interest of Franchisee (or any parent or Affiliate) in the Franchise or in the Cable System in order to secure indebtedness; nor shall approval be required if Franchisee undertakes or is subject to changes to the corporate or partnership structures or ownership among or between its Affiliates, provided there is no change in the controlling interests which materially alter the financial responsibilities for the Franchisee. In any event, Franchisee will use reasonable efforts to notify the City of any such change.

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

8(c) The Franchisee shall file its request for approval of transfer utilizing FCC Form 394 Application for Consent of Change of Control which reflects the financial, legal and technical qualifications of transferee.

8(d) The City shall be reimbursed for all the actual reasonable out-of-pocket legal, administrative (including the value of any services rendered by the City Attorney or City staff or employees), and consulting costs and fees associated with the City's review of any request to transfer, not to exceed Three Thousand Dollars (\$3,000) and will be paid by the transferee.

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

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

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

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

9. REPORTS AND RECORDS.

9(a) *Open Books and Records:*

9(a)(1) The City shall have the right to inspect, upon prior written notice to the Franchisee, during Regular Business Hours at the Cable System office of the Franchisee, all books, strand and trench maps, financial information, service complaint logs, records of requests for service, and other like material, which are relevant and necessary in order to monitor compliance with the terms of this Agreement, or applicable law. This includes not only the books and records of the Franchisee, but any books and records of the Franchisee's Cable System regardless of by whom such records are maintained. If any such records are available in electronic format, the Franchisee may make those records available to City in electronic format, subject to other restrictions of this section regarding relevancy and protection from public disclosure.

9(a)(2) The Franchisee shall maintain financial records that allow analysis and review of its operations in the City. Franchisee agrees to maintain its books and records in accordance with generally accepted accounting principles (GAAP).

9(a)(3) The Franchisee shall maintain a file of records open to public inspection in accordance with applicable FCC rules and regulations.

9(a)(4) The Franchisee shall file with the City Engineer, if he so requests, such maps as he may need of the location of cable services within the City.

9(b) *Communication with Regulatory Agencies.*

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

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

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

9(b)(2)(B) a summary of complaints within the City, identifying both the number and nature of the complaints received and an explanation of their dispositions.

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

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

9(b)(2)(E) the Franchisee's policies regarding AB switches;

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

9(b)(2)(G) A summary of all new cable service connections made available to the City within the year; and

9(b)(2)(H) A summary of minority business policies, if required by generally applicable City laws.

9(c) *Telephone Answering Reports:* The Franchisee, upon written request from the City, will report customer service-related data on a Chattanooga area specific basis.

9(d) *Additional Reports:* The Franchisee shall cooperate with the City to provide such additional reports with respect to the operation of the system, as may be reasonably necessary or appropriate to determine Franchisee's compliance under this Agreement.

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

9(f) *Retention of Records; Relation to Privacy Rights:* The Franchisee shall take all steps that may be required to ensure that it is able to provide the City all information which must be provided or may be requested under this Agreement, including the provision of appropriate Subscriber privacy notices. Nothing in this Section shall be read to require the Franchisee to violate 47 U.S.C. § 551. The Franchisee shall be responsible for redacting any data that federal or state law prevents it from providing to the City. The City retains the right to question any such redaction and to challenge it in any forum having jurisdiction over such a challenge. Records shall be kept for at least five (5) years.

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

10. INSURANCE, SURETY, AND INDEMNIFICATION.

10(a) *Insurance Required:*

10(a)(1) The Franchisee shall maintain, and by its acceptance of the Franchise specifically agrees that it will maintain, throughout the entire length of the Franchise period, at least the following insurance coverages: workers' compensation and employer liability insurance or alternative self insurance to meet all requirements of Tennessee law; liability insurance which

names the City as an additional insured, covering errors and omissions and negligent acts and other operations of the Franchisee; and comprehensive general liability insurance with respect to the construction, operation, and maintenance of the Cable System, and the conduct of the Franchisee's business in the City, in the minimum amounts of:

10(a)(1)(A) One Million Dollars (\$1,000,000) for bodily injury or death to any one person , and One Million Dollars (\$1,000,000) for bodily injury or death of any two or more persons resulting from one occurrence, and One Million Dollars (\$1,000,000,000) for property damage resulting from any one accident.

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

10(a)(1)(B) The Franchisee shall provide Certificates of Insurance with respect to the required insurance to the City's Risk Manager.

10(a)(1)(C) The insurance policy and bonds obtained by the Franchisee in compliance with this Franchise must be filed and maintained with the City's Risk Manager during the term of this Franchise.

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

10(c) *Certificates of Insurance:* The Franchisee shall keep on file with the City copies of certificates of insurance reflecting coverage in compliance with Section 10(a), above and which shall specify as additional insureds all classes of people designated in section 10(d), below.

Franchise shall provide upon written request and upon reasonable basis the opportunity for reasonable review by City of insurance policy endorsements required herein.

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

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

10(f) *Indemnification:*

10(f)(1) The Franchisee shall, at its sole cost and expense, indemnify, hold harmless, and defend the City, its elected and appointed officials, officers, boards, commissions, commissioners, agents, and employees, against any and all claims, suits, causes of action (whether frivolous or otherwise), proceedings, and judgments for damages or equitable relief arising out of the Franchisee's exercise of its rights under this Franchise or out of the construction, maintenance, or operation of the Franchisee's Cable System provided that the City shall give Franchisee written notice of the claim within ten (10) business days of receipt of a claim or action pursuant to this Section 10(f)(1).

10(f)(2) The Franchisee shall also fully indemnify, defend, and hold harmless the City, and its elected and appointed officials, officers, boards, commissions, commissioners, employees and agents from and against any and all claims, suits, or causes of action of any kind or nature, and the resulting losses, costs, expenses and reasonably necessary attorneys' fees, orders,

decrees, liabilities and judgments, whether for damages or otherwise, subject to 47 U.S.C. § 558, arising out of or alleged to arise out of any claim against the Franchisee for invasion of the right of privacy, defamation of any Person, firm or corporation, or the violation or infringement of any copyright, trade mark, trade name, service mark, or patent, or of any other right of any Person, firm, or corporation. This indemnity does not apply to programming carried on any Channel utilized for educational or governmental access purposes.

10(f)(3) The indemnity provisions of this Section include, but are not limited to, the City's reasonable and reasonably necessary attorneys' fees incurred in defending against any covered claims, suits, actions or proceedings.

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

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

10(f)(6) Nothing in this Agreement shall be construed to waive the tort or any other immunity, limitation of action, limitation of judgment or applicable defense, including the Tennessee governmental Tort Liability Act, T.C.A. § 29-20-101, *et seq.*, of the City or Franchisee, and their elected and appointed officials, officers, boards, commissions, commissioners, agents and employees under this Agreement.

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

11. PERFORMANCE GUARANTEES AND REMEDIES.

11(a) *Performance Bond:* On the Effective Date of this Franchise, the Franchisee shall obtain and maintain during the entire term of the Franchise, and any renewal or extensions thereof, except as provided in Section 11(a)(3) below, a performance bond in the City's favor in the amount of Fifty Thousand Dollars (\$50,000.00) to ensure the Franchisee's faithful performance of its obligations.

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

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

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

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

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

11(a)(3) Upon written application by the Franchisee, the City may, at its sole option, in writing, permit the amount of the bond to be reduced or waive the requirements for a performance bond. Reductions granted or denied upon application by the Franchisee shall be

without prejudice to the Franchisee's subsequent applications or to the City's right to require the full bond at any time thereafter. However, no application shall be made by the Franchisee within one (1) year of any prior application.

11(b) *Reservation of Rights:*

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

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

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

11(b)(4) Nothing in this Franchise Agreement shall be interpreted to prohibit City or any entity of the City from publishing audio, video or text Access Channel programming on or in its own media, including but not limited to its own web site on the World Wide Web.

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

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

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

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

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

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

11(e) *Liquidated Damages:* Because it may be difficult to calculate the harm to the City in the event of a breach of this Franchise Agreement by Franchisee, the parties agree to liquidated damages as a reasonable estimation of the actual damages. To the extent that the City elects to assess liquidated damages as provided in this Agreement and such liquidated damages have been paid, such damages shall be the City's sole and exclusive remedy. Nothing in this Section is intended to preclude the City from exercising any other right or remedy with respect to a breach that continues past the time the City stops assessing liquidated damages for such breach.

11 (e)(1) Prior to assessing any liquidated damages, the City shall mail to the Franchisee a written notice by certified or registered mail of the alleged violation and the proposed liquidated damage, specifying the violation at issue. The Franchisee shall have forty-

five (45) days from the date of receipt of the written notice to cure or commence to cure, as is appropriate depending on the nature of the alleged violation, or to file a written response refuting the alleged violation or explaining why additional time for cure is necessary. In the case of breaches of requirements measured on a monthly, quarterly or longer period (such as customer service standards), Franchisee's cure period shall be no less than one such period.

11 (e)(2) The City may not assess any liquidated damage if the Franchisee has reasonably responded to the complaint or cured or commenced to cure, as may be appropriate, the violation within a reasonable time frame not to exceed forty-five (45) days following receipt of written notice from the City, unless some other cure period is approved by the City. In the event Franchisee fails to cure or commence to cure, or fails to refute the alleged breach, the City may assess liquidated damages and shall inform Franchisee in writing of the assessment. Franchisee shall have thirty (30) days to pay the damages.

11(e)(3) The first day for which liquidated damages may be assessed, if there has been no cure after the end of the applicable cure period, shall be the day after the end of the applicable cure period, including any extension of the cure period granted by the City.

11 (e)(4) Franchisee may appeal (by pursuing judicial relief or other relief afforded by the City) any assessment of liquidated damages within thirty (30) days of receiving written notice of the assessment. Franchisee's obligation to pay the liquidated damages assessed shall be stayed pending resolution of the appeal.

11 (e)(5) In no event may liquidated damages be assessed for a time period exceeding one hundred twenty (120) days. If after that amount of time Franchisee has not cured or commenced to cure the alleged breach to the satisfaction of the City, the City may pursue all other remedies.

11(e)(6) For failure to submit any required plans indicating expected dates of installation of various parts of the System: Fifty Dollars (\$50) per day for each violation for each day the violation continues;

11(e)(7) For failure to continue operations in accordance with the requirements of this Agreement: Fifty Dollars (\$50) per day for each violation for each day the violation continues;

11(e)(8) For failure to comply with requirements for educational and governmental use of the System: Fifty Dollars (\$50) per day for each violation for each day the violation continues, in addition to any monetary payment due under this Agreement;

11(e)(9) For failure to supply information, reports, or filings lawfully required under the Franchise Agreement or applicable law or by the City: Fifty Dollars (\$50) for each violation for each day the violation continues.

11(e)(10) For violation of customer service standards other than those covered by 11(e)(11): Fifty Dollars (\$50) per violation or per day, as applicable;

11(e)(11) For failure to render payment for reimbursement of any Franchise expenses or failure to pay Franchise fees: Fifty Dollars (\$50) per day, in addition to any monetary payment due under this Agreement;

11(e)(12) For failure to file, obtain or maintain any required insurance or performance bond in a timely fashion: Fifty Dollars (\$50) per day;

11(e)(13) For violation of technical standards established by the FCC: Fifty Dollars (\$50) per day;

11(e)(14) For any other violations for which actual damages may not be ascertainable: Fifty Dollars (\$50) per day for each violation for each day the violation continues; and

11(e)(15) For failure to comply with quarterly customer service requirements: Fifty Dollars (\$50) per day for each quarterly violation.

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

11(f) *Shortening, Revocation, or Termination of Franchise:* The City shall have the right, subject to the provisions of this Agreement, to revoke the Franchise or to shorten the term of the Franchise to a term not less than thirty-six (36) months from the date of the action shortening the Franchise term, for the Franchisee's material failure to construct, operate, or maintain the Cable System as required by this Franchise Agreement; for defrauding or attempting to defraud the City or Subscribers, as determined by a court of competent jurisdiction; or for any other material breach of this Agreement or material violation of this Agreement for which there is not a draw on the performance bond.

11(g) *Due Process:*

11(g)(1) To pursue remedies under this Agreement, including, but not limited to, revocation shortening the Franchise, or utilization of the performance bond, the City shall first give the Franchisee written notice of the alleged default in its performance. Within forty-five (45) calendar days following such certified written notice from the City to the Franchisee, or such other period as the Franchisee and the City shall agree, the Franchisee has not a) responded to the City, contesting the assertion of noncompliance, b) cured the alleged default, or c) in the event that, by nature of alleged default, such default cannot be cured within the forty-five (45) day period, initiate reasonable steps to remedy such alleged default and notify the City of the steps being taken and the projected date that they will be completed. The City shall give written notice to the Franchisee of default and its intent to pursue such remedies and identify the remedies sought.

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

11(g)(3) Prior to determination of default, the City shall hold a public hearing, on at least thirty (30) days' prior written notice, at which time the Franchisee and the public shall be given a reasonable opportunity to be heard and to present evidence. Following the public hearing, the City shall make its decision based on the information and evidence presented at the hearing, and other information of record, or, where applicable, grant additional time to the Franchisee to effect any cure. If the City determines that a default has occurred and determines to impose any liquidated damage or invoke any other remedy herein, it shall issue a written decision setting forth in reasonable detail the reasons for its decision. A copy of such decision shall be transmitted to the Franchisee, either by hand delivery or by certified mail, return receipt requested. The Franchisee may appeal such decision to any tribunal of competent jurisdiction. Nothing in this section shall limit the Franchisee's rights to seek any other review of any decision by the City in any tribunal of competent jurisdiction beyond the means for such review provided herein.

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

11(g)(4)(A) The City may require the Franchisee to remove its facilities and equipment at the Franchisee's expense and restore affected sites as required herein. If the Franchisee fails to remove its facilities and equipment within a reasonable period of time, but not

less than eighteen (18) months, the City may have the removal done at the Franchisee's and/or surety's expense. The City will not be liable to the Franchisee for damages resulting from such removal.

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

11(g)(5) The Franchise Agreement may, at the option of the City following a public hearing, be revoked by the City one hundred twenty (120) calendar days after an assignment for the benefit of creditors or the appointment of a receiver or trustee to take over the business of the Franchisee, whether in a receivership, reorganization, bankruptcy assignment for the benefit of creditors or other action or proceeding, unless within that one hundred twenty (120) day period:

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

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

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

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

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

12. MISCELLANEOUS PROVISIONS.

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

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

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

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

12(e) *Force Majeure*: The Franchisee shall not be deemed in default under, or in noncompliance with the provisions of this Franchise Agreement nor suffer any enforcement or penalty relating to noncompliance or default (including termination, cancellation or revocation of the Franchise) where such noncompliance or alleged defaults occurred or were caused by war or riots, labor strikes or civil disturbances, floods, or other causes beyond the Franchisee's control, failure of utility service necessary to operate the Cable System, or other event that is reasonably beyond the Franchisee's ability to anticipate or control. This provision also covers work delays caused by waiting for utility providers to service or monitor their own utility poles on which the Franchisee's cable and/or equipment is attached, as well as unavailability of materials and/or qualified labor to perform the work necessary and the Franchise Agreement shall not be revoked or the Franchisee penalized for such noncompliance, provided that the Franchisee takes immediate and diligent steps to bring itself back into compliance and to comply as soon as practicable under the circumstances with the Franchise Agreement without unduly endangering the health, safety, and integrity of the Franchisee's employees or property, or the health, safety, and integrity of the public, Public Rights-of-Way, public property, or private property.

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

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

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

The Electric Power Board of the City of Chattanooga, Tennessee
P.O. Box 182255, 10 West M.L. King Boulevard
Chattanooga, TN 37422

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

City of Chattanooga
Attn: Mayor's Office
City Hall
101 East 11th Street
Chattanooga, Tennessee 37402

With a copy to: City Attorney
801 Broad Street, Suite 400
Chattanooga, TN 37402

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

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

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

12(i) *Captions and References:*

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

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

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

agrees to abide by all such applicable laws and regulations, subject to the provisions of the Franchise Agreement.

SECTION 2. BE IT FURTHER ORDAINED, That this Ordinance shall take effect immediately after its passage.

PASSED on Second and Final Reading

November 18, 2008.


CHAIRPERSON

APPROVED: DISAPPROVED:

DATE: 11-24, 2008


MAYOR

RLN/add

ACCEPTANCE

The foregoing Franchise and its terms and conditions are hereby accepted.

This the 1st day of December, 2008.

The Electric Power Board of Chattanooga,
an Independent Board of the City of Chattanooga, Tennessee

By: 

WITNESS:

