

**COMCAST OF COLORADO I, LLC AND  
THE TOWN OF ERIE, COLORADO**

**CABLE FRANCHISE AGREEMENT**

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**COMCAST OF COLORADO I, LLC AND  
THE TOWN OF ERIE, COLORADO  
CABLE FRANCHISE AGREEMENT**

**SECTION 1. DEFINITIONS**

For the purposes of this Franchise, the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural. Words not defined shall be given their common and ordinary meaning. The word “shall” is always mandatory and not merely directory.

1.1 “Access” means the availability for noncommercial use by various agencies, institutions, organizations, groups and individuals in the community, including the Town and its designees, of the Cable System to acquire, create, receive, and distribute video Cable Services and other services and signals as permitted under applicable law including, but not limited to:

a. “Public Access” means Access where community-based, noncommercial organizations, groups or individual members of the general public, on a nondiscriminatory basis, are the primary users.

b. “Educational Access” means Access where schools are the primary users having editorial control **over** programming and services. For purposes of this definition, “school” means any State-accredited educational institution, public or private, including, for example, primary and secondary schools, colleges and universities.

c. “Government Access” means Access where governmental institutions or their designees are the primary users having editorial control over programming and services.

1.2 “Access Channel” means any Channel, or portion thereof, designated for Access purposes or otherwise made available to facilitate or transmit Access programming or services.

1.3 “Activated” means the status of any capacity or part of the Cable System in which any Cable Service requiring the use of that capacity or part is available without further installation of system equipment, whether hardware or software.

1.4 “Administrator” means the Town Administrator of the Town, or his designee.

1.5 “Affiliate,” when used in connection with Grantee, means any Person who owns or controls, is owned or controlled by, or is under common ownership or control with, Grantee.

1.6 “Agents” means a person who has a contract with the Town authorizing him or her to perform specific duties directly related to grant or denial of this Franchise, including renewals or

Franchise or Grantee's performance of the duties of this Franchise when they are acting within the scope of their authority.

1.7 "Bad Debt" means amounts lawfully billed to a Subscriber and owed by the Subscriber for Cable Service and accrued as revenues on the books of Grantee, but not collected after reasonable efforts have been made by Grantee to collect the charges.

1.8 "Basic Service" means any Cable Service Tier that includes, at a minimum, the retransmission of local television Broadcast Signals.

1.9 "Board of Trustees" or "Town Board" means the Board of Trustees of the Town of Erie, the governing body of the Town.

1.10 "Broadcast Signal" means a television or radio signal transmitted over the air to a wide geographic audience, and received by a Cable System by antenna, microwave, satellite dishes or any other means.

1.11 "Cable Act" means the Title VI of the Communications Act of 1934, as amended.

1.12 "Cable Internet Service" means any Cable Service offered by Grantee whereby Persons receive access to the Internet through the Cable System.

1.13 "Cable Operator" means any Person or groups of Persons, including Grantee, who provide(s) Cable Service over a Cable System and directly or through one or more affiliates owns a significant interest in such Cable System or who otherwise control(s) or is (are) responsible for, through any arrangement, the management and operation of such a Cable System.

1.14 "Cable Service" means the one-way transmission to Subscribers of Video Programming or other programming service, and Subscriber interaction, if any, which is required for the selection or use of such Video Programming or other programming service.

In a Declaratory Ruling and Notice of Proposed Rulemaking released March 1.5, 2002, the FCC stated that cable modem service is not a cable service under the Communications Act of 1934, as amended, and initiated a rulemaking to, among other things, examine the State's and local government's authority to regulate cable modem service and the scope of the FCC's jurisdiction to regulate cable modem service. If the FCC's ruling that cable modem service is not a cable service is modified in a final, non-appealable decision by the FCC or a court of competent jurisdiction to the extent that cable modem service is determined to be within the jurisdiction of a local franchising authority and a cable service, then the definition of Cable Service shall include Cable Internet Service.

1.15 "Cable System" means any facility, including Grantee's, consisting of a set of closed transmissions 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 a community, but such term does not include (A) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (B) a facility that serves Subscribers without using any Right-of-Way; (C) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the federal Communications Act (47 U.S.C. 201 et seq.), except that such facility shall be considered a Cable System (other than for purposes of Section 621(c) (47 U.S.C. 541(c)) 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; (D) an open video system that complies with federal statutes; or (E) any facilities of any electric utility used solely for operating its electric utility systems.

1.16 “Channel” means a portion of the electromagnetic frequency spectrum which is used in the Cable System and which is capable of delivering Video Programming on a twenty-four (24) hour per day basis.

1.17 “Commercial Subscribers” means any Subscribers other than Residential Subscribers.

1.18 “Customer Service Standards” means the Customer Service Standards adopted by the Town pursuant to Section 6.1.

1.19 “Demarcation Point” means the patch panel, termination block or other termination device provided by the Grantee, located within each *I-Net* site, which represents the interface between the I-Net and the Qualified I-Net User’s local network or end user electronics. In all cases the Demarcation Point will be clearly marked as such by Grantee, and will provide an identifiable interface for the end user electronics.

1.20 “Designated Access Provider” means the entity or entities designated now or in the future by the Town to manage or co-manage Access Channels and facilities. The Town may be a Designated Access Provider.

1.21 “Downstream” means carrying a transmission from the Headend to remote points on the Cable System or to Interconnection points on the Cable System.

1.22 “Dwelling Unit” means any building, or portion thereof, that has independent living facilities, including provisions for cooking, sanitation and sleeping, and that is designed for residential occupancy. Buildings with more than one set of facilities for cooking shall be considered Multiple Dwelling Units unless the additional facilities are clearly accessory.

1.23 “Expanded Basic Service” means the Tier of optional Video Programming, which is the level of Cable Service received by most Subscribers above Basic Service, and does not include Premium Services.

1.24 “FCC” means the Federal Communications Commission.

1.25 “Fiber Optic” means a transmission medium of optical fiber cable, along with all associated electronics and equipment, capable of carrying Cable Service by means of electric lightwave impulses.

1.26 “Franchise” means the document in which this definition appears, *i.e.*, the contractual agreement, executed between the Town and Grantee, containing the specific provisions of the authorization granted, including references, specifications, requirements and other related matters.

1.27 “Franchise Area” means the area within the jurisdictional boundaries of the Town, including any areas annexed by the Town during the term of this Franchise.

1.28 “Franchise Fee” means the fee payable to the Town as described in subsection 3.1.

1 . “GAAP” means generally accepted accounting principles.

1.30 “Grantee” means Comcast of COLORADO I, LLC, or its lawful successor, transferee or assignee.

1.31 “Gross Revenues” means any and all revenue received by the Grantee, or by any other entity that is a Cable Operator of the Cable System including Grantee’s Affiliates, from the operation of the Grantee’s Cable System to provide Cable Services. Gross Revenues include, by way of illustration and not limitation, monthly fees charged Subscribers for Basic Service; any expanded Tiers of Cable Service; optional Premium Services; installation, disconnection, reconnection and change-in-service fees; Leased Access Channel fees; remote control rental fees; all Cable Service lease payments from the Cable System, late fees and administrative fees; fees, payments or other consideration received by the Grantee from programmers for carriage of programming on the Cable System and accounted for as revenue under GAAP; revenues from rentals or sales of converters or other Cable System equipment; advertising revenues; the fair market value of consideration received by the Grantee for use of the Cable System to provide Cable Service and accounted for as revenue under GAAP; revenues from program guides; revenue from data transmissions to the extent these transmissions are considered Cable Services under federal law; additional outlet fees; franchise fees; revenue from interactive services to the extent they are considered Cable Services under federal law; revenue from the sale or carriage of other Cable Services; and revenue from home shopping, bank-at-home Channels and other revenue-sharing arrangements. Gross Revenues shall include revenue received by any entity other than the Grantee where necessary to prevent evasion or avoidance of the obligation under this Franchise to pay the franchise fees. Gross Revenues shall not include (i) to the extent consistent with GAAP, Bad Debt; provided, however, that all or part of any such Bad Debt that is written off but subsequently collected shall be included in Gross Revenues in the period collected; (ii) the Capital Contribution specified in subsection 9.1; or (iii) any taxes on services furnished by the Grantee which are imposed directly on any Subscriber or user by the State, Town or other governmental unit and which are collected by the Grantee on behalf of said governmental unit. The franchise fee is not such a tax.



The parties intend for the definition of Gross Revenues to be as inclusive as possible consistent with existing applicable law. If there is a change in federal law subsequent to the Effective Date of this Franchise, such change shall not impact this Gross Revenues definition unless the change specifically preempts the affected portion of the definition above.

1.32 “Headend” means any facility for signal reception and dissemination on a Cable System, including cables, antennas, wires, satellite dishes, monitors, switchers, modulators, processors for Broadcast Signals, equipment for the Interconnection of the Cable System with adjacent Cable Systems and Interconnection of any networks which are part of the Cable System, and all other related equipment and facilities.

1.33 “Hub” means an intermediary exchange point in the signal distribution portion of the Cable System, located between the Headend and the Nodes.

1.34 “Interconnect” or “Interconnection” means the linking of Grantee’s Cable System with another Cable System, including technical, engineering, physical, financial and other necessary components to accomplish, complete and adequately maintain such linking, in a manner that permits the transmission and receiving of electronic or optical signals between the Cable System and other cable system; or the necessary components to accomplish, complete and adequately maintain pathways that permit the transmission and receiving of electronic or optical signals between locations connected to portions of the Cable System outside the Franchise Area and those portions of the Cable System inside the Franchise Area.

1.35 “Leased Access Channel” means any Channel or portion of a Channel commercially available for programming by Persons other than Grantee, for a fee or charge.

1.36 “Node” means an exchange point in the signal distribution system portion of the Cable System, where optical signals are converted to RF signals.

1.37 “Person” means any individual, sole proprietorship, partnership, association, or corporation, or any other form of entity or organization.

1.38 “Premium Service” means programming choices (such as movie Channels, pay-per-view programs, or video on demand) offered to Subscribers on a per-Channel, per-program or per-event basis.

1.39 “Residential Subscriber” means any Person who receives Cable Service delivered to Dwelling Units or Multiple Dwelling Units, excluding such Multiple Dwelling Units billed on a bulk-billing basis.

1.40 “Right-of-Way” means each of the following which have been dedicated to the public or are hereafter dedicated to the public and maintained under public authority or by others and located within the Town: streets, roadways, highways, avenues, lanes, alleys, bridges, sidewalks, easements, rights-of-way and similar public property and areas.

1.41 “Standard Drop” means an aerial connection extending no more than one hundred twenty-five (125) feet from the potential Subscriber’s demarcation point to the point on the Cable System from which Cable Service can be provided to that Subscriber.

1.42 “State” means the State of Colorado.

1.43 “Subscriber” means any Person who lawfully receives Cable Service from the Grantee’s Cable System.

1.44 “Telecommunications” means the transmission, between or among points specified by the user, of information of the user’s choosing, without change in the form or content of the information as sent and received (as provided in 47 U.S.C. Section 153(43)).

1.45 “Telecommunications Service” means the offering of Telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used (as provided in 47 U.S.C. Section 153(46)).

1.46 “Tier” means a group of Channels for which a single periodic subscription fee is charged.

1.47 “Town” is the Town of Erie, Colorado, a body politic and corporate under the laws of the State of Colorado, and all of the area within its boundaries, as such may change from time to time.

1.48 “Two-Way” means that the Cable System is capable of providing both Upstream and Downstream transmissions.

1.49 “Upgrade” means major improvements to the Cable System.

1.50 “Upstream” means carrying a transmission to the Headend from remote points on the Cable System or from Interconnection points on the Cable System.

1.51 “Video Programming” means programming provided by, or generally considered comparable to programming provided by, a local television Broadcast Signal.

## **SECTION 2. GRANT OF FRANCHISE**

### **2.1 Grant**

(A) The Town hereby grants to Grantee a nonexclusive authorization to make reasonable and lawful use of the Rights-of-Way within the Town to construct, operate, maintain, upgrade and rebuild as necessary a Cable System for the purpose of providing Cable Service subject to the terms and conditions set forth in this Franchise and in any prior utility or use agreements entered into with regard to any individual property. This Franchise shall constitute both a right and an obligation to provide the Cable Services required by, and to fulfill the obligations set forth in, the provisions of this Franchise.

(B) Nothing in this Franchise shall be deemed to waive the lawful requirements of any generally applicable Town ordinance existing as of the Effective Date, as defined in subsection 2.2 (A).

(C) Each and every term, provision or condition herein is subject to the provisions of State law, federal law, the Charter of the Town, and the ordinances and regulations enacted pursuant thereto. The Charter of the Town, as the same may be amended from time to time, is hereby expressly incorporated into this Franchise as if fully set out herein by this reference. Notwithstanding the foregoing, the Town may not unilaterally alter the material rights and obligations of Grantee under this Franchise.

(D) This Franchise shall not be interpreted to prevent the Town from imposing additional lawful conditions, including additional compensation conditions for use of the Rights-of-Way, should Grantee provide service other than Cable Service.

(E) Grantee promises and guarantees, as a condition of exercising the privileges granted by this Franchise, that any Affiliate of the Grantee directly involved in the offering of Cable Service in the Franchise Area, or directly involved in the management or operation of the Cable System in the Franchise Area, will also comply with the terms and conditions of this Franchise.

(F) No rights shall pass to Grantee by implication. Without limiting the foregoing, by way of example and not limitation, this Franchise shall not include or be a substitute for:

(1) Any other permit or authorization of general applicability required for the privilege of transacting and carrying on a business within the Town that may be required by the ordinances and laws of the Town;

(2) Any permit, agreement, or authorization of general applicability required by the Town for Right-of-Way users in connection with operations on or in Rights-of-Way or public property including, by way of example and not limitation, street cut permits; or

(3) Any permits or agreements of general applicability for occupying any other property of the Town or private entities to which access is not specifically granted by this Franchise including, without limitation, permits and agreements for placing devices on poles, in conduits or in or on other structures.

(G) This Franchise is intended to convey limited rights and interests only as to those Rights-of-Way in which the Town has an actual interest. It is not a warranty of title or interest in any Right-of-Way; it does not provide the Grantee with any interest in any particular location within the Right-of-Way; and it does not confer rights other than as expressly provided in the grant hereof.

(H) This Franchise does not authorize, prohibit or condition Grantee's provision of Telecommunications Service in the Franchise Area. This Franchise is not a bar to imposition of any lawful conditions on Grantee with respect to Telecommunications, whether similar, different or the same as the conditions specified herein. This Franchise does not relieve Grantee of any obligation it may have to obtain from the Town any such authorizations that may be lawfully required in order to provide Telecommunications Services, or to construct, operate or maintain Telecommunications facilities.

## 2.2 Effective Date and Term of Franchise

(A) This Franchise and the rights, privileges and authority granted hereunder shall take effect on May 21, 2004 (the "Effective Date"), and shall terminate in fifteen years on May 20, 2019, unless terminated sooner or extended as hereinafter provided.

(B) The grant of this Franchise shall have no effect on the Grantee's duty under the prior franchise agreement or any ordinance in effect prior to the Effective Date of this Franchise to indemnify or insure the Town against acts and omissions occurring during the period that the prior franchise agreement was in effect.

## 2.3 Franchise Nonexclusive

This Franchise shall be nonexclusive, and subject to all prior rights, interests, easements or licenses granted by the Town to any Person to use any Right-of-Way or other public property for any purpose whatsoever, including the right of the Town to use same for any purpose it deems fit, including the same or similar purposes allowed the Grantee hereunder. The Town may at any time grant authorization to use the Rights-of-Way for any purpose not incompatible with Grantee's authority under this Franchise, including additional Franchises for Cable Systems, open video systems, or other providers of Video Programming as the Town deems appropriate; provided, however, that such additional grants shall not contain terms and conditions, which in the reasonable discretion of a disinterested third party, are materially more favorable or less burdensome than those granted to Grantee herein.

## 2.4 Police Powers

(A) Grantee's rights hereunder are subject to the police powers of the Town to adopt and enforce ordinances necessary to the safety, health, and welfare of the public, and Grantee agrees to comply with all laws and ordinances of general applicability enacted, or hereafter enacted, by the Town or any other legally constituted governmental unit having lawful jurisdiction over the subject matter hereof. The Town shall have the right to adopt, from time to time, such ordinances as may be deemed necessary in the exercise of its police power; provided that such ordinances shall be reasonable and not destructive of the rights granted in this Franchise.

(B) The Town reserves the right to exercise its police powers, notwithstanding anything in this Franchise to the contrary, and any conflict between the provisions of this

Franchise and any other present or future lawful exercise of the Town's police powers shall be resolved in favor of the latter.

## **2.5 Familiarity with Franchise**

The Grantee acknowledges and warrants by acceptance of the rights, privileges and agreements granted herein, that it has carefully read and fully comprehends the terms and conditions of this Franchise and is willing to and does accept all lawful and reasonable risks of the meaning of the provisions, terms and conditions herein. The Grantee further acknowledges and states that it has fully studied and considered the requirements and provisions of this Franchise, and finds that the same are commercially practicable at this time.

## **2.6 Effect of Acceptance**

By accepting the Franchise, the Grantee: (1) acknowledges and accepts the Town's legal right to issue and enforce the Franchise; (2) accepts and agrees to comply with each and every provision of this Franchise subject to applicable law; and (3) agrees that the Franchise was granted pursuant to processes and procedures consistent with applicable law, and that it will not raise any claim to the contrary. Grantee shall not be required to pay Grantor fees and taxes on revenues from a particular service that is unduly discriminatory when compared to those services paid by other providers of the same service.

# **SECTION 3. FRANCHISE FEE PAYMENT AND FINANCIAL CONTROLS**

## **3.1 Franchise Fee**

(A) As compensation for the benefits and privileges granted under this Franchise and in consideration of permission to use the Town's Rights-of-Way, Grantee shall pay as a franchise fee to the Town, throughout the duration of this Franchise, an amount equal to five percent (5%) of Grantee's Gross Revenues. Accrual of such franchise fee shall commence as of the Effective Date of this Franchise.

(B) The Town recognizes that in the future, Grantee may allocate revenue between Cable Services (which are subject to the Franchise Fee) and non-Cable Services (which are not subject to the Franchise Fee but may be subject to other fees and/or taxes), when these two types of service are bundled together in a discounted package offered to Subscribers. In the event that the Town believes that Grantee has unlawfully, unfairly, or in violation of this Franchise allocated revenue between Cable Services and non-Cable Services for the purpose of calculating Franchise Fee payments, the Town and the Grantee shall meet upon advance notice from the Town to discuss the allocation methodology. If the Town and the Grantee cannot agree on the matter within a reasonable period of time, the Town and the Grantee shall submit the matter to a mutually agreeable third party for mediation. The cost of the mediation shall be shared equally between the Town and the Grantee. If the mediation is unsuccessful or if the Town and the Grantee are unable to mutually agree on a mediator, then either the Town or the Grantee can

bring the matter to a court of competent jurisdiction, or pursue any other remedies available to them in this Franchise or by law.

### **3.2 Payments**

Grantee's franchise fee payments to the Town shall be computed quarterly for the preceding calendar quarter ending March 31, June 30, September 30, and December 31. Each quarterly payment shall be due and payable no later than thirty (30) days after said dates.

### **3.3 Acceptance of Payment and Recomputation**

No acceptance of any payment shall be construed as an accord by the Town that the amount paid is, in fact, the correct amount, nor shall any acceptance of payments be construed as a release of any claim the Town may have for further or additional sums payable or for the performance of any other obligation of Grantee.

### **3.4 Quarterly Franchise Fee Reports**

Each payment shall be accompanied by a written report to the Town, verified by an authorized representative of Grantee, containing an accurate statement in summarized form, as well as in detail, of Grantee's Gross Revenues and the computation of the payment amount. Such reports shall detail all Gross Revenues of the Cable System and shall be drafted in accordance with GAAP.

### **3.5 Annual Franchise Fee Reports**

Grantee shall, within sixty (60) days after the end of each year, furnish to the Town a statement stating the total amount of Gross Revenues for the year and all payments, deductions and computations for the period. Such statement shall be audited by a certified public accountant, who may also be the chief financial officer or controller of Grantee, prior to submission to the Town.

### **3.6 Audits**

On an annual basis, upon thirty (30) days prior written notice, the Town, including the Town's Auditor or his/her authorized representative, shall have the right to conduct an independent audit of Grantee's records reasonably related to the administration or enforcement of this Franchise, in accordance with GAAP. If the audit shows that Grantee's franchise fee payments have been underpaid by five percent (5%) or more, Grantee shall pay the total cost of the audit, such cost not to exceed five thousand dollars (\$5,000) for each year of the audit period. The Town's right to audit and the Grantee's obligation to retain records related to a franchise fee audit shall expire three (3) years after each franchise fee payment has been made to the Town.

### **3.7 Late Payments**

In the event any payment due quarterly is not received within thirty (30) days from the end of the calendar quarter, Grantee shall pay interest on the amount due (at the prime rate as listed in the Wall Street Journal on the date the payment was due), compounded daily, calculated from the date the payment was originally due until the date the Town receives the payment.

### **3.8 Under-payments**

If a net franchise fee underpayment is discovered as the result of an audit, Grantee shall pay interest at the rate of the eight percent (8%) per annum, compounded quarterly, calculated from the date each portion of the underpayment was originally due until the date Grantee remits the underpayment to the Town.

### **3.9 Alternative Compensation**

In the event the obligation of Grantee to compensate the Town through franchise fee payments is lawfully suspended or eliminated, in whole or part, then Grantee shall pay to the Town compensation equivalent to the compensation paid to the Town by other similarly situated users of the Town's Rights-of-Way for Grantee's use of the Town's Rights-of-Way, provided that in no event shall such payments exceed the equivalent of five percent (5%) of Grantee's Gross Revenues (subject to the other provisions contained in this Franchise).

### **3.10 Maximum Legal Compensation**

The parties acknowledge that, at present, applicable federal law limits the Town to collection of a maximum permissible franchise fee of five percent (5%) of Gross Revenues. In the event that at any time during the duration of this Franchise, the Town is authorized to collect an amount in excess of five percent (5%) of Gross Revenues, then the Town may unilaterally amend this Franchise by ordinance to provide that such excess amount shall be added to the franchise fee payments to be paid by Grantee to the Town hereunder, provided that Grantee has received at least ninety (90) days prior written notice from the Town of such amendment.

### **3.11 Additional Commitments Not Franchise Fee Payments**

No term or condition in this Franchise, including the funding required by Section 9, shall in any way modify or affect Grantee's obligation to pay franchise fees. Although the total sum of franchise fee payments and additional commitments set forth elsewhere in this Franchise may total more than five percent (5%) of Grantee's Gross Revenues in any twelve (12) month period, Grantee agrees that the additional commitments herein are not franchise fees as defined under any federal law, nor are they to be offset or credited against any franchise fee payments due to the Town, nor do they represent an increase in franchise fees to be passed through to Subscribers pursuant to any federal law.

### **3.12 Tax Liability**

The franchise fees shall be in addition to any and all taxes or other levies or assessments which are now or hereafter required to be paid by businesses in general by any law of the Town, the State or the United States including, without limitation, sales, use and other taxes, business license fees or other payments. Payment of the franchise fees under this Franchise shall not exempt Grantee from the payment of any other license fee, permit fee, tax or charge on the business, occupation, property or income of Grantee that may be lawfully imposed by the Town.

Any other license fees, taxes or charges shall be of general applicability in nature and shall not be levied against Grantee solely because of its status as a Cable Operator, or against Subscribers, solely because of their status as such.

### **3.13 Financial Records**

Grantee agrees to meet with a representative of the Town upon request to review Grantee's methodology of record-keeping, financial reporting, the computing of franchise fee obligations and other procedures, the understanding of which the Town deems necessary for reviewing reports and records.

### **3.14 Payment on Termination**

If this Franchise terminates for any reason, the Grantee shall file with the Town within ninety (90) calendar days of the date of the termination, a financial statement, certified by an independent certified public accountant, showing the Gross Revenues received by the Grantee since the end of the previous fiscal year. The Town reserves the right to satisfy any remaining financial obligations of the Grantee to the Town by utilizing the funds available in the letter of credit or other security provided by the Grantee in accordance with the procedures set forth herein.

## **SECTION 4. ADMINISTRATION AND REGULATION**

### **4.1 Authority**

(A) The Town shall be vested with the power and right to reasonably regulate the exercise of the privileges permitted by this Franchise in the public interest, or to delegate that power and right, or any part thereof, to the extent permitted under State and local law, to any agent, including but not limited to the Greater Metro Telecommunications Consortium, in its sole discretion.

(B) Nothing in this Franchise shall limit nor expand the Town's right of eminent domain under State law.



## **4.2 Rates and Charges**

All of Grantee's rates and charges related to or regarding Cable Services shall be subject to regulation by the Town to the full extent authorized by applicable federal, State and local laws.

## **4.3 Rate Discrimination**

All of Grantee's rates and charges shall be published (in the form of a publicly-available rate card) and be non-discriminatory as to all Persons and organizations of similar classes, under similar circumstances and conditions. Grantee shall apply its rates in accordance with governing law, with identical rates and charges for all Subscribers receiving identical Cable Services, without regard to race, color, ethnic or national origin, religion, age, sex, sexual orientation, marital, military or economic status, or physical or mental disability or geographic location within the Town. Grantee shall offer the same Cable Services to all Residential Subscribers at identical rates and to Multiple Dwelling Unit, Commercial or bulk account Subscribers as authorized by FCC rules. Grantee shall permit Subscribers to make any lawful in-residence connections the Subscriber chooses without additional charge or penalty to the Subscriber. However, if any in-home connection requires service from Grantee due to signal quality, signal leakage or other factors, caused by improper installation of such in-home wiring or faulty materials of such in-home wiring, the Subscriber may be charged reasonable service charges by Grantee. Nothing herein shall be construed to prohibit:

(A) The temporary reduction or waiving of rates or charges in conjunction with valid promotional campaigns; or

(B) The offering of reasonable discounts to senior citizens or economically disadvantaged citizens; or

(C) The offering of rate discounts for Cable Service; or

(D) The Grantee from establishing different and nondiscriminatory rates and charges and classes of service for Commercial Subscribers, as allowable by federal law and regulations.

## **4.4 Filing of Rates and Charges**

(A) Throughout the term of this Franchise, Grantee shall maintain on file with the Town a complete schedule of applicable rates and charges for Cable Services provided under this Franchise. Nothing in this subsection shall be construed to require Grantee to file rates and charges under temporary reductions or waivers of rates and charges in conjunction with promotional campaigns. As used in this subsection, no rate or charge shall be considered temporary if Subscribers have the ability over a period greater than twelve (12) months (or such other period as may be approved by the Town) to purchase Cable Services at such rate or charge.

(B) Upon request of the Town, Grantee shall provide a complete schedule of current rates and charges for any and all Leased Access Channels, or portions of such Channels,

provided by Grantee. The schedule shall include a description of the price, terms, and conditions established by Grantee for Leased Access Channels.

#### **4.5 Cross Subsidization**

Grantee shall comply with all applicable laws regarding rates for Cable Services and all applicable laws covering issues of cross subsidization.

#### **4.6 Reserved Authority**

The Town reserves all regulatory authority arising from the Cable Act and any other relevant provisions of federal, State, or local law.

#### **4.7 Time Limits Strictly Construed**

Whenever this Franchise sets forth a time for any act to be performed by Grantee, such time shall be deemed to be of the essence, and any failure of Grantee to perform within the allotted time may be considered a material breach of this Franchise, and sufficient grounds for the Town to invoke any relevant remedy.

#### **4.8 Franchise Amendment Procedure**

Either party may at any time seek an amendment of this Franchise by so notifying the other party in writing. Within thirty (30) days of receipt of notice, the Town and the Grantee shall meet to discuss the proposed amendment(s). If the parties reach a mutual agreement upon the suggested amendment(s), such amendment(s) shall be submitted to the Town Council for approval. If approved by the Town Council and the Grantee, then such amendment(s) shall be deemed part of this Franchise. If mutual agreement is not reached, there shall be no amendment.

#### **4.9 Performance Evaluations**

(A) The Town may hold performance evaluation sessions within thirty (30) days of the biennial anniversary dates of the Effective Date of this Franchise. The Town shall conduct all such evaluation sessions.

(B) The town may hold special evaluation sessions at any time during the term of this Franchise.

(C) All regular evaluation sessions shall be open to the public and announced at least two (2) weeks in advance in a newspaper of general circulation in the Town. Grantee shall also include with or on the Subscriber billing statements for the billing period immediately preceding the commencement of the session, written notification of the date, time, and place of the regular performance evaluation session, and any special evaluation session as required by the Town, provided Grantee receives appropriate advance notice.

(D) Topics which may be discussed at any evaluation session may include, but are not limited to, Cable Service rate structures; franchise fee payments; liquidated damages; free or discounted Cable Services; application of new technologies; Cable System performance; Cable Services provided; programming offered; Subscriber complaints; privacy; amendments to this Franchise; judicial and FCC rulings; line extension policies; and the Town or Grantee's rules; provided that nothing in this subsection shall be construed as requiring the renegotiation of this Franchise.

(E) During evaluations under this subsection, Grantee shall fully cooperate with the Town and shall provide such information and documents as the Town may reasonably require to perform the evaluation.

#### **4.10 Late Fees**

(A) For purposes of this subsection, any assessment, charge, cost, fee or sum, however characterized, that the Grantee imposes upon a Subscriber solely for late payment of a bill is a late fee and shall be applied in accordance with the Town's Customer Service Standards (as defined in Section 6.1), or as the same may be superseded by legislation or final court order.

(B) Nothing in this subsection shall be deemed to create, limit or otherwise affect the ability of the Grantee, if any, to impose other assessments, charges, fees or sums other than those permitted by this subsection, for the Grantee's other services or activities it performs in compliance with applicable law, including FCC law, rule or regulation.

(C) The Grantee's late fee and disconnection policies and practices shall be nondiscriminatory and such policies and practices, and any fees imposed pursuant to this subsection, shall apply equally in all parts of the Town without regard to the neighborhood or income level of the Subscriber.

#### **4.11 Force Majeure**

In the event Grantee is prevented or delayed in the performance of any of its obligations under this Franchise by reason beyond the control of Grantee, Grantee shall have a reasonable time, under the circumstances, to perform the affected obligation under this Franchise or to procure a substitute for such obligation, which is satisfactory to the Town. Those conditions which are not within the control of Grantee include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, regulatory restrictions, and severe or unusual weather conditions which have a direct and substantial impact on the Grantee's ability to provide Cable Services in the Town and which was not caused and could not have been avoided by the Grantee which used its best efforts in its operations to avoid such results. During the time of delay, to the extent any non-performance is the result of any Force Majeure condition, Grantee shall not be held in breach of this Franchise or suffer any penalty as a result.

If Grantee believes that a reason beyond its control has prevented or delayed its compliance with the terms of this Franchise, Grantee shall provide documentation as reasonably

required by the Town to substantiate the Grantee's claim. If Grantee has not yet cured the deficiency, Grantee shall also provide the Town with its proposed plan for remediation, including the timing for such cure.

## **SECTION 5. INDEMNIFICATION AND INSURANCE REQUIREMENTS**

### **5.1 Indemnification**

(A) General Indemnification. Grantee shall indemnify, defend and hold the Town, its officers, officials, boards, commissions, agents and employees, harmless from any action or claim for injury, damage, loss, liability, cost or expense, including court and appeal costs and attorneys' fees or expenses, arising from any casualty or accident to Person or property, including, without limitation, copyright infringement, defamation, and all other damages in any way arising out of, or by reason of, any construction, excavation, operation, maintenance, reconstruction, or any other act done under this Franchise, by or for Grantee, its agents, or its employees, or by reason of any neglect or omission of Grantee. Grantee shall consult and cooperate with the Town while conducting its defense of the Town. Notwithstanding the foregoing, the Grantee shall not indemnify the Town for any damages, liability or claims resulting from the willful misconduct or negligence of the Town or for claims relating to provisions set forth in Section 9 of this Franchise unless such claims directly arise out of Grantee's construction of Grantee's other operational activities required to provide PEG channels to Town or for claims brought by Grantee against Grantor.

(B) Indemnification for Relocation. Grantee shall indemnify the Town for any damages, claims, additional costs or expenses assessed against, or payable by, the Town arising out of, or resulting from, directly or indirectly, Grantee's failure to remove, adjust or relocate any of its facilities in the Rights-of-Way in a timely manner in accordance with any relocation required by the Town pursuant to applicable law.

(C) Additional Circumstances. Grantee shall also indemnify, defend and hold the Town harmless for any claim for injury, damage, loss, liability, cost or expense, including court and appeal costs and attorneys' fees or expenses in any way arising out of:

(1) The lawful actions of the Town in granting this Franchise to the extent such actions are consistent with this Franchise and applicable law;

(2) Damages arising out of any failure by Grantee to secure consents from the owners, authorized distributors, or licensees/licensors of programs to be delivered by the Cable System, whether or not any act or omission complained of is authorized, allowed or prohibited by this Franchise.

(D) Procedures and Defense. If a claim or action arises, the Town or any other indemnified party shall promptly tender the defense of the claim to Grantee, which defense shall be at Grantee's expense. The Town may participate in the defense of a claim and, in any event, Grantee may not agree to any settlement of claims affecting the Town without the Town's approval.

(E) Non-waiver. The fact that Grantee carries out any activities under this Franchise through independent contractors shall not constitute an avoidance of or defense to Grantee's duty of defense and indemnification under this subsection.

(F) Expenses. If separate representation to fully protect the interests of both parties is necessary, such as a conflict of interest between the Town and the counsel selected by Grantee to represent the Town, Grantee shall pay all expenses incurred by the Town in defending itself with regard to any action, suit or proceeding indemnified by Grantee. The Town's expenses shall include all out-of-pocket expenses, such as consultants' fees, and shall also include the reasonable value of any services rendered by the Town Attorney or his/her assistants or any employees of the Town or its agents but shall not include outside attorneys' fees for services that are unnecessarily duplicative of services provided the Town by Grantee.

## **5.2 Insurance**

(A) Grantee shall maintain in full force and effect at its own cost and expense each of the following policies of insurance:

(1) Commercial General Liability insurance with limits of no less than one million dollars (\$1,000,000.00) per occurrence and one million dollars (\$1,000,000.00) general aggregate. Coverage shall be at least as broad as that provided by ISO CG 00 01 1/96 or its equivalent and include severability of interests. Such insurance shall name the Town, its officers, officials and employees as additional insureds per ISO CG 2026 or its equivalent. There shall be a waiver of subrogation and rights of recovery against the Town, its officers, officials and employees. Coverage shall apply as to claims between insureds on the policy, if applicable.

(2) Commercial Automobile Liability insurance with minimum combined single limits of one million dollars (\$1,000,000.00) each occurrence and one million dollars (\$1,000,000.00) aggregate with respect to each of Grantee's owned, hired and non-owned vehicles assigned to or used in the operation of the Cable System in the Town. The policy shall contain a severability of interests provision.

(B) Each policy shall provide that the insurance shall not be canceled or materially changed so as to be out of compliance with these requirements without thirty (30) days' written notice first provided to the Town, and ten (10) days' notice for nonpayment of premium. If the insurance is canceled or materially altered so as to be out of compliance with the requirements of this subsection within the term of this Franchise, Grantee shall provide a replacement policy. Grantee agrees to maintain continuous uninterrupted insurance coverage, in at least the amounts required, for the duration of this Franchise and, in the case of the Commercial General Liability, for at least one (1) year after expiration of this Franchise.

### 5.3 Deductibles / Certificates of Insurance.

Any deductible of the policies shall not in any way limit Grantee's liability to the Town.

(A) Endorsements. All policies shall contain, or shall be endorsed so that:

(1) The Town, its officers, elected officials, boards, commissions, employees, and agents performing generally accepted routine Town duties shall be covered as, and have the rights of, additional insureds with respect to liability arising out of activities performed by, or for which Grantee has assumed responsibility herein.

(2) Grantee's insurance coverage shall be primary insurance with respect to the Town, its officers, elected officials, boards, commissions, employees and agents performing generally accepted routine Town duties. Any insurance or self-insurance maintained by the Town, its officers, elected officials, boards, commissions, employees and agents shall be in excess of the Grantee's insurance and shall not contribute to it; and

(3) Grantee's insurance shall apply separately to each insured against whom a claim is made or lawsuit is brought, except with respect to the limits of the insurer's liability.

(B) Acceptability of Insurers. The insurance obtained by Grantee shall be placed with insurers with a Best's rating of no less than "A."

(C) Verification of Coverage. The Grantee shall furnish the Town with certificates of insurance or endorsements or a copy of the page of the policy reflecting blanket additional insured status. The certificates and endorsements for each insurance policy are to be signed by a Person authorized by that insurer to bind coverage on its behalf. The certificates or endorsements for each insurance policy are to be on standard forms or such forms as are consistent with standard industry practices.

(D) Self-Insurance. In the alternative to providing a certificate of insurance to the Town certifying insurance coverage as required above, Grantee may provide self-insurance in the same amount and level of protection for Grantee and Town, its officers, agents performing generally accepted routine Town duties and employees as otherwise required under this Section. The adequacy of self-insurance shall be subject to the periodic review and approval of the Town.

### 5.4 **Letter of Credit**

(A) No later than the Effective Date of this Franchise, Grantee shall establish and provide to the Town, on behalf of the Town and all other members of the GMTCC, as security for the faithful performance by Grantee of all of the provisions of this Franchise, including Exhibit A, a letter of credit in the amount of one hundred thousand dollars (\$1 00,000.00).

(B) The letter of credit shall be maintained at one hundred thousand dollars (\$100,000.00) throughout the term of this Franchise, provided that at intervals no more often than every three (3) years, Town shall have the right to review whether this amount should be increased to reflect increases in the Denver Metropolitan Area Consumer Price Index during the prior three (3) year period.

(C) The letter of credit may be drawn upon by the Town for purposes including, but not limited to, the following:

- (1) Failure of Grantee to pay the Town sums due under the terms of this Franchise;
- (2) Reimbursement of costs borne by the Town to correct Franchise violations not corrected by Grantee;
- (3) Monetary remedies or damages assessed against Grantee due to default or breach of Franchise requirements; and
- (4) Failure to comply with the Customer Service Standards of the Town, as the same may be amended from time to time by the Town Board acting by ordinance or resolution.

(D) The Town shall give Grantee written notice of any withdrawal under this subsection upon such withdrawal. Within seven (7) days following receipt of such notice, Grantee shall restore the letter of credit to the amount required under this Franchise.

(E) Grantee shall have the right to appeal to the Town Board for reimbursement in the event Grantee believes that the letter of credit was drawn upon improperly. Grantee shall also have the right of judicial appeal if Grantee believes the letter of credit has not been properly drawn upon in accordance with this Franchise. Any funds the Town erroneously or wrongfully withdraws from the letter of credit shall be returned to Grantee with interest, from the date of withdrawal at a rate equal to the prime rate of interest as quoted in the Wall Street Journal.

(F) If more than fifty percent (50%), based on the number of Subscribers, of the GMTC members listed on Exhibit A withdraw from the GMTC or are not eligible to draw on the letter of credit held in the name of all GMTC members, Grantee shall have the right to renegotiate the terms of the letter of credit or reduce it by an amount equal to the pro-rata number of Subscribers whose grantors have withdrawn from the GMTC or are not eligible to draw on the shared letter of credit; provided, however, that the amount of the letter of credit shall be no less than \$25,000.00.

(G) If the Town withdraws from the GMTC, Grantee shall obtain a letter of credit solely on behalf of the Town, in the amount of ten thousand dollars (\$10,000.00), within sixty (60) days of receiving written notice from the Town. In this event, the Town will also be removed from the GMTC letter of credit

## **SECTION 6. CUSTOMER SERVICE**

### **6.1 Customer Service Standards**

Grantee shall comply with Customer Service Standards of the Town, as the same may be lawfully amended from time to time by the Town Board acting by ordinance or resolution. The Town's current Customer Service Standards attached hereto as Exhibit A. Grantee reserves the right to challenge any customer service requirement, which it believes is inconsistent with its contractual rights under this Franchise.

### **6.2 Subscriber Privacy**

Grantee shall fully comply with any provisions regarding the privacy rights of Subscribers contained in federal or State law.

### **6.3 Subscriber Contracts**

Grantee shall not enter into a contract with any Subscriber, which is in any way inconsistent with the terms of this Franchise or the requirements of any applicable Customer Service Standard. Upon request, Grantee will provide to the Town a sample of the Subscriber contract or service agreement then in use.

### **6.4 Advance Notice to Town**

The Grantee shall use reasonable efforts to furnish information provided to Subscribers or the media in the normal course of business to the Town in advance.

## **SECTION 7. REPORTS AND RECORDS**

### **7.1 Open Records**

The Town, including its auditor or his authorized representative, shall have access to, and the right to inspect, any books and records of Grantee, its parent corporations and Affiliates which are reasonably related to the administration or enforcement of the terms of this Franchise. Grantee shall not deny the Town access to any of Grantee's records on the basis that Grantee's records are under the control of any parent corporation, Affiliate or a third party. The Town may, in writing, request copies of any such records or books and Grantee shall provide such copies within thirty (30) days of the transmittal of such request. One (1) copy of all reports and records required under this or any other subsection shall be furnished to the Town, at the sole expense of Grantee. If the requested books and records are too voluminous, or for security reasons cannot be copied or removed, then Grantee may request, in writing within ten (10) days, that the Town inspect them at Grantee's local offices. If any books or records of Grantee are not kept in a local office and not made available in copies to the Town upon written request as set forth above, and if the Town determines that an examination of such records is necessary or



appropriate for the performance of any of the Town's duties, administration or enforcement of this Franchise, then all reasonable travel and related expenses incurred in making such examination shall be paid by Grantee.

## **7.2 Confidentiality**

The Town agrees to treat as confidential any books or records that constitute proprietary or confidential information under federal or State law, to the extent Grantee makes the Town aware of such confidentiality. Grantee shall be responsible for clearly and conspicuously stamping the word "Confidential" on each page that contains confidential or proprietary information, and shall provide a brief written explanation as to why such information is confidential under State or federal law. If the Town believes it must release any such confidential books and records in the course of enforcing this Franchise, or for any other reason, it shall advise Grantee in advance so that Grantee may take appropriate steps to protect its interests. If the Town receives a demand from any Person for disclosure of any information designated by Grantee as confidential, the Town shall, so far as consistent with applicable law, advise Grantee and provide Grantee with a copy of any written request by the party demanding access to such information within a reasonable time. Until otherwise ordered by a court or agency of competent jurisdiction, the Town agrees that, to the extent permitted by State and federal law, it shall deny access to any of Grantee's books and records marked confidential as set forth above to any Person. Grantee shall reimburse the Town for all reasonable costs and attorneys fees incurred in any legal proceedings pursued under this Section.

## **7.3 Records Required**

(A) Grantee shall at all times maintain, and shall furnish to the Town upon written request:

(1) A complete set of maps showing the routing of all Cable System equipment and facilities in the Right-of-Way, but excluding detail on proprietary electronics or other proprietary information that is related to Grantee's specific design of Cable System contained therein and Subscriber drops. As-built maps including proprietary electronics shall be available at Grantee's offices for inspection by the Town's authorized representative(s) or agent(s) and made available to such during the course of technical inspections as reasonably conducted by the Town. An appropriate representative of the Grantee shall certify these maps as accurate;

(2) A copy of all FCC filings on behalf of Grantee, its parent corporations or Affiliates which relate to the operation of the Cable System in the Town;

(3) Current Subscriber Records and information;

(4) A log of Cable Services added or dropped, Channel changes, number of Subscribers added or terminated, all construction activity, and total homes passed for the previous twelve (12) months; and

(5) A list of Cable Services, rates and Channel line-ups.

(B) Subject to subsection 7.2, all information furnished to the Town is public information, and shall be treated as such, except for information involving the privacy rights of individual Subscribers.

#### **7.4 Annual Reports**

Within sixty (60) days after the end of the calendar year, Grantee shall submit to the Town a written or electronic report, in a form acceptable to the Town, which shall include, but not necessarily be limited to, the following information for the Town:

(A) A Gross Revenue statement, as required by subsection 3.5 of this Franchise;

(B) A summary of the previous year's activities in the development of the Cable System, including, but not limited to, Cable Services begun or disconnected during the reporting year, and the number of Subscribers; and

(C) The number of homes passed, beginning and ending plant miles, any services added or dropped, and any technological changes occurring in the Cable System; and

(D) A statement of planned construction, if any, for the next year.

If the Town determines that it no longer requires the reports described in this Section, it may provide written notice of such decision to the Grantee.

#### **7.5 Copies of Federal and State Reports**

Grantee shall submit to the Town copies of all pleadings, applications, notifications, communications and documents of any kind, submitted by Grantee or its parent corporation(s) to any government bodies if such documents directly relate to the operations of the Cable System within the Town. Grantee shall submit such documents to the Town no later than thirty (30) days after filing, mailing, publication, or completion. Grantee shall not claim confidential, privileged or proprietary rights to such documents unless under federal, State or local law such documents have been determined to be confidential by a court of competent jurisdiction, or a federal or State agency. With respect to all documents provided to any federal, State or local regulatory agency as a routine matter in the due course of operating the Cable System within the Town, Grantee shall make such documents available to the Town upon request.

#### **7.6 Complaint File and Reports**

Grantee shall keep an accurate file of any and all complaints regarding the Cable System, in a manner consistent with the privacy rights of Subscribers, and Grantee's actions in response to those complaints. These files shall remain open to the Town during normal business hours.

Grantee shall provide the Town a quarterly executive summary which shall include the following information:

- (A) A summary of service calls, identifying the number and nature of the requests and their disposition;
- (B) A log of all service interruptions;
- (C) A summary of customer complaints referred by the Town to Grantee;
- (D) Average response time for service calls;
- (E) Phone activity report;
- (F) Such other information as reasonably requested by the Town, provided that Grantee is given thirty (30) days prior written notice of such request before the beginning of the applicable quarter.

If the Town determines that it no longer requires the reports described in this Section, it may provide written notice of such decision to the Grantee.

## **7.7 False Statements**

Any false or misleading statement or representation in any report required by this Franchise (not including clerical errors or errors made in good faith) may be deemed a material breach of this Franchise and may subject Grantee to all remedies, legal or equitable, which are available to the Town under this Franchise or otherwise.

## **SECTION 8. PROGRAMMING**

### **8.1 Broad Programming Categories**

Grantee shall provide or enable the provision of at least the following initial broad categories of programming to the extent such categories are reasonably available:

- (A) Educational programming;
- (B) National news, weather & information;
- (C) sports;
- (D) General entertainment (including movies);
- (E) Children/family-oriented;

- (F) Arts, culture and performing arts;
- (G) Foreign language;
- (H) Science/documentary; and
- (I) Colorado news, weather and information.

## **8.2 Deletion or Reduction of Broad Programming Categories**

(A) Grantee shall not delete or so limit as to effectively delete any broad category of programming within its control without the prior written consent of the Town.

(B) In the event of a modification proceeding under federal law, the mix and quality of Cable Services provided by Grantee on the Effective Date of this Franchise shall be deemed the mix and quality of Cable Services required under this Franchise throughout its term.

## **8.3 Ascertainment of Programming and Customer Satisfaction**

Results from any survey conducted by Grantee within the Town which are intended for external publication shall be provided to the Town. Nothing herein shall be construed to limit the right of the Town to conduct its own surveys at its own expense.

## **8.4 Obscenity**

Grantee shall not transmit, or permit to be transmitted over any Channel subject to its editorial control, any programming which is obscene under, or violates any provision of, applicable law relating to obscenity, and is not protected by the Constitution of the United States. Grantee shall be deemed to have transmitted or permitted a transmission of obscene programming only if a court of competent jurisdiction has found that any of Grantee's officers or employees or agents have permitted programming which is obscene under, or violative of, any provision of applicable law relating to obscenity, and is otherwise not protected by the Constitution of the United States, to be transmitted over any Channel subject to Grantee's editorial control. Grantee shall comply with all relevant provisions of federal law relating to obscenity.

## **8.5 Parental Control Device**

Upon request by any Subscriber, Grantee shall make available a parental control or lockout device, traps or filters to enable a Subscriber to control access to both the audio and video portions of any or all Channels. Grantee shall inform its Subscribers of the availability of the lockout device at the time of their initial subscription and periodically thereafter. Any device offered shall be at a rate, if any, in compliance with applicable law.

## **8.6 Continuity of Service Mandatory**

(A) It shall be the right of all Subscribers to continue to receive Cable Service from Grantee insofar as their financial and other obligations to Grantee are honored. The Grantee shall act so as to ensure that all Subscribers receive continuous, uninterrupted Cable Service regardless of the circumstances. For the purposes of this subsection, “uninterrupted” does not include short-term outages of the Cable System for maintenance or testing.

(B) In the event of a change of grantee, or in the event a new Cable Operator acquires the Cable System in accordance with this Franchise, Grantee shall cooperate with the Town, new franchisee or Cable Operator in maintaining continuity of Cable Service to all Subscribers. During any transition period, Grantee shall be entitled to the revenues for any period during which it operates the Cable System, and shall be entitled to reasonable costs for its services when it no longer operates the Cable System.

(C) In the event Grantee fails to operate the Cable System for four (4) consecutive days without prior approval of the Manager, or without just cause, the Town may, at its option, operate the Cable System itself or designate another Cable Operator until such time as Grantee restores service under conditions acceptable to the Town or a permanent Cable Operator is selected. If the Town is required to fulfill this obligation for Grantee, Grantee shall reimburse the Town for all reasonable costs or damages that are the result of Grantee’s failure to perform.

## **8.7 Services for the Disabled**

Grantee shall comply with the Americans with Disabilities Act and any amendments thereto.

## **SECTION 9. ACCESS**

### **9.1 Capital Access Contribution**

Within sixty (60) days of the effective date of this Franchise, Grantee shall provide a one time PEG capital contribution of thirty thousand dollars (\$30,000) which the Town shall use to outfit Town Board chambers for video production and to purchase additional field equipment to produce Access programming. Grantee shall be entitled to fully recover this initial grant from Residential Subscribers pursuant to federal law, at a rate of \$.50 per month per Subscriber. Grantee shall notify the Town when the capital contribution has been recovered. Grantee shall have no further programming production or studio obligations to the Town.

### **9.2 Replacement Capital Contribution**

When the contribution specified in subsection 9.1 is fully recovered, the Town may direct Grantee to provide to the Town up to \$.50 per month per Residential Subscriber for Access or I-Net capital (the “Replacement Capital Contribution”). The Town understands that pursuant to federal law, Grantee intends to collect the Replacement Capital Contribution from Residential

Subscribers as a separate line item on Subscriber bills in addition to the price for Cable Service. Grantee shall not be responsible for collecting or paying the Replacement Capital Contribution with respect to gratis accounts. The Town shall give Grantee at least ninety (90) days advance written notice of Grantee's obligation to begin payment of the Replacement Capital Contribution, including the monthly amount to be collected.

Each payment shall be due and payable no later than thirty (30) days following the end of the quarter from when the Replacement Capital Contribution takes effect. The Town shall have discretion to allocate the Replacement Capital Contribution in accordance with applicable law.

The Town may adjust the amount of the Replacement Capital Contribution on an annual basis (up to the maximum amount specified in this subsection), provided that Grantee is given ninety (90) days advance written notice.

### **9.3 Management and Control of Access Channel**

The Town shall have sole and exclusive responsibility for identifying the Designated Access Providers and allocating the Access resources under this Section. The Town may authorize Designated Access Providers to control and manage the use of any and all Access facilities provided by Grantee under this Franchise, including, without limitation, the operation of Access Channels. To the extent of such designation by the Town, the Designated Access Provider shall have sole and exclusive responsibility for operating and managing such Access facilities. The Town or its designee may formulate rules for the operation of the Access Channel, consistent with this Franchise. Grantee shall cooperate with the Town and Designated Access Providers in the use of the Cable System and Access facilities for the provision of Access. Nothing herein shall prohibit the Town from authorizing itself to be a Designated Access Provider. Nothing herein shall prohibit the Town from assigning several Designated Access Providers to share a single Access Channel.

### **9.4 Access Channels**

As of the Effective Date, Grantee shall provide two (2) Access Channels, which shall be allocated as follows: one (1) Government Access Channel and one (1) Educational Access Channel.

All assigned Access Channels can be used to transmit signals in any format, which is technically compatible with the Cable System, including, by way of example and not limitation, video, audio, secondary audio and/or text messages. Such uses must be in furtherance of Access purposes.

### **9.5 Change In Technology**

In the event Grantee makes any change in the Cable System and related equipment and facilities or in Grantee's signal delivery technology, which directly or indirectly affects the signal quality or transmission of Access services or programming, Grantee shall at its own expense take

necessary technical steps or provide necessary technical assistance, including the acquisition of all necessary equipment and full training of Access personnel, to ensure that the capabilities of Access services are not diminished or adversely affected by such change. For example, this provision shall apply if the Cable System is converted from an analog to a digital format, such that the Access Channels must also be converted to digital in order to be received by Subscribers.

## **9.6 Additional Access Channel**

The Town may request one additional access channel from Grantee for Public Access. The Town shall not request the additional access channel until the Town, or its Designated Access Provider, proves that it has all resources necessary for the additional channel, including but not limited to all equipment needed to produce and distribute original programming; an access studio and the funds available for constructing a return line, if needed; and has the capability to distribute Public Access programming sufficient to meet community needs, as determined by the Town Board. In determining community needs and interests, the Town Board shall consider these issues through an appropriate *survey* methodology that is mutually acceptable between the Town and the Grantee. The survey methodology will consider the programming that would be displaced, and how much programming is produced on the existing access channels in the Denver metro area. The costs of such survey shall be paid by Grantee.

## **9.7 Underutilized Access Channels**

(A) Grantee and the Town agree that it is their mutual goal to fully and efficiently use the Channel capacity of the Cable System, which may include allowing the Grantee to use underutilized time on the Access Channel. If Grantee believes that the Access Channel has underutilized time, Grantee may file a request with the Administrator to use that time. In response to the request, the Administrator will consider a combination of factors, including but not limited to, the community's needs and interests, and the source, quantity, type and schedule of the programming carried on the Access Channel. The Administrator will also consider, taking into account the mission of the Access programming, whether it is feasible for the Designated Access Providers to cluster Access programming into blocks of time such that the Channel space can be compatibly shared between the Designated Access Provider and the Grantee and/or if several Designated Access Providers can combine their programming onto a single Access Channel. The Administrator shall render his/her decision regarding the matter within sixty (60) days of receiving the request. Should the Administrator find that the Access Channel or portion of the Access Channel may be used by the Grantee, then Grantee may begin using such time ninety (90) days after receipt of the decision. The Grantee's request shall not be unreasonably denied. Any permission granted pursuant to this subsection for use of an Access Channel or a portion thereof shall be considered temporary.

(B) At such time as a Designated Access Provider believes that it has the resources and ability to utilize the Access Channel time currently used by the Grantee pursuant to this subsection, a Designated Access Provider may request that the Administrator return such Channel or portion of the Channel for Access purposes. In response to the request, the Administrator will consider a combination of factors, including but not limited to, the

community's needs and interests in the additional Access programming as measured through a survey methodology that is mutually acceptable between the Town and Grantee, and the source, quantity, type and schedule of the programming proposed to be carried on the Access Channel as well the applicant's ability and resources to acquire or produce the proposed Access programming. The Administrator will also consider, taking into account the mission of the Access programming, whether it is feasible for the Designated Access Providers to cluster Access programming into blocks of time such that the Channel space can be compatibly shared between the Designated Access Provider and the Grantee and/or if several Designated Access Providers can combine their programming onto a single Access Channel and how much programming is repeated and/or character generated and the programming that would be displaced. The Administrator shall render his/her decision regarding the matter within sixty (60) days of receiving the request. Should the Administrator find that the evidence exists to support the return of the Access Channel or portion of the Access Channel to the Designated Access Provider, then Grantee shall surrender the requested time on the Access Channel within ninety (90) days of receiving the decision. Grantee may appeal the decision of the Administrator to the Town Board of Trustees. The Designated Access Provider's request shall not be unreasonably denied.

#### **9.8 Access Channels On Basic Service**

The Access Channels provided to Subscribers under this Franchise shall be included by Grantee, without limitation, as a part of Basic Service.

#### **9.9 Access Channel Assignment**

Grantee will use reasonable efforts to minimize the movement of Access Channel assignment.

#### **9.10 Relocation of Access Channel**

(A) Grantee shall provide the Town with a minimum of ninety (90) days notice, and use its best efforts to provide one hundred twenty (120) days notice, prior to the time the Access Channel designation is changed, unless the change is required by federal law, in which case Grantee shall give the Town the maximum notice possible. In addition, Grantee shall pay to the Town an amount equal to the Town's costs in remarketing the location of the Access Channel and managing the relocation administratively and technologically, up to a maximum of fifty cents (\$.50) per Subscriber unless the Town has approved the change. Grantee shall only be allowed to recover such amounts paid to Town as "external costs" (as that term is used in 47 C.F.R. Section 76.922) if the movement of Channel is required by federal, State or local law. Grantee, at Grantee's expense, will place the Town's notices of the Channel change on or with its regular monthly billings, upon the Town's request. Any new Channel designation for the Access Channels provided pursuant to this Franchise shall be in full compliance with FCC signal quality and proof-of-performance standards.

(B) Notwithstanding the provisions of Section 9.8(A), Grantee shall use its best



efforts to relocate the existing Access channels to the same channel assignments consistent with the majority of the GMTC area (at the time of the Effective Date, the majority of the GMTC area government channels are located on Channel 8), and shall incur no cost obligations to the City in accomplishing these relocations.

### **9.11 Access Interconnections**

Grantee acknowledges that it is the Town's goal to further the community's needs and interests by providing for the Interconnection of Access Channels between the Town and surrounding communities. Grantee shall take all necessary technical steps to ensure that technically adequate signal quality is initially and continuously provided for all Interconnects at the level provided to Grantee.

### **9.12 Return Lines**

(A) Grantee shall, at its expense, continuously maintain throughout the life of this Franchise return lines to the Headend from the production facilities of each of the Designated Access Providers that are in existence on the Effective Date, in order to enable the distribution of Access programming to Residential Subscribers on the Access Channels, unless these locations are no longer used by Designated Access Providers. The only return line in existence and use by the Town as of the Effective Date is the return line from the Erie Town Hall (645 Holbrook Street) to Grantee's Louisville Hub site.

(B) Grantee shall upgrade the return lines to the Headend from the production facilities of each of the Designated Access Providers that are in existence on the Effective Date to Fiber Optics and construct and maintain new Fiber Optic return lines to the Headend from production facilities of new or relocated Designated Access Providers delivering Access programming to Residential Subscribers as requested in writing by the Town. Town shall pay all costs for labor and material for constructing new Fiber Optic return lines. Town shall send any requests for new return line construction to Grantee in writing. Grantee shall submit an estimate of costs to construct the new return line to the Town within 30 days of receiving the written request. After Town has had a reasonable amount of time to review the estimate, Town shall inform Grantee in writing that the new return line should be constructed. When the work is complete, Grantee shall submit a bill for the work. Town shall have thirty (30) days from receipt of the bill to submit its payment to Grantee.

### **9.13 Technical Quality**

The Grantee shall maintain the Access Channel, Interconnects and return lines at the same or better level of technical quality and reliability required by this Franchise and all other applicable laws, rules and regulations for other Channels, services and Interconnects. The Grantee shall provide routine maintenance and shall repair and replace all transmission equipment as necessary to carry a quality signal from the Access facilities provided under this Franchise to Subscribers.

#### **9.14 Information about Access Programming to Subscribers**

Upon request by the Town, Grantee shall include information about Access programming in the installation packet provided to Subscribers. The Town shall supply the materials for insertion in the packet in a format consistent with Grantee's requirements.

### **SECTION 10. GENERAL RIGHT-OF-WAY USE AND CONSTRUCTION**

#### **10.1 Right to Construct**

Subject to applicable laws, regulations, rules, resolutions and ordinances of the Town and the provisions of this Franchise, Grantee may perform all construction in the Rights-of-Way for any facility needed for the maintenance, rebuild, upgrade or extension of Grantee's Cable System.

#### **10.2 Right-of-Way Meetings**

Grantee will regularly attend and participate in meetings of the Town, of which the Grantee is made aware, regarding Right-of-Way issues that may impact the Cable System.

#### **10.3 Joint Trenching/Boring Meetings**

Grantee will regularly attend and participate in planning meetings of the Town, of which the Grantee is made aware, to anticipate joint trenching and boring. Whenever it is possible and reasonably practicable to joint trench or share bores or cuts, Grantee shall work with other providers, licensees, permittees, and franchisees so as to reduce so far as possible the number of Right-of-Way cuts within the Town.

#### **10.4 General Standard**

All work authorized and required hereunder shall be done in a safe, thorough and workmanlike manner. All installations of equipment shall be permanent in nature, durable and installed in accordance with good engineering practices.

#### **10.5 Permits Required for Construction**

Prior to doing any work in the Right-of Way or other public property, Grantee shall apply for, and obtain, appropriate permits from the Town. As part of the permitting process, the Town may impose such conditions and regulations as are necessary for the purpose of protecting any structures in such Rights-of-Way, proper restoration of such Rights-of-Way and structures, the protection of the public, and the continuity of pedestrian or vehicular traffic. Such conditions may also include the provision of a construction schedule and maps showing the location of the facilities to be installed in the Right-of-Way. Grantee shall pay all applicable fees for the requisite Town permits received by Grantee.

## **10.6 Emergency Permits**

In the event that emergency repairs are necessary, Grantee shall immediately notify the Town of the need for such repairs. Grantee may initiate such emergency repairs, and shall apply for appropriate permits within forty-eight (48) hours after discovery of the emergency.

## **10.7 Compliance with Applicable Codes**

(A) Town Construction Codes. Grantee shall comply with all applicable Town construction codes, including, without limitation, the Uniform Building Code and other building codes, the Uniform Fire Code, the Uniform Mechanical Code, the Electronic Industries Association Standard for Physical Location and Protection of Below-Ground Fiber Optic Cable Plant, and zoning codes and regulations.

(B) Tower Specifications. Antenna supporting structures (towers) shall be designed for the proper loading as specified by the Electronics Industries Association (EIA), as those specifications may be amended from time to time. Antenna supporting structures (towers) shall be painted, lighted, erected and maintained in accordance with all applicable rules and regulations of the Federal Aviation Administration and all other applicable federal, State, and local codes or regulations.

(C) Safety Codes. Grantee shall comply with all federal, State and Town safety requirements, rules, regulations, laws and practices, and employ all necessary devices as required by applicable law during construction, operation and repair of its Cable System. By way of illustration and not limitation, Grantee shall comply with the National Electric Code, National Electrical Safety Code and Occupational Safety and Health Administration (OSHA) Standards.

## **10.8 GIS Mapping**

Grantee shall comply with any generally applicable ordinances, rules and regulations of the Town regarding geographic information mapping systems for users of the Rights-of-Way.

## **10.9 Minimal Interference**

Work in the Right-of-Way, on other public property, near public property, or on or near private property shall be done in a manner that causes the least interference with the rights and reasonable convenience of property owners and residents. Grantee's Cable System shall be constructed and maintained in such manner as not to interfere with sewers, water pipes, or any other property of the Town, or with any other pipes, wires, conduits, pedestals, structures, or other facilities that may have been laid in the Rights-of-Way by, or under, the Town's authority. The Grantee's Cable System shall be located, erected and maintained so as not to endanger or interfere with the lives of Persons, or to interfere with new improvements the Town may deem proper to make or to unnecessarily hinder or obstruct the free use of the Rights-of-Way or other public property, and shall not interfere with the travel and use of public places by the public during the construction, repair, operation or removal thereof, and shall not obstruct or impede

traffic. In the event of such interference, the Town may require the removal or relocation of Grantee's lines, cables, equipment and other appurtenances from the property in question at Grantee's expense.

**10.10 Prevent Injury/Safety**

Grantee shall provide and use any equipment and facilities necessary to control and carry Grantee's signals so as to prevent injury to the Town's property or property belonging to any Person. Grantee, at its own expense, shall repair, renew, change and improve its facilities to keep them in good repair, and safe and presentable condition. All excavations made by Grantee in the Rights-of-Way shall be properly safeguarded for the prevention of accidents by the placement of adequate barriers, fences or boarding, the bounds of which, during periods of dusk and darkness, shall be clearly designated by warning lights.

**10.11 Hazardous Substances**

(A) Grantee shall comply with any and all applicable laws, statutes, regulations and orders concerning hazardous substances relating to Grantee's Cable System in the Rights-of-Way.

(B) Upon reasonable notice to Grantee, the Town may inspect Grantee's facilities in the Rights-of-Way to determine if any release of hazardous substances has occurred, or may occur, from or related to Grantee's Cable System. In removing or modifying Grantee's facilities as provided in this Franchise, Grantee shall also remove all residue of hazardous substances related thereto.

(C) Grantee agrees to indemnify the Town against any claims, costs, and expenses, of any kind, whether direct or indirect, incurred by the Town arising out of a release of hazardous substances caused by Grantee's Cable System.

**10.12 Locates**

Prior to doing any work in the Right-of-Way, Grantee shall give appropriate notices to the Town and to the notification association established in C.R.S. Section 9-1 .5-1 05, as such may be amended from time to time.

Within forty-eight (48) hours after any Town bureau or franchisee, licensee or permittee notifies Grantee of a proposed Right-of-Way excavation, Grantee shall, at Grantee's expense:

(A) Mark on the surface all of its located underground facilities within the area of the proposed excavation;

(B) Notify the excavator of any unlocated underground facilities in the area of the proposed excavation; or

(C) Notify the excavator that Grantee does not have any underground facilities in the vicinity of the proposed excavation.

### **10.13 Notice to Private Property Owners**

Grantee shall give advance notice to private property owners of work on or adjacent to private property, in accordance with the Town's Customer Service Standards.

### **10.14 Underground Construction and Use of Poles**

(A) When required by general ordinances, resolutions, regulations or rules of the Town or applicable State or federal law, Grantee's Cable System shall be placed underground. Placing facilities underground does not preclude the use of ground-mounted appurtenances.

(B) Where electric, telephone, and other above-ground utilities are installed underground at the time of Cable System construction, or when all such wiring is subsequently placed underground, all Cable System lines shall also be placed underground with other wireline service at no expense to the Town or Subscribers unless funding is generally available for such relocation to all users of the Rights-of-Way. Related Cable System equipment, such as pedestals, must be placed in accordance with the Town's applicable code requirements and rules. In areas where either electric or telephone utility wiring is aerial, the Grantee may install aerial cable, except when a property owner or resident requests underground installation and agrees to bear the additional cost in excess of aerial installation.

(C) The Grantee shall utilize existing poles and conduit wherever possible.

(D) In the event Grantee cannot obtain the necessary poles and related facilities pursuant to a pole attachment agreement, and only in such event, then it shall be lawful for Grantee to make all needed excavations in the Rights-of-Way for the purpose of placing, erecting, laying, maintaining, repairing, and removing poles, supports for wires and conductors, and any other facility needed for the maintenance or extension of Grantee's Cable System. All poles of Grantee shall be located as designated by the proper Town authorities.

(E) This Franchise does not grant, give or convey to the Grantee the right or privilege to install its facilities in any manner on specific utility poles or equipment of the Town or any other Person. The Town must provide copies of agreements for the use of poles, conduits or other utility facilities upon request.

(F) The Grantee and the Town recognize that situations may occur in the future where the Town may desire to place its own cable or conduit for Fiber Optic cable in trenches or bores opened by the Grantee. The Grantee agrees to cooperate with the Town in any construction by the Grantee that involves trenching or boring, provided that the Town has first notified the Grantee in some manner that it is interested in sharing the trenches or bores in the area where the Grantee's construction is occurring. The Grantee shall allow the Town to lay its cable, conduit and Fiber Optic cable in the Grantee's trenches and bores, provided the Town shares in the cost

of the trenching and boring on the same terms and conditions as the Grantee at that time shares the total cost of trenches and bores. The Town shall be responsible for maintaining its respective cable, conduit and Fiber Optic cable buried in the Grantee's trenches and bores under this paragraph.

(G) Nothing herein shall be construed as to waive any rights Grantee may have for reimbursement of costs related to underground construction.

#### **10.15 Undergrounding of Multiple Dwelling Unit Drops**

In cases of single site Multiple Dwelling Units, Grantee shall minimize the number of individual aerial drop cables by installing multiple drop cables underground between the pole and Multiple Dwelling Unit where determined to be technologically feasible in agreement with the owners and/or owner's association of the Multiple Dwelling Units.

#### **10.16 Burial Standards**

(A) Depths. Unless otherwise required by law, Grantee shall comply with the following burial depth standards. In no event shall Grantee be required to bury its cable deeper than electric or gas facilities in the same portion of the Right-of-Way:

Underground cable drops from the curb shall be buried at a minimum depth of twelve (12) inches, unless a sprinkler system or other construction concerns preclude it, in which case, underground cable drops shall be buried at a depth of at least six (6) inches.

Feeder lines shall be buried at a minimum depth of eighteen (18) inches.

Trunk lines shall be buried at a minimum depth of thirty-six (36) inches.

Fiber Optic cable shall be buried at a minimum depth of thirty-six (36) inches.

(B) Timeliness. Cable drops installed by Grantee to residences shall be buried according to these standards within one calendar week of initial installation, or at a time mutually-agreed upon between the Grantee and the Subscriber. When freezing surface conditions prevent Grantee from achieving such timetable, Grantee shall apprise the Subscriber of the circumstances and the revised schedule for burial, and shall provide the Subscriber with Grantee's telephone number and instructions as to how and when to call Grantee to request burial of the line if the revised schedule is not met.

#### **10.17 Electrical Bonding**

Grantee shall ensure that all cable drops are properly bonded to the electrical power ground at the home, consistent with applicable code requirements. All non-conforming or non-

performing cable drops shall be replaced by Grantee as necessary.

#### **10.18 Prewiring**

Any ordinance or resolution of the Town which requires prewiring of subdivisions or other developments for electrical and telephone service shall be construed to include wiring for Cable Systems.

#### **10.19 Repair and Restoration of Property**

(A) The Grantee shall protect public and private property from damage. If damage occurs, the Grantee shall promptly notify the property owner within twenty-four (24) hours in writing.

(B) Whenever Grantee disturbs or damages any Right-of-Way, other public property or any private property, Grantee shall promptly restore the Right-of-Way or property to at least its prior condition, normal wear and tear excepted, at its own expense.

(C) Rights-of-Way and Other Public Property. Grantee shall warrant any restoration work performed by or for Grantee in the Right-of-Way or on other public property for one (1) year. If restoration is not satisfactorily performed by the Grantee within a reasonable time, the Town may, after prior notice to the Grantee, or without notice where the disturbance or damage may create a risk to public health or safety, cause the repairs to be made and recover the cost of those repairs from the Grantee. Within thirty (30) days of receipt of an itemized list of those costs, including the costs of labor, materials and equipment, the Grantee shall pay the Town,

(D) Private Property. Upon completion of the work which caused any disturbance or damage, Grantee shall promptly commence restoration of private property, and will use best efforts to complete the restoration within seventy-two (72) hours, considering the nature of the work that must be performed. Grantee shall also perform such restoration in accordance with the Town's Customer Service Standards.

#### **10.20 Use of Conduits by the Town**

The Town may install or affix and maintain wires and equipment owned by the Town for Town purposes in or upon any and all of Grantee's ducts, conduits or equipment in the Rights-of-Way and other public places, to the extent space therein or thereon is reasonably available, and pursuant to all applicable ordinances and codes, provided that (a) such use by the Town does not interfere with the current or future use by the Grantee; (b) the Town holds the Grantee harmless against and from all claims, demands, costs, or liabilities of every kind and nature whatsoever arising out of such use, including, but not limited to reasonable attorneys fees and costs; (c) the Town takes reasonable precautions to prevent any use of the Grantee's conduits, ducts, or equipment, or the Cable System; and (d) at Grantee's sole discretion, the Town may be required to pay a reasonable rental fee or otherwise reasonably compensate the Grantee for the use of such conduits, ducts or equipment provided, however, the Grantee agrees that such compensation or

charge shall not exceed those paid by Grantee to public utilities or the Town pursuant to applicable pole or conduit agreements or codes. For the purposes of this subsection, "Town purposes" includes, but is not limited to, the use of the structures and installations for Town fire, police, traffic, water, telephone, and/or signal systems, but not for Cable Service in competition with Grantee. Grantee shall not deduct the value of such use of its facilities from its franchise fee payments or from other fees payable to the Town.

#### **10.21 Common Users**

(A) For the purposes of this subsection:

(1) "Attachment" means any wire, optical fiber or other cable, and any related device, apparatus or auxiliary equipment, for the purpose of voice, video or data transmission.

(2) "Conduit" or "Conduit Facility" means any structure, or section thereof, containing one or more Ducts, conduits, manholes, handhole or other such facilities in Grantee's Cable System.

(3) "Duct" means a single enclosed raceway for cables, Fiber Optics or other wires.

(4) "Licensee" means any Person licensed or otherwise permitted by the Town to use the Rights-of-Way.

(5) "Surplus Ducts or Conduits" are Conduit Facilities other than those occupied by Grantee or any prior Licensee, or unoccupied Ducts held by Grantee as emergency use spares, or other unoccupied Ducts that Grantee reasonably expects to use within two (2) years from the date of a request for use.

(B) Grantee acknowledges that the Rights-of-Way have a finite capacity for containing Conduits. Therefore, Grantee agrees that whenever the Town determines it is impracticable to permit construction of an underground Conduit system by any other Person which may at the time have authority to construct or maintain Conduits or Ducts in the Rights-of-Way, but excluding Persons providing Cable Services in competition with Grantee, the Town may require Grantee to afford to such Person the right to use Grantee's Surplus Ducts or Conduits in common with Grantee, pursuant to the terms and conditions of an agreement for use of Surplus Ducts or Conduits entered into by Grantee and the Licensee. Nothing herein shall require Grantee to enter into an agreement with such Person if, in Grantee's reasonable determination, such an agreement could compromise the integrity of the Cable System.

(C) A Licensee occupying part of a Duct shall be deemed to occupy the entire Duct.



(D) Grantee shall give a Licensee a minimum of one hundred twenty (120) days notice of its need to occupy a licensed Conduit and shall propose that the Licensee take the first feasible action as follows:

(1) Pay revised Conduit rent designed to recover the cost of retrofitting the Conduit with multiplexing, Fiber Optics or other space-saving technology sufficient to meet Grantee's space needs;

(2) Pay revised Conduit rent based on the cost of new Conduit constructed to meet Grantee's space needs;

(3) Vacate the needed Ducts or Conduit; or

(4) Construct and maintain sufficient new Conduit to meet Grantee's space needs.

(E) When two or more Licensees occupy a section of Conduit Facility, the last Licensee to occupy the Conduit Facility shall be the first to vacate or construct new Conduit. When Conduit rent is revised because of retrofitting, space-saving technology or construction of new Conduit, all Licensees shall bear the increased cost.

(F) All Attachments shall meet local, State, and federal clearance and other safety requirements, be adequately grounded and anchored, and meet the provisions of contracts executed between Grantee and the Licensee. Grantee may, at its option, correct any attachment deficiencies and charge the Licensee for its costs. Each Licensee shall pay Grantee for any fines, fees, damages or other costs the Licensee's attachments cause Grantee to incur.

(G) In order to enforce the provisions of this subsection with respect to Grantee, the Town must demonstrate that it has required that all similarly situated users of the Rights-of-Way to comply with the provisions of this subsection.

## **10.22 Acquisition of Facilities**

Upon Grantee's acquisition of facilities in any Town Right-of-Way, or upon the addition to the Town of any area in which Grantee owns or operates any facility, Grantee shall, at the Town's request, submit to the Town a statement describing all facilities involved, whether authorized by franchise, permit, license or other prior right, and specifying the location of all such facilities to the extent Grantee has possession of such information. Such facilities shall immediately be subject to the terms of this Franchise.

## **10.23 Discontinuing Use/Abandonment of Cable System Facilities**

Whenever Grantee intends to discontinue using any facility within the Rights-of-Way, Grantee shall submit for the Town's approval a complete description of the facility and the date on which Grantee intends to discontinue using the facility. Grantee may remove the facility or

request that the Town permit it to remain in place. Notwithstanding Grantee's request that any such facility remain in place, the Town may require Grantee to remove the facility from the Right-of-Way or modify the facility to protect the public health, welfare, safety, and convenience, or otherwise serve the public interest. The Town may require Grantee to perform a combination of modification and removal of the facility. Grantee shall complete such removal or modification in accordance with a schedule set by the Town. Until such time as Grantee removes or modifies the facility as directed by the Town, or until the rights to and responsibility for the facility are accepted by another Person having authority to construct and maintain such facility, Grantee shall be responsible for all necessary repairs and relocations of the facility, as well as maintenance of the Right-of-Way, in the same manner and degree as if the facility were in active use, and Grantee shall retain all liability for such facility. If Grantee abandons its facilities, the Town may choose to use such facilities for any purpose whatsoever including, but not limited to, Government Access Programming purposes.

#### **10.24 Movement of Cable System Facilities For Town Purposes**

The Town shall have the right to require Grantee to relocate, remove, replace, modify or disconnect Grantee's facilities and equipment located in the Rights-of-Way or on any other property of the Town in the event of an emergency or when reasonable public convenience requires such change (for example, without limitation, by reason of traffic conditions, public safety, Right-of-Way vacation, Right-of-Way construction, change or establishment of Right-of-Way grade, installation of sewers, drains, gas or water pipes, or any other types of structures or improvements by the Town for public purposes). Such work shall be performed at the Grantee's expense consistent with applicable law. Except during an emergency, the Town shall provide reasonable notice to Grantee, not to be less than five (5) business days, and allow Grantee with the opportunity to perform such action. In the event of any capital improvement project exceeding \$500,000 in expenditures by the Town which requires the removal, replacement, modification or disconnection of Grantee's facilities or equipment, the Town shall provide at least sixty (60) days' written notice to Grantee. Following notice by the Town, Grantee shall relocate, remove, replace, modify or disconnect any of its facilities or equipment within any Right-of-Way, or on any other property of the Town. If the Town requires Grantee to relocate its facilities located within the Rights-of-Way, the Town shall make a reasonable effort to provide Grantee with an alternate location within the Rights-of-Way. If funds are generally made available to users of the Rights-of-Way for such relocation, Grantee shall be entitled to its pro rata share of such funds.

If the Grantee fails to complete this work within the time prescribed and to the Town's satisfaction, the Town may cause such work to be done and bill the cost of the work to the Grantee consistent with applicable laws, including all costs and expenses incurred by the Town due to Grantee's delay. In such event, the Town shall not be liable for any damage to any portion of Grantee's Cable System. Within thirty (30) days of receipt of an itemized list of those costs, the Grantee shall pay the Town.

Nothing herein shall be construed as to waive any rights Grantee may have for reimbursement of costs related to underground construction.

### **10.25 Movement of Cable System Facilities for Other Franchise Holders**

If any removal, replacement, modification or disconnection of the Cable System is required to accommodate the construction, operation or repair of the facilities or equipment of another Town franchise holder, Grantee shall, after at least thirty (30) days' advance written notice, take action to effect the necessary changes requested by the responsible entity. Grantee may require that the benefited party pay the costs associated with the removal or relocation.

### **10.26 Temporary Changes for Other Permittees**

At the request of any Person holding a valid permit and upon reasonable advance notice, Grantee shall temporarily raise, lower or remove its wires as necessary to permit the moving of a building, vehicle, equipment or other item. The permit holder must pay the expense of such temporary changes, and Grantee may require a reasonable deposit of the estimated payment in advance.

### **10.27 Reservation of Town Use of Right-of-Way**

Nothing in this Franchise shall prevent the Town or public utilities owned, maintained or operated by public entities other than the Town from constructing sewers; grading, paving, repairing or altering any Right-of-Way; laying down, repairing or removing water mains; or constructing or establishing any other public work or improvement. All such work shall be done, insofar as practicable, so as not to obstruct, injure or prevent the use and operation of Grantee's Cable System.

### **10.28 Tree Trimming**

Grantee may prune or cause to be pruned, using proper pruning practices, any tree in the Town's Rights-of-Way which interferes with Grantee's Cable System. Grantee shall comply with any general ordinance or regulations of the Town regarding tree trimming. Except in emergencies, Grantee may not prune trees at a point below thirty (30) feet above sidewalk grade until one (1) week written notice has been given to the owner or occupant of the premises abutting the Right-of-Way in or over which the tree is growing. The owner or occupant of the abutting premises may prune such tree at his or her own expense during this one (1) week period.

If the owner or occupant fails to do so, Grantee may prune such tree at its own expense. For purposes of this subsection, emergencies exist when it is necessary to prune to protect the public or Grantee's facilities from imminent danger only.

### **10.29 Inspection of Construction and Facilities**

The Town may inspect any of Grantee's facilities, equipment or construction at any time upon at least twenty-four (24) hours notice, or, in case of emergency, upon demand without prior notice. The Town shall have the right to charge generally applicable inspection fees for construction inspections pursuant to generally applicable city regulations. If an unsafe condition

is found to exist, the Town, in addition to taking any other action permitted under applicable law, may order Grantee, in writing, to make the necessary repairs and alterations specified therein forthwith to correct the unsafe condition by a time the Town establishes. The Town has the right to correct, inspect, administer and repair the unsafe condition if Grantee fails to do so, and to charge Grantee for necessary repairs made to an unsafe facility.

### **10.30 Stop Work**

(A) On notice from the Town that any work is being performed contrary to the provisions of this Franchise, or in an unsafe or dangerous manner as determined by the Town, or in violation of the terms of any applicable permit, laws, regulations, ordinances, or standards, the work may immediately be stopped by the Town.

(B) The stop work order shall:

- (1) Be in writing;
- (2) Be given to the Person doing the work, or posted on the work site;
- (3) Be sent to Grantee by overnight delivery at the address given herein;
- (4) Indicate the nature of the alleged violation or unsafe condition; and
- (5) Establish conditions under which work may be resumed.

### **10.31 Work of Contractors and Subcontractors**

Grantee's contractors and subcontractors shall be licensed and bonded in accordance with the Town's ordinances, regulations and requirements. Work by contractors and subcontractors is subject to the same restrictions, limitations and conditions as if the work were performed by Grantee. Grantee shall be responsible for all work performed by its contractors and subcontractors and others performing work on its behalf as if the work were performed by it, and shall ensure that all such work is performed in compliance with this Franchise and other applicable law, and shall be jointly and severally liable for all damages and correcting all damage caused by them. It is Grantee's responsibility to ensure that contractors, subcontractors or other Persons performing work on Grantee's behalf are familiar with the requirements of this Franchise and other applicable laws governing the work performed by them.

## **SECTION 11. CABLE SYSTEM CONFIGURATION, TECHNICAL STANDARDS AND TESTING**

### **11.1 Cable System Configuration**

(A) As of the Effective Date, Grantee has activated the Cable System bandwidth to at least 750 MHz and has provided activated two-way capability throughout the Franchise Area.

The Cable System shall deliver no less than one hundred ten (110) Channels of analog and/or digital Video Programming to Subscribers, provided that the Grantee reserves the right to use the bandwidth in the future for other uses based on market factors.

(B) Equipment must be installed so that all closed captioning programming received by the Cable System shall include the closed caption signal so long as the closed caption signal is provided consistent with FCC standards. Equipment must be installed so that all local signals received in stereo or with secondary audio tracks (broadcast and Access Programming) are retransmitted in those same formats. In the case of AM/FM radio transmission, the above specifications, where applicable, shall apply.

(C) All future Upgrade construction shall be subject to the Town's permitting process.

(D) Grantee and Town shall meet, at the Town's request, to discuss the progress of any future Upgrade design plan and construction.

(E) Grantee will take prompt corrective action if it finds that any facilities or equipment on the Cable System are not operating as expected, or if it finds that facilities and equipment do not comply with the requirements of this Franchise or applicable law.

(F) Grantee's construction decisions shall be based solely upon legitimate engineering decisions and shall not take into consideration the income level of any particular community within the Franchise Area.

## **11.2 Standby Power**

Grantee shall provide standby power generating capacity at the Cable System Headend capable of providing at least twelve (12) hours of emergency operation. Grantee shall maintain standby power system supplies, rated for at least two (2) hours duration, throughout the trunk and distribution networks, and rated for at least four (4) hours duration at all Nodes and at all Hubs.

## **11.3 Emergency Alert Capability**

(A) Grantee shall comply with the rules and procedures of the FCC with respect to providing an Emergency Alert System ("EAS") so that the Town may use the Cable System to transmit an emergency alert signal to Subscribers in the Town.

(B) The Town shall permit only appropriately trained and authorized Persons to operate the EAS equipment provided pursuant to this subsection.

(C) Grantee shall ensure that the EAS is functioning properly at all times. It will test the EAS periodically, in a manner consistent with sound operational practices for emergency systems. Upon written request from the Town, Grantee will advise the Town of the testing schedule and the Town may be present for the tests.

#### **11.4 Technical Performance**

The technical performance of the Cable System shall meet or exceed all applicable federal (including, but not limited to, the FCC), State and local technical standards, as they may be amended from time to time, regardless of the transmission technology utilized. The Town shall have the full authority permitted by applicable law to enforce compliance with these technical standards.

#### **11.5 Cable System Performance Testing**

(A) Grantee shall, at Grantee's expense, perform the following tests on its Cable System:

(1) All tests required by the FCC;

(2) All other tests reasonably necessary to determine compliance with technical standards adopted by the FCC at any time during the term of this Franchise; and

(3) All other tests as otherwise specified in this Franchise.

(B) At a minimum, Grantee's tests shall include:

(1) Cumulative leakage index testing of any new construction;

(2) Semi-annual compliance and proof of performance tests in conformance with generally accepted industry guidelines;

(3) Tests in response to Subscriber complaints;

(4) Periodic monitoring tests, at intervals not to exceed six (6) months, of Subscriber (field) test points, the Headend, and the condition of standby power supplies; and

(5) Cumulative leakage index tests, at least annually, designed to ensure that one hundred percent (100%) of Grantee's Cable System has been ground or air tested for signal leakage in accordance with FCC standards.

(C) Grantee shall maintain written records of all results of its Cable System tests, performed by or for Grantee. Copies of such test results will be provided to the Town upon written request.

(D) If the FCC no longer requires proof of performance tests for Grantee's Cable System during the term of this Franchise, Grantee agrees that it shall continue to conduct proof of performance tests on the Cable System in accordance with the standards that were in place on

the Effective Date, or any generally applicable standards later adopted, at least once a year, and provide written results of such tests to the Town upon written request.

(E) The FCC semi-annual testing is conducted in January/February and July/August of each year. If the Town contacts Grantee prior to the next test period (i.e., before December 15 and June 15 respectively of each year), Grantee shall provide Town with no less than seven (7) days prior written notice of the actual date(s) for FCC compliance testing. If Town notifies Grantee in writing by the December 15th and June 15th dates that it wishes to have a representative present during the next test(s), Grantee shall cooperate in scheduling its testing so that the representative can be present. Notwithstanding the above, representatives of the Town may witness all technical performance tests.

(F) Grantee shall be required to promptly take such corrective measures as are necessary to correct any performance deficiencies fully and to prevent their recurrence as far as possible. Grantee's failure to correct deficiencies identified through this testing process shall be a material violation of this Franchise. Sites shall be re-tested following correction.

### **11.6 Additional Tests**

Where there exists other evidence that in the judgment of the Town casts doubt upon the reliability or technical quality of Cable Service, the Town shall have the right and authority to require Grantee to test, analyze and report on the performance of the Cable System. Grantee shall fully cooperate with the Town in performing such testing and shall prepare the results and a report, if requested, within thirty (30) days after testing. Such report shall include the following information:

- (A) the nature of the complaint or problem that precipitated the special tests;
- (B) the Cable System component tested;
- (C) the equipment used and procedures employed in testing;
- (D) the method, if any, in which such complaint or problem was resolved; and
- (E) any other information pertinent to said tests and analysis that may be required.

## **SECTION 12. SERVICE AVAILABILITY, INTERCONNECTION AND SERVICE TO SCHOOLS AND PUBLIC BUILDINGS**

### **12.1 Universal Service**

Grantee shall not arbitrarily refuse to provide Cable Service to any Person within its Franchise Area. All Dwelling Units, Multiple Dwelling Units and commercial establishments in the Franchise Area shall have the same availability of Cable Services from Grantee's Cable System under non-discriminatory rates and reasonable terms and conditions consistent with this franchise.

The Town acknowledges that the Grantee cannot control the dissemination of particular Cable Services beyond the point of demarcation at a Multiple Dwelling Unit. Notwithstanding the foregoing, Grantee may introduce new or expanded Cable Services on a geographically phased basis, where such services require an upgrade of the Cable System. Grantee may also charge for line extensions and non-standard installations pursuant to subsection 12.2.

## **12.2 Service Availability**

(A) In General. Except as otherwise provided herein, Grantee shall provide Cable Service within seven (7) days of a request by any Person within the Town. For purposes of this subsection, a request shall be deemed made on the date of signing a service agreement, receipt of funds by Grantee, receipt of a written request by Grantee or receipt by Grantee of a verified verbal request. Grantee shall provide such service:

(1) With no line extension charge except as specifically authorized elsewhere in this Franchise.

(2) At a non-discriminatory installation charge for a standard installation with a Standard Drop with additional charges for non-standard installations computed according to a non-discriminatory methodology for such installations, adopted by Grantee and provided in writing to the Town;

(3) At non-discriminatory monthly rates for Residential Subscribers.

(B) Service to Multiple Dwelling Units. The Grantee shall offer the individual units of a Multiple Dwelling Unit all Cable Services offered to other Dwelling Units in the Town and shall individually wire units upon request of the property owner or renter who has been given written authorization by the owner; provided, however, that any such offering is conditioned upon the Grantee having legal access to said unit. The Town acknowledges that the Grantee cannot control the dissemination of particular Cable Services beyond the point of demarcation at a Multiple Dwelling Unit.

(C) Customer Charges for Extensions of Service. No customer shall be refused service arbitrarily. However, for unusual circumstances, such as a non-Standard Drop or a density of less than thirty-five (35) residences per 5280 cable-bearing strand feet of trunk or distribution cable, service may be made available on the basis of a capital contribution in aid of construction, including cost of material, labor and easements. For the purpose of determining the amount of capital contribution in aid of construction to be borne by the Grantee and customers in the area in which service may be expanded, the Grantee will contribute an amount equal to the construction and other costs per mile, multiplied by a fraction whose numerator equals the actual number of residences per 5280 cable-bearing strand feet of its trunk or distribution cable and whose denominator equals thirty-five (35). Customers who request service hereunder will bear the remainder of the construction and other costs on a pro rata basis. The Grantee may require that the payment of the capital contribution in aid of construction borne by such potential customers be paid in advance.



(D) Annexations. For the purposes of this Section, “contiguous” means adjacent to some property within the Town’s municipal boundary that is more than a road or street.

(1) In the event that the Town annexes territory that is contiguous to the current Franchise Area and not being provided Cable Service by the Grantee or an Affiliate of Grantee, Grantee agrees that it will extend its Cable system into the newly annexed territory under the terms of subsection 12.2(C); provided however if the annexation is of property that includes potential customers where Grantee’s coaxial infrastructure does not exist to serve such customers, service shall be provided when technically and economically feasible.

(2) In the event the Town annexes territory that is currently being provided Cable Service by Grantee or an Affiliate of Grantee, but not the same Cable Service as provided within the current Franchise Area, Grantee shall estimate the cost to make such adjustments to the Cable System as is necessary to provide the same Cable Service to the annexed area. If requested by the Grantee or Town, Grantee and the Town shall meet to discuss the cost of such adjustment and potential impact on Subscriber rates within one hundred twenty (120) days of Grantee’s receipt of notification of the annexation. Potential Subscribers in the area shall be given notice of the costs and potential impact on Subscriber rates, and shall be surveyed, at Grantee’s expense, as to their opinion. The Town will consider the results of the survey in its decision. Following the meeting the Town may require that Grantee make the required adjustments to the Cable System and billing system to provide the same Cable Service to the annexed area within two (2) years of the receipt of the annexation notification. If the Town determines that Grantee need not make adjustments necessary to provide the same Cable Services to the annexed area as exists elsewhere in the Town, the Town and the Grantee may annually revisit these issues and the costs necessary to make the required adjustments. Grantee may pass any costs of these adjustments to provide the same cable service to the newly annexed area to the Subscribers in that area.

(3) In the event that the Town annexes territory that is not contiguous to the current Franchise Area, Grantee shall have no obligation to extend to such area; provided, however, that if Grantee and/or an Affiliate has permission from the appropriate government authority to use the intervening Right-of-Way for this purpose, either by franchise or separate agreement, Grantee shall extend or adjust the Cable System in accordance with subsection (1) or (2) above.

(4) If Grantee finds it convenient for any of the annexed territory to be served by an Affiliate versus the Grantee, it is understood by the parties that the rights, benefits and obligations of this Franchise shall apply to such Affiliate for the annexed area, without the need for a transfer approval of the Town.

### **12.3 Interconnection With Other Cable Systems**

(A) The Cable System shall be Interconnected with other contiguous cable systems that

are owned and operated by Grantee or an Affiliate, provided that the same Headend that serves the Franchise Area serves such systems.

(B) Grantee shall, in accordance with this subsection, Interconnect the noncommercial Video Programming acquired or produced by governmental institutions (“Government Access Channels”), of the Cable System with any other contiguous cable system not owned or operated by Grantee or an Affiliate of Grantee upon the directive of the Town. Interconnection of Government Access Channels may be done by direct cable connection, microwave link, satellite or other appropriate methods. The Town shall not direct Interconnection except under circumstances where it can be accomplished without undue burden or excessive costs to the Subscribers. Grantee shall not be required to Interconnect with the other cable system unless the operator of that system is willing to do so and pays for its own cost of constructing and maintaining the Interconnect up to the demarcation point.

(C) Grantee shall only be required to Interconnect Government Access Channels with an overbuilder in the County in the event that the overbuilder proves to the County that would be economically burdensome to its Subscribers to construct and maintain return lines directly from the origination point(s) of the Access Channel(s) versus Interconnecting with Grantee. In the event Grantee receives a directive from the Town to Interconnect with an overbuilder, Grantee shall immediately initiate negotiations with the overbuilder and shall report to the County the results of such negotiations no later than sixty (60) days after such initiation. The overbuilder shall be responsible for all of Grantee’s costs in constructing and maintaining the Interconnect. If the Interconnections interfere in any way with the signal quality and normal operations of Grantee’s Subscriber Network, the Interconnection shall not be required. Additionally, Grantee shall only be required to Interconnect with an overbuilder if the overbuilder is providing similar support for Access as required of Grantee pursuant to this Franchise.

(D) Grantee shall explore with any public interconnection authority, regional interconnection authority or Town, County, State or federal regulatory agency which may hereafter be established for the purpose of regulating, financing or otherwise providing for the Interconnection of cable systems beyond the boundaries of the Town, the possibility of further Interconnects.

#### **12.4 Connection of Public Facilities**

Grantee shall, at no cost to the Town, continue to provide one outlet of Basic Service and Expanded Basic Service to all Town owned and occupied buildings, schools and public libraries where such service is provided as of the Effective Date of this Franchise. For purposes of this subsection, “school” means all State-accredited K-12 public and private schools. In addition, Grantee shall provide, at no cost to the Town or other entity, one outlet of Basic and Expanded Basic Service to additional owned or leased and occupied Town buildings, schools and libraries where service is not being provided as of the Effective Date of this Franchise upon request and if it is a Standard Drop or if the Town or other entity agrees to pay the incremental cost of such drop line, including the cost of such excess labor and materials. Such obligation to provide free Cable Service shall not extend to areas of Town buildings where the Grantee would normally enter into a

commercial contract to provide such Cable Service (e.g., golf courses, airport restaurants and concourses, and recreation center work out facilities). Outlets of Basic and Expanded Basic Service provided in accordance with this subsection may be used to distribute Cable Services throughout such buildings, provided such distribution can be accomplished without causing Cable System disruption and general technical standards are maintained. Such outlets may only be used for lawful purposes.

## **SECTION 13. FRANCHISE VIOLATIONS**

### **13.1 Procedure for Remediating Franchise Violations**

(A) If the Town believes that Grantee has failed to perform any obligation under this Franchise or has failed to perform in a timely manner, the Town shall notify Grantee in writing, stating with reasonable specificity the nature of the alleged breach. Grantee shall have thirty (30) days from the receipt of such notice to:

(1) Respond to the Town, contesting the Town's assertion that a breach has occurred;

(2) Cure the breach; or

(3) Notify the Town that Grantee cannot reasonably cure the breach within the thirty (30) days, because of the nature of the breach. If the breach cannot reasonably be cured within thirty (30) days, Grantee shall promptly take all reasonable steps to cure the breach and notify the Town in writing and in detail as to the exact steps that will be taken and the projected completion date. In such case, the Town may set a meeting in accordance with paragraph (B) to determine whether additional time beyond the thirty (30) days specified above is indeed needed, and whether Grantee's proposed completion schedule and steps are reasonable.

(B) If Grantee does not cure the alleged breach within thirty (30) days or by the projected completion date under paragraph (A)(3), or denies the breach and the Town still wishes to pursue the matter, the Town shall set a meeting with the Administrator to discuss issues related to the alleged breach. The Town shall notify Grantee of the meeting in writing and such meeting shall take place no less than thirty (30) days after Grantee's receipt of notice of the meeting. At the meeting, Grantee shall have an opportunity to be heard and to present any relevant information. Following the meeting, if the Town Manager finds that a breach does exist, the Administrator may recommend to Town Board that it find that Grantee has breached the Franchise.

(C) If the Town Board determines that a breach exists, the Town may order Grantee to correct or remedy the breach within fifteen (15) days or within such other reasonable time as the Town shall determine. If Grantee does not cure such breach within the time designated by the Town to the Town's reasonable satisfaction, the Town may impose one or more of the following sanctions:

- (1) Withdraw an amount from the letter of credit as monetary damages;
- (2) Recommend revocation of this Franchise pursuant to Section 14.2 if the breach is material; or
- (3) Recommend any other legal or equitable remedy available under this Franchise or any applicable law.

(D) The determination as to whether a violation of this Franchise has occurred shall be within the reasonable discretion of the Town, in accordance with law, provided that any final determination may be subject to appeal to a court of competent jurisdiction under applicable law.

### **13.2 Revocation**

(A) After completing the procedure set forth in Section 13.1, the Town may commence proceedings to revoke this Franchise and rescind all rights and privileges associated with this Franchise in the following circumstances, each of which represents a material breach of this Franchise:

- (1) If Grantee fails to perform any material obligation under this Franchise;
- (2) If Grantee willfully fails for more than forty-eight (48) hours to provide continuous and uninterrupted Cable Service;
- (3) If Grantee attempts to evade any material obligation of this Franchise or to practice any fraud or deceit upon the Town or Subscribers;
- (4) If Grantee becomes insolvent, or if there is an assignment for the benefit of Grantee's creditors; or
- (5) If Grantee makes a material misrepresentation of fact in the application for or negotiation of this Franchise.

(B) To begin the revocation process, the Town shall give at least forty-five (45) days prior written notice to Grantee of its intent to revoke the Franchise at a public hearing before the Town Board. The notice shall set forth the exact nature of the noncompliance.

(1) At such hearing, Grantee shall be provided a fair opportunity for full participation, including the right to be represented by legal counsel, to introduce evidence, and to call and question witnesses. Town shall record by audio recording or certified court reporter such hearing by the Town. The Town Board shall hear any Persons interested in the revocation, and shall allow Grantee an opportunity to state its position on the matter.

(2) Within ninety (90) days after the hearing, the Town Board shall determine whether to revoke the Franchise and declare that the Franchise is revoked and the letter of credit forfeited; or if the breach at issue is capable of being cured by Grantee, direct

Grantee to take appropriate remedial action within the time and in the manner and on the terms and conditions that the Town Board determines are reasonable under the circumstances. If the Town determines that the Franchise is to be revoked, the Town shall set forth the reasons for the decision and transmit a copy of the decision to Grantee. Grantee shall be bound by the Town's decision to revoke the Franchise unless it appeals the decision to a court of competent jurisdiction within fifteen (15) days of the date of the decision.

(3) Upon appeal, Grantee shall be entitled to such relief as the Court may deem appropriate.

(4) The Town Board may in its sole discretion take any lawful action that it deems appropriate to enforce the Town's rights under the Franchise in lieu of revocation of the Franchise.

### **13.3 Procedures in the Event of Termination or Revocation**

(A) If this Franchise expires without renewal or is otherwise lawfully terminated or revoked, the Town may, subject to applicable law:

(1) Allow Grantee to maintain and operate its Cable System on a month-to-month basis or short-term extension of this Franchise for not less than six (6) months, unless a sale of the Cable System can be closed sooner or Grantee demonstrates to the Town's satisfaction that it needs additional time to complete the sale; or

(2) Purchase Grantee's Cable System in accordance with the procedures set forth in subsection 13.4, below.

(B) In the event that a sale has not been completed in accordance with subsections (A)(1) and/or (A)(2) above, the Town may order the removal of the above-ground Cable System facilities and such underground facilities from the Town at Grantee's sole expense within a reasonable period of time as determined by the Town. In removing its plant, structures and equipment, Grantee shall refill, at its own expense, any excavation that is made by it and shall leave all Rights-of-Way, public places and private property in as good condition as that prevailing prior to Grantee's removal of its equipment without affecting the electrical or telephone cable wires or attachments. The indemnification and insurance provisions shall remain in full force and effect during the period of removal, and Grantee shall not be entitled to, and agrees not to request, compensation of any sort.

(C) If Grantee fails to complete any removal required by subsection 13.3 (B) to the Town's satisfaction, after written notice to Grantee, the Town may cause the work to be done and Grantee shall reimburse the Town for the costs incurred within thirty (30) days after receipt of an itemized list of the costs.

(D) The Town may seek legal and equitable relief to enforce the provisions of this Franchise.

#### **13.4 Purchase of Cable System**

(A) If at any time this Franchise is revoked, terminated, or not renewed upon expiration in accordance with the provisions of federal law, the Town shall have the option to purchase the Cable System.

(B) The Town may, at any time thereafter, offer in writing to purchase Grantee's Cable System. Grantee shall have thirty (30) days from receipt of a written offer from the Town within which to accept or reject the offer.

(C) In any case where the Town elects to purchase the Cable System, the purchase shall be closed within one hundred twenty (120) days of the date of the Town's audit of a current profit and loss statement of Grantee. The Town shall pay for the Cable System in cash or certified funds, and Grantee shall deliver appropriate bills of sale and other instruments of conveyance.

(D) For the purposes of this subsection, the price for the Cable System shall be determined as follows:

(1) In the case of the expiration of the Franchise without renewal, at fair market value determined on the basis of Grantee's Cable System valued as a going concern, but with no value allocated to the Franchise itself. In order to obtain the fair market value, this valuation shall be reduced by the amount of any lien, encumbrance, or other obligation of Grantee that the Town would assume.

(2) In the case of revocation for cause, the equitable price of Grantee's Cable System.

#### **13.5 Receivership and Foreclosure**

(A) At the option of the Town, subject to applicable law, this Franchise may be revoked one hundred twenty (120) days after the appointment of a receiver or trustee to take over and conduct the business of Grantee whether in a receivership, reorganization, bankruptcy or other action or proceeding, unless:

(1) The receivership or trusteeship is vacated within one hundred twenty (120) days of appointment; or

(2) The receivers or trustees have, within one hundred twenty (120) days after their election or appointment, fully complied with all the terms and provisions of this Franchise, and have remedied all defaults under the Franchise. Additionally, the receivers or trustees shall have executed an agreement duly approved by the court having jurisdiction,

by which the receivers or trustees assume and agree to be bound by each and every term, provision and limitation of this Franchise.

(B) If there is a foreclosure or other involuntary sale of the whole or any part of the plant, property and equipment of Grantee, the Town may serve notice of revocation on Grantee and to the purchaser at the sale, and the rights and privileges of Grantee under this Franchise shall be revoked thirty (30) days after service of such notice, unless:

(1) The Town has approved the transfer of the Franchise, in accordance with the procedures set forth in this Franchise and as provided by law; and

(2) The purchaser has covenanted and agreed with the Town to assume and be bound by all of the terms and conditions of this Franchise.

### **13.6 No Monetary Recourse Against the Town**

Grantee shall not have any monetary recourse against the Town or its officers, officials, boards, commissions, agents or employees for any loss, costs, expenses or damages arising out of any provision or requirement of this Franchise or the enforcement thereof, in accordance with the provisions of applicable federal, State and local law. The rights of the Town under this Franchise are in addition to, and shall not be read to limit, any immunities the Town may enjoy under federal, State or local law.

### **13.7 Alternative Remedies**

No provision of this Franchise shall be deemed to bar the right of the Town to seek or obtain judicial relief from a violation of any provision of the Franchise or any rule, regulation, requirement or directive promulgated thereunder. Neither the existence of other remedies identified in this Franchise nor the exercise thereof shall be deemed to bar or otherwise limit the right of the Town to recover monetary damages for such violations by Grantee, or to seek and obtain judicial enforcement of Grantee's obligations by means of specific performance, injunctive relief or mandate, or any other remedy at law or in equity.

### **13.8 Assessment of Monetary Damages**

(A) Upon completion of the procedures set forth in subsection 13.1, and from the date of said completion, the Town may assess against Grantee monetary damages up to two hundred dollars (\$200.00) per day for any material breaches, or up to one hundred dollars (\$100.00) per day for other defaults, and withdraw the assessment from the letter of credit or collect the assessment as specified in this Franchise. To assess any amount from the letter of credit, the Town shall follow the procedures for withdrawals from the letter of credit set forth in the letter of credit and in this Franchise.

(B) The assessment does not constitute a waiver by Town of any other right or remedy it may have under the Franchise or applicable law, including its right to recover from Grantee any

additional damages, losses, costs and expenses that are incurred by Town by reason of the breach of this Franchise.

### **13.9 Effect of Abandonment**

If the Grantee abandons its Cable System during the Franchise term, or fails to operate its Cable System in accordance with its duty to provide continuous service, the Town, at its option, may operate the Cable System; designate another entity to operate the Cable System temporarily until the Grantee restores service under conditions acceptable to the Town, or until the Franchise is revoked and a new franchisee is selected by the Town; or obtain an injunction requiring the Grantee to continue operations. If the Town is required to operate or designate another entity to operate the Cable System, the Grantee shall reimburse the Town or its designee for all reasonable costs, expenses and damages incurred.

### **13.10 What Constitutes Abandonment**

The Town shall be entitled to exercise its options in subsection 13.9 if:

(A) The Grantee fails to provide Cable Service in accordance with this Franchise over a substantial portion of the Franchise Area for four (4) consecutive days, unless the Town authorizes a longer interruption of service; or

(B) The Grantee, for any period, willfully and without cause refuses to provide Cable Service in accordance with this Franchise.

## **SECTION 14. FRANCHISE RENEWAL AND TRANSFER**

### **14.1 Renewal**

(A) The Town and Grantee agree that any proceedings undertaken by the Town that relate to the renewal of the Franchise shall be governed by and comply with the provisions of Section 626 of the Cable Act.

(B) In addition to the procedures set forth in said Section 626(a), the Town agrees to notify Grantee of the completion of its assessments regarding the identification of future cable-related community needs and interests, as well as the past performance of Grantee under the then current Franchise term. Notwithstanding anything to the contrary set forth herein, Grantee and Town agree that at any time during the term of the then current Franchise, while affording the public adequate notice and opportunity for comment, the Town and Grantee may agree to undertake and finalize negotiations regarding renewal of the then current Franchise and the Town may grant a renewal thereof. Grantee and Town consider the terms set forth in this subsection to be consistent with the express provisions of Section 626 of the Cable Act.



## 14.2 Transfer of Ownership or Control

(A) The Cable System and this Franchise shall not be sold, assigned, transferred, leased or disposed of, either in whole or in part, either by involuntary sale or by voluntary sale, merger or consolidation; nor shall title thereto, either legal or equitable, or any right, interest or property therein pass to or vest in any Person or entity without the prior written consent of the Town.

(B) The Grantee shall promptly notify the Town of any actual or proposed change in, or transfer of, or acquisition by any other party of control of the Grantee. The word "control" as used herein is not limited to majority stockholders but includes actual working control in whatever manner exercised. Every change, transfer or acquisition of control of the Grantee shall make this Franchise subject to cancellation unless and until the Town shall have consented in writing thereto. Town's consent shall not be unreasonably withheld.

(C) The parties to the sale or transfer shall make a written request to the Town for its approval of a sale or transfer and furnish all information required by law and the Town.

(D) In seeking the Town's consent to any change in ownership or control, the proposed transferee shall indicate whether it:

(1) Has ever been convicted or held liable for acts involving deceit including any violation of federal, State or local law or regulations, or is currently under an indictment, investigation or complaint charging such acts;

(2) Has *ever* had a judgment in an action for fraud, deceit, or misrepresentation entered against the proposed transferee by any court of competent jurisdiction;

(3) Has pending any material legal claim, lawsuit, or administrative proceeding arising out of or involving a cable system;

(4) Is financially solvent, by submitting financial data including financial statements that are audited by a certified public accountant who may also be an officer of the transferee, along with any other data that the Town may reasonably require; and

(5) Has the financial, legal and technical capability to enable it to maintain and operate the Cable System for the remaining term of the Franchise.

(E) The Town shall act by ordinance or resolution on the request within one hundred twenty (120) days of the request, provided it has received all requested information. Subject to the foregoing, if the Town fails to render a final decision on the request within one hundred twenty (120) days, such request shall be deemed granted unless the requesting party and the Town agree to an extension of time.

(F) Within thirty (30) days of any transfer or sale, if approved or deemed granted by the Town, Grantee shall file with the Town a copy of the deed, agreement, lease or other written

instrument evidencing such sale or transfer of ownership or control, certified and sworn to as correct by Grantee and the transferee, and the transferee shall file its written acceptance agreeing to be bound by all of the provisions of this Franchise, subject to applicable law. In the event of a change in control, in which the Grantee is not replaced by another entity, the Grantee will continue to be bound by all of the provisions of the Franchise, subject to applicable law, and will not be required to file an additional written acceptance.

(G) In reviewing a request for sale or transfer, the Town may inquire into the legal, technical and financial qualifications of the prospective controlling party or transferee, and Grantee shall assist the Town in so inquiring. The Town may condition said sale or transfer upon such terms and conditions as it deems reasonably appropriate, provided, however, any such terms and conditions so attached shall be related to the legal, technical and financial qualifications of the prospective controlling party or transferee and to the resolution of outstanding and unresolved issues of noncompliance with the terms and conditions of this Franchise by Grantee.

(H) Notwithstanding anything to the contrary in this subsection, the prior approval of the Town shall not be required for any sale, assignment or transfer of the Franchise or Cable System to an entity controlling, controlled by or under the same common control as Grantee, provided that the proposed assignee or transferee must show financial responsibility as may be determined necessary by the Town and must agree in writing to comply with all of the provisions of the Franchise. Further, Grantee may pledge the assets of the Cable System for the purpose of financing without the consent of the Town; provided that such pledge of assets shall not impair or mitigate Grantee's responsibilities and capabilities to meet all of its obligations under the provisions of this Franchise.

## **SECTION 15. SEVERABILITY**

If any Section, subsection, paragraph, term or provision of this Franchise is determined to be illegal, invalid or unconstitutional by any court or agency of competent jurisdiction, such determination shall have no effect on the validity of any other Section, subsection, paragraph, term or provision of this Franchise, all of which will remain in full force and effect for the term of the Franchise.

## **SECTION 16. MISCELLANEOUS PROVISIONS**

### **16.1 Preferential or Discriminatory Practices Prohibited**

**NO DISCRIMINATION IN EMPLOYMENT.** In connection with the performance of work under this Franchise, the Grantee agrees not to refuse to hire, discharge, promote or demote, or discriminate in matters of compensation against any Person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, marital status, or physical or mental disability; and the Grantee further agrees to insert the foregoing provision in all subcontracts hereunder. Throughout the term of this Franchise, Grantee shall fully comply with all equal employment or non-discrimination provisions and requirements of federal, State and local laws, and in particular, FCC rules and regulations relating thereto.

## **16.2 Notices**

Throughout the term of the Franchise, each party shall maintain and file with the other a local address for the service of notices by mail. All notices shall be sent postage prepaid to such respective address and such notices shall be effective upon the date of mailing. The Town or the Grantee may change these addresses by written notice at any time. At the Effective Date of this Franchise, Grantee's address shall be:

Comcast of COLORADO I, LLC  
8000 East Iliff Avenue  
Denver, Colorado 8023 1  
Attention: Director of Local Government Relations

with a copy to:

Comcast Mountain Division  
183 Inverness Dr. West  
Englewood, CO 80112  
Attention: Legal Department/ Local Government Relations

The Town's address shall be:

Town Administrator  
Town of Erie  
645 Holbrook  
Box 750  
Erie, Colorado 805 16

## **16.3 Descriptive Headings**

The headings and titles of the Sections and subsections of this Franchise are for reference purposes only, and shall not affect the meaning or interpretation of the text herein.

## **16.4 Publication Costs to be Borne by Grantee**

Grantee shall reimburse the Town for all costs incurred in publishing this Franchise, if such publication is required by a generally applicable Town ordinance.

## **16.5 Binding Effect**

This Franchise shall be binding upon the parties hereto, their permitted successors and assigns.

**16.6 No Joint Venture**

Nothing herein shall be deemed to create a joint venture or principal-agent relationship between the parties, and neither party is authorized to, nor shall either party act toward third Persons or the public in any manner that would indicate any such relationship with the other.

**16.7 Waiver**

The failure of the Town at any time to require performance by the Grantee of any provision hereof shall in no way affect the right of the Town hereafter to enforce the same. Nor shall the waiver by the Town of any breach of any provision hereof be taken or held to be a waiver of any succeeding breach of such provision, or as a waiver of the provision itself or any other provision.

**16.8 Reasonableness of Consent or Approval**

Whenever under this Franchise "reasonableness" is the standard for the granting or denial of the consent or approval of either party hereto, such party shall be entitled to consider public and governmental policy, moral and ethical standards as well as business and economic considerations.

**16.9 Entire Agreement**


This Franchise represents the entire understanding and agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior oral negotiations between the parties.

IN WITNESS WHEREOF, this Franchise is signed in the name of the Town of Erie, Colorado this 15 day of April, 2004.

ATTEST:

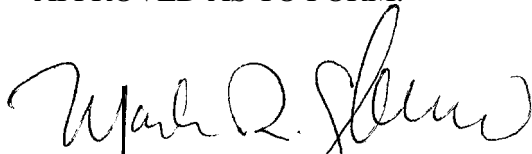
TOWN OF ERIE, COLORADO:


  
Town Clerk

  
Mayor

APPROVED AS TO FORM:

RECOMMENDED AND APPROVED:

  
Town Attorney

  
Town Administrator

Accepted and approved this \_\_\_\_\_ day of \_\_\_\_\_, 2004.

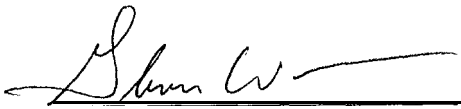
UNCONDITIONAL ACCEPTANCE OF FRANCHISE

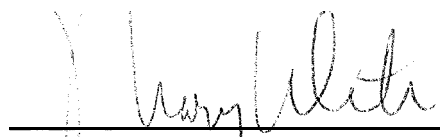
Comcast of Colorado I, LLC, by and through its undersigned representative, Mary White, hereby accepts Ordinance No. \_\_\_\_\_, passed and adopted by the Town of Erie pursuant to which Comcast of Colorado I, LLC is granted a Franchise to operate a Cable System in the Town of Erie in accordance with the terms of such Franchise, and does hereby unconditionally agree that it will comply with and abide by all the provisions, terms and conditions of the Franchise, subject to applicable federal, state and local law, and that as written and to the best of its knowledge, all terms of the Franchise are consistent with federal, state and local law, as of the date this acceptance is signed.

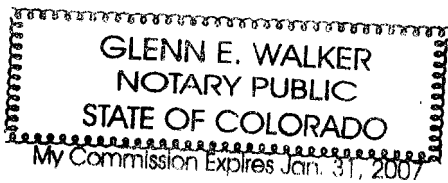
Accepted and approved this Marcy of th, 2004.

ACKNOWLEDGED:

COMCAST OF COLORADO I, LLC

  
\_\_\_\_\_  
Notary Public

  
\_\_\_\_\_  
Mary White  
Senior Vice President



**Exhibit A**  
**To**  
**Cable Franchise Agreement**  
**Customer Service Standards**

# Customer Service Standards

adopted by  
**The Greater Metro Telecommunications Consortium**

## **Introduction**

The Greater Metro Telecommunications Consortium has created the following Customer Service Standards (the "Standards") for distribution and adoption by Members. The purpose of the standards is to establish uniform requirements for the quality of service cable operators are expected to offer their customers in the metropolitan area. The Standards are subject to change from time to time.

The Standards incorporate the Customer Service Obligations published by the Federal Communications Commission (Section 76.309), April, 1993 and customer service standards of cable television service providers operating in the metro area. Based upon the assessment of the needs of citizens in the metropolitan area, the GMTC adopted, modified and created standards specially tailored to members of the Greater Metro Telecommunications Consortium.

The Standards require the cable operator to post a security fund ensuring Customer Service. The security fund is to be used when the cable company fails to respond to a citizen complaint that the franchising authority determines is valid, and to provide a mechanism by which to impose remedies for noncompliance. It is the sincere hope and intention of the GMTC that the security fund will never need to be drawn upon; however, the GMTC believes that some enforcement measures are necessary.

## **GREATER METRO TELECOMMUNICATIONS CONSORTIUM CUSTOMER SERVICE STANDARDS**

### **I. POLICY**

The Cable Operator should be permitted the option and autonomy to first resolve citizen complaints without delay and interference from the Franchising Authority.

Where a given complaint is not addressed by the Cable Operator to the citizen's satisfaction, the Franchising Authority should intervene. In addition, where a pattern of unremedied complaints or noncompliance with the Standards is identified, the Franchising Authority should prescribe a cure and establish a thirty (30) day deadline for implementation of the cure. If the noncompliance is not cured within thirty (30) days, monetary sanctions should be imposed to encourage compliance.

These Standards are intended to be of general application; however, the Cable Operator shall be relieved of any obligations hereunder if it is unable to perform due to a region-wide natural emergency or in the event of force majeure affecting a significant portion of the franchise area. The Cable Operator is free to exceed these Standards to the benefit of its Customers and such shall be considered performance for the purposes of these Standards.

## **II. DEFINITIONS**

When used in these Customer Service Standards (the “Standards”), the following words, phrases, and terms shall have the meanings given below.

“Adoption” shall mean the process necessary to formally enact the Standards within the Franchising Authority’s jurisdiction under applicable ordinances and laws.

“Cable Operator” shall mean any person granted a franchise to operate, or operating, a cable television, data transfer, or telecommunications system within any area of jurisdiction of the Franchising Authority, or such person’s employees, agents, contractors, or subcontractors.

“Customer” shall mean any person who receives service of any sort from the Cable Operator.

“Customer Service Representative” (or “CSR”) shall mean any person employed by the Cable Operator to assist, or provide service to, customers, whether by answering public telephone lines, writing service or installation orders, answering customers’ questions, receiving and processing payments, or performing other customer service-related tasks.

“Franchising Authority” shall mean the Town (County or Town) and/or the Greater Metro Telecommunications Consortium, and/or, the Grantor.

“Greater Metro Telecommunications Consortium” or “GMTC” shall mean a Colorado agency formed by intergovernmental agreement between its Members, local governmental subdivisions of the State of Colorado. The GMTC may be delegated the authority to enforce cable television franchises and cable system operations for its Member communities, and may administer any or all functions under these Standards.

“Town” shall mean the Town of Erie, Colorado

## **III. CUSTOMER SERVICE**

### **A. Courtesy**

All employees of the Cable Operator shall be courteous, knowledgeable and helpful and shall provide effective and satisfactory service in all contacts with customers.

### **B. Accessibility**

1. Within sixty (60) days of the effective date of these Standards, the Cable Operator shall provide, at sites acceptable to the Franchising Authority, customer service centers/business offices (“service centers”) such that no customer shall be located further than ten (10) miles away from a service center. Except as otherwise approved by the Franchising Authority, all service centers shall be open Monday through Friday from 8:00 a.m. to 6:00 p.m., and from 9:00 am to 1:00 p.m. Saturdays, and shall be fully staffed with customer service representatives offering the following services to customers who come to the service center: bill payment, equipment exchange, processing of change



of service requests, and response to customer inquiries and requests. The Franchising Authority may approve alternatives for service centers offering lesser services at any site to which the public has general access. The Cable Operator shall post a sign at each service center advising customers of its hours of operation and of the addresses and telephone numbers at which to contact the Franchising Authority and the Cable Operator if the service center is not open at the times posted. The Cable Operator shall provide free exchanges of faulty converters at the customer's address.

2. The Cable Operator shall maintain local telephone access lines that shall be available twenty-four (24) hours a day, seven (7) days a week for service/repair requests and billing inquiries.
3. The Cable Operator shall have dispatchers and technicians on call twenty-four (24) hours a day, seven (7) days a week, including legal holidays.
4. The Cable Operator shall retain sufficient customer service representatives and telephone line capacity to ensure that telephone calls to service/repair and billing inquiry lines are answered by a customer service representative within thirty (30) seconds or less, and that any transfers are made within thirty (30) seconds. These standards shall be met no less than ninety (90) percent of the time measured monthly.
5. The total number of calls receiving busy signals shall not exceed three (3) of the total telephone calls. This standard shall be met ninety (90) percent or more of the time measured monthly.

### **C. Responsiveness**

#### **1. Guaranteed Seven-Day Residential Installation**

- a. The Cable Operator shall complete all standard residential installations requested by customers within seven (7) business days after the order is placed, unless a later date for installation is requested. "Standard" residential installations are those located up to one hundred twenty five (125) feet from the existing distribution system. If the customer requests a nonstandard residential installation, or the Cable Operator determines that a nonstandard residential installation is required, the Cable Operator shall provide the customer in advance with a total installation cost estimate and an estimated date of completion.
- b. All underground cable drops from the curb to the home shall be buried at a depth of no less than twelve inches (12"), and within no more than one calendar week from the initial installation, or at a time mutually agreed upon between the Cable Operator and the customer.

#### **2. Residential Installation and Service Appointments**

- a. Customers requesting installation of cable service or service to an existing installation may choose any of the following blocks of time for the installation appointment: 8:00 a.m. to 12:00 Noon; 12:00 Noon to 4:00 p.m.; 4:00 p.m. to 8:00 p.m.; or a four-hour block of time mutually agreed upon by the customer and the Cable Operator. The Cable Operator may not cancel an appointment with a customer after 5:00 p.m. on the day before the

scheduled appointment, except for appointments scheduled within twelve (12) hours after the initial call.

b. The Cable Operator shall contact by telephone, mail, or in person, every customer within 2 weeks after installation to assure the customer's satisfaction with the work completed. All responses shall be recorded, and retained by the Cable Operator, and made easily available to the Franchising Authority upon request.

c. The Cable Operator shall be deemed to have responded to a request for service under the provisions of this section when a technician arrives within the agreed upon time, and, if the customer is absent when the technician arrives, the technician leaves written notification of arrival and return time, and a copy of that notification is kept by the Cable Operator. In such circumstances, the Cable Operator shall contact the customer within forty-eight (48) hours.

### 3. Residential Service Interruptions

a. In the event of system outages (loss of reception on all channels) resulting from Cable Operator equipment failure affecting 5 or more customers, the Cable Operator shall correct such failure within 2 hours after the 3rd customer call is received.

b. All other service interruptions resulting from Cable Operator equipment failure shall be corrected by the Cable Operator by the end of the next calendar day.

c. The Cable Operator shall keep an accurate and comprehensive file of any and all complaints regarding the cable system or its operation of the cable system, in a manner consistent with the privacy rights of customers, and the Cable Operator's actions in response to those complaints. These files shall remain open to the Franchising Authority and the public during normal business hours. Grantee shall provide Grantor an executive summary monthly, which shall include

information concerning customer complaints. A summary of service requests, identifying the number and nature of the requests and their disposition, shall also be completed by the Cable Operator for each month and submitted to the Franchising Authority by the tenth (10th) day of the succeeding month. A log of all service interruptions shall be maintained and provided to the Franchising Authority quarterly.

d. All service outages and interruptions for any cause beyond the control of the Cable Operator shall be corrected within thirty-six (36) hours, after the conditions beyond its control have been corrected.

### 4. TV Reception

a. The Cable Operator shall provide clear television reception that meets or exceeds technical standards established by the United States Federal Communications Commission (the "FCC"). The Cable Operator shall render efficient service, make repairs promptly, and interrupt service only for good cause and for the shortest time possible. Scheduled interruptions shall be preceded by notice and shall occur during periods of minimum use of the system, preferably between midnight and six a.m. (6:00 a.m.).

b. If a customer experiences poor video or audio reception attributable to the Cable Operator's equipment, the Cable Operator shall repair the problem no later than the day following the customer call. If an appointment is necessary, customer may choose the same

blocks of time described in Section III.2.a. At the customer's request, the Cable Operator shall repair the problem at a later time convenient to the customer.

## 5. Problem Resolution

The Cable Operator's customer service representatives shall have the authority to provide credit for interrupted service or any of the other credits listed in Schedule A, to waive fees, to schedule service appointments and to change billing cycles, where appropriate. Any difficulties that cannot be resolved by the customer service representative shall be referred to the appropriate supervisor who shall contact the customer within four (4) hours and resolve the problem within forty eight (48) hours or within such other time frame as is acceptable to the customer and the Cable Operator.

## 6. Billing, Credits, and Refunds

- a. The Cable Operator shall use the Anniversary Billed System or similar system of billing. The Cable Operator shall allow at least thirty (30) days from the beginning date of the applicable service period for payment of a customer's service bill for that period. If a customer's service bill is not paid within that period of time the Cable Operator may apply an administrative fee to the customer's account. If the customer's service bill is not paid within forty-five (45) days of the beginning date of the applicable service period, the Cable Operator may perform a "soft" disconnect of the customer's service. If a customer's service bill is not paid within fifty-two (52) days of the beginning date of the applicable service period, the Cable Operator may disconnect the customer's service, provided it has provided two (2) weeks notice to the customer that such disconnection may result.
- b. The Cable Operator shall issue a credit or refund to a customer within 30 days after determining the customer's entitlement to a credit or refund.

## 7. Treatment of Property

- a. The Cable Operator shall keep tree trimming to a minimum; trees and shrubs or other landscaping that are damaged by the Cable Operator, any employee or agent of the Cable Operator during installation or construction shall be restored to their prior condition or replaced. Trees and shrubs shall not be removed without the prior permission of the owner or legal tenant of the property on which they are located. This provision shall be in addition to, and shall not supersede, any requirement in any franchise agreement.
- b. The Cable Operator shall, at its own cost and expense, and in a manner approved by the property owner and the Franchising Authority, restore any property to as good condition as before the work causing such disturbance was initiated. The Cable Operator shall repair, replace or compensate a property owner for any damage resulting from the Cable Operator's installation, construction, service or repair activities.
- c. Except in the case of an emergency involving public safety or service interruption to a large number of subscribers, the Cable Operator shall give reasonable notice to property

owners or legal tenants prior to entering upon private premises, and the notice shall specify the work to be performed; provided that in the case of construction operations such notice shall be delivered or provided at least twenty-four (24) hours prior to entry. Nothing herein shall be construed as authorizing access or entry to private property, or any other property, where such right to access or entry is not otherwise provided by law. If damage is caused by any Cable Operator activity, the Cable Operator shall reimburse the property owner one hundred (100) percent of the cost of the damage or replace the damaged property. For the installation of pedestals or other major construction or installation projects, property owners shall also be notified by mail at least one week in advance. In the case of an emergency, the Cable Operator shall attempt to contact the property owner or legal tenant in person, and shall leave a door hanger notice in the event personal contact is not made.

d. The Cable Operator personnel shall clean all areas surrounding any work site and ensure that all cable materials have been disposed of properly.

#### **D. Services for Customers with Disabilities**

1. For any customer with a disability, the Cable Operator shall at no charge deliver and pick up converters at customers' homes. In the case of a malfunctioning converter, the technician shall provide another converter, hook it up and ensure that it is working properly, and shall return the defective converter to the Cable Operator.

2. The Cable Operator shall provide TDD service with trained operators who can provide every type of assistance rendered by the Cable Operator's customer service representatives for any hearing-impaired customer at no charge.

3. The Cable Operator shall provide free use of a remote control unit to mobility-impaired (if disabled, in accordance with Section III.D.4) customers.

4. Any customer with a disability may request the special services described above by providing the Cable Operator with a letter from the customer's physician stating the need, or by making the request to the Cable Operator's installer or service technician, where the need for the special services can be visually confirmed.

#### **E. Customer Information**

1. Upon installation, and at any time the customer may request, the Cable Operator shall provide the following information, in clear, concise written form:

- a. Products and services offered by the Cable Operator, including its channel lineup;
- b. The Cable Operator's complete range of service options and the prices for these services;
- c. These Standards and any other applicable customer service standards;
- d. Instruction on the use of cable TV service and on standard VCR hookups;
- e. The Cable Operator's billing, collection and disconnection policies;
- f. Customer privacy requirements;

- g. All applicable complaint procedures, including complaint forms and the telephone numbers and mailing addresses of the Cable Operator, the FCC, and the Franchising Authority to whom the complaints should be addressed;
- h. Use and availability of A/B switches;
- i. Use and availability of parental control/lock out device;
- j. Special services for customers with disabilities;
- k. Days, times of operation, and locations of the service centers.

2. Copies of all notices provided to the customer shall be filed (by fax acceptable) concurrently with the Franchising Authority and the Consortium.

3. The Cable Operator shall provide customers with written notification of any change in rates, programming, or channel positions, at least thirty (30) days before the effective date of change.

4. All officers, agents, and employees of the Cable Operator or its contractors or subcontractors who are in personal contact with cable customers shall wear on their outer clothing identification cards bearing their name and photograph as approved by the Franchising Authority. The Cable Operator shall account for all identification cards at all times. Every vehicle of the Cable Operator shall be clearly visually identified to the public as working for the Cable Operator. All CSRs shall identify themselves orally to callers immediately following the greeting during each telephone contact with the public. Every vehicle of a subcontractor or contractor shall be labeled with the name of the contractor and further identified as contracting or subcontracting for the Cable Operator.

5. Each CSR, technician or employee of the Cable Operator in each contact with a customer shall state the estimated cost of the service, repair, or installation orally prior to delivery of the service or before any work is performed, and shall provide the customer with an oral statement of the total charges before terminating the telephone call or before leaving the location at which the work was performed.

## **F. Customer Privacy**

1. The Cable Operator shall not monitor cable television signals to determine the individual viewing patterns or practices of any customer without prior written consent from that customer, except as otherwise permitted by the applicable Franchise.

2. The Cable Operator shall not sell or otherwise make available customer lists or other personally identifiable customer information without prior written customer consent, except as otherwise permitted by the Franchise. The Cable Operator is permitted to disclose such information if such disclosure is necessary to render, or conduct, a legitimate business activity related to a cable service or other service provided by the Cable Operator to its customers.

## **G. Safety**

The Cable Operator shall install and locate its facilities, cable system, and equipment in compliance with all federal, state, local, and company safety standards, and in such manner as shall not unduly interfere with or endanger persons or property. Whenever the Cable Operator receives notice that an unsafe condition exists with respect to its equipment, the Cable Operator shall investigate such condition immediately, and shall take such measures as are necessary to remove or eliminate any unsafe condition.

## **H. Satisfaction Guaranteed**

The Cable Operator shall guarantee customer satisfaction for every customer who requests new installation of cable service or adds any additional programming service to the customer's cable subscription. Any such customer who requests disconnection of such service within 30 days from its date of activation shall receive a credit to his/her account in the amount of one month's subscription charge for the service that has been disconnected.

## **IV. COMPLAINT PROCEDURE**

### **A. Complaints to the Cable Operator**

1. The Cable Operator shall establish written procedures for receiving, acting upon, and resolving customer complaints, and crediting customer accounts and shall publicize such procedures through printed documents at the Cable Operator's sole expense.
2. Said written procedures shall prescribe a simple manner in which any customer may submit a complaint by telephone or in writing to the Cable Operator that it has violated any provision of these Customer Service Standards, any terms or conditions of the customer's contract with the Cable Operator, or reasonable business practices.
3. At the conclusion of the Cable Operator's investigation of a customer complaint, but in no more than fifteen (15) calendar days after receiving the complaint, the Cable Operator shall notify the customer of the results of its investigation and its proposed action or credit.
4. The Cable Operator shall also notify the customer of the customer's right to file a complaint with the Franchising Authority in the event the customer is dissatisfied with the Cable Operator's decision, and shall thoroughly explain the necessary procedures for filing such complaint with the Franchising Authority.
5. The Cable Operator shall immediately report all customer complaints that it does not find valid to the Franchising Authority.
6. The Cable Operator's complaint procedures shall be filed with and approved by the Franchising Authority prior to implementation.

## **B. Security Fund**

1. Within thirty (30) days of the effective date of these Standards or the effective date of any franchise granted by the Franchising Authority, whichever occurs first, the Cable Operator shall deposit with an escrow agent approved by the Franchising Authority \$100,000 (one hundred thousand dollars), or, in the sole discretion of the Franchising Authority, such lesser amount as the Franchising Authority deems reasonable to protect subscribers within its jurisdiction. Such amount may, with the approval of the Franchising Authority, be posted jointly for more than one member of the GMTC, and may be administered, and drawn upon, jointly by the GMTC or drawn upon individually by each member. The escrowed funds shall constitute the "Security Fund" for ensuring compliance with these Standards for the benefit of the Franchising Authority. The escrowed funds shall be maintained by the Cable Operator at one hundred thousand dollars (\$100,000), or such lesser amount accepted by the Franchising Authority, even if amounts are withdrawn pursuant to any provision of these Standards.
2. At any time during the term of this agreement, the Franchising Authority may require the Cable Operator to increase the amount of the Security Fund, if it finds that new risk factors exist which necessitate such an increase.
3. The Security Fund shall serve as security for the payment of any penalties, fees, charges or credits as provided for herein and for the performance by the Cable Operator of all its obligations under these Customer Service Standards.
4. The rights reserved to the Franchising Authority with respect to the Security Fund are in addition to all other rights of the Franchising Authority, whether reserved by any applicable franchise agreement or authorized by law, and no action, proceeding or exercise of a right with respect to same shall in any way affect, or diminish, any other right the Franchising Authority may otherwise have.

## **C. Complaints to the Franchising Authority**

1. Any customer who is dissatisfied with any proposed decision of the Cable Operator or who has not received a decision within the fifteen (15) day period as required shall be entitled to have the complaint reviewed by the Franchising Authority.
2. The customer may initiate the review either by calling the Franchising Authority or by filing a written complaint together with the Cable Operator's written decision, if any, with the Franchising Authority.
3. The customer shall make such filing and notification within twenty (20) days of receipt of the Cable Operator's decision or, if no decision has been provided, within thirty (30) days after filing the original complaint with the Cable Operator.

4. If the Franchising Authority decides that further evidence is warranted, the Franchising Authority shall require the Cable Operator and the customer to submit, within ten (10) days of notice thereof, a written statement of the facts and arguments in support of their respective positions.

5. The Cable Operator and the customer shall produce any additional evidence, including any reports from the Cable Operator, which the Franchising Authority may deem necessary to an understanding and determination of the complaint.

6. The Franchising Authority shall issue a determination within fifteen (15) days after examining the materials submitted, setting forth its basis for the determination.

7. The Franchising Authority may extend these time limits for reasonable cause and may intercede and attempt to negotiate an informal resolution.

8. If the Franchising Authority determines that the customer's complaint is valid and that the Cable Operator did not provide the complaining customer with the proper solution and/or credit, the Franchising Authority may reverse any decision of the Cable Operator in the matter and/or require the Cable Operator to grant a specific solution as determined by the Franchising Authority in its sole discretion, and/or any credit provided for in these Standards; or the Franchising Authority may provide the customer with the amount of the credit by means of a withdrawal from the Security Fund.

#### **D. Verification of Compliance**

The Cable Operator shall establish its compliance with any or all of the standards required through annual reports that demonstrate said compliance, or as requested by the Franchising Authority.

#### **E. Overall Quality of Service**

The Franchising Authority may evaluate the overall quality of customer service provided by the Cable Operator to customers:

- a. In conjunction with any performance review provided for in the franchise agreement; and
- b. At any other time, at its sole discretion, based on the number of customer complaints received by the Cable Operator and the Franchising Authority, and the Cable Operator's response to those complaints.

#### **F. Non-Compliance with Customer Service Standards.**

Non-compliance with any provision of these Standards is a violation of these Standards.

#### **G. Procedure for Remedying Violations**

1. If the Franchising Authority has reason to believe that the Cable Operator has failed to comply with any of these Standards, or has failed to perform in a timely manner, the



Franchising Authority may demand in writing that the Cable Operator remedy the alleged noncompliance. If the alleged noncompliance is denied or not remedied to the satisfaction of the Franchising Authority, the Franchising Authority may opt to follow the following procedure.

2. An informal meeting may be held to review the alleged noncompliance. If this meeting does not result in a resolution satisfactory to the Franchising Authority, the Cable Operator may request or the Franchising Authority may require an administrative hearing to determine if the noncompliance occurred. The Cable Operator shall be provided with ten (10) days written notice of the time and the place of the hearing, the allegations of noncompliance and the possible consequences of the noncompliance if substantiated.

3. After the administrative hearing, the Franchising Authority shall determine whether the noncompliance has been substantiated. If the noncompliance is substantiated, the franchising Authority may order the Cable Operator to correct or remedy the noncompliance within thirty (30) days (except where the noncompliance constitutes a material safety hazard) and in the manner and on the terms and conditions that the Franchising Authority establishes, or, in its sole discretion, the Franchising Authority may find a material violation of these Standards.

4. If the Franchising Authority determines in its sole discretion that the noncompliance has been substantiated, the Franchising Authority may:

a. Impose assessments of one thousand dollars (\$1,000.00) per day, to be withdrawn from the Security Fund in addition to any franchise fee until the non-compliance is remedied; and/or Order, after further hearing, such rebates and credits to affected customers as in its sole discretion it deems reasonable and appropriate for degraded or unsatisfactory services that constituted noncompliance with these Standards; and/or

c. In its sole discretion, declare a violation of the franchise agreement, and in such case, the noncompliance shall be a violation of the franchise agreement for the purposes of the franchise agreement, triggering all available obligations and remedies under the franchise agreement; and/or

d. Withhold licenses and permits for work by the Cable Operator or its subcontractors in accordance with applicable law; and/or

e. Pursue any other legal or equitable remedy available under any applicable franchise agreement or law.

f. Any assessment or remedy shall not constitute a waiver by the Franchising Authority of any other right or remedy it may have under any applicable franchise agreement or law including any right to recover from the Cable Operator any additional damages, losses, costs, and expenses, including actual attorney's fees that are incurred by the Franchising Authority by reason of, or arise out of noncompliance with these Standards.

## **V. MISCELLANEOUS**

### **A. Severability**

Should any section, subsection, paragraph, term, or provision of these Standards be determined to be illegal, invalid, or unconstitutional by any court or agency of competent jurisdiction with regard thereto, such determination shall have no effect on the validity of any other section, subsection, paragraph, term, or provision of these Standards, each of the latter of which shall remain in full force and effect.

### **B. Non-Waiver**

Failure to enforce any provision of these Standards shall not operate as a waiver of the obligations or responsibilities of the Cable Operator under said provision, or any other provision of these Standards. #9; #9; Revised 3/10/00