SELECT COMMITTEE ON CABLE FRANCHISE

Monday, January 3, 2022
5:00 PM
AV ROOM #308, CITY HALL, CHARLESTON, WV

1. **Call to Order**
2. **Review and Consideration of Committee Report and Recommendations**
3. **Review and Recommendation for Introduction of Proposed CAS Cable Franchise Agreement**
4. **Review and Recommendation for Introduction of Proposed Suddenlink/Altice Franchise Agreement**
5. **Adjournment**

***Meetings may be recorded and broadcast via internet https://charlestonwv.civicclerk.com**

DRAFT

TO: **MEMBERS OF CITY COUNCIL AND CITY CLERK MILES CARY**

FROM: **SELECT COMMITTEE ON CABLE FRANCHISE**

RE: **REPORT AND RECOMMENDATIONS**

DATE: **JANUARY 3, 2022**

The Select Committee on Cable Franchise was created by Mayor Amy Shuler Goodwin by appointment on November 2, 2020. The Select Committee was tasked with thoroughly reviewing the City of Charleston's Cable Franchise Agreement with Suddenlink/Altice and instructed to engage the public in a community needs assessment and recommend appropriate actions moving forward for the City of Charleston regarding its next Cable Franchise Agreement.

The City's authority to enter into franchise agreements with cable television providers stems from The Cable Communications Policy Act of 1984, 47 U.S.C. Ch. 5, §§ 521 - 573 ("The Cable Act") and its West Virginia counterpart The Cable Television Systems Act, W. Va. Code § 24D-1-1, *et seq*. The City has maintained a franchise agreement with Suddenlink/Altice and its predecessors in interest since November 7, 1988. Since that time the City of Charleston has renewed its cable franchise agreement with Suddenlink/Altice and its predecessors on four separate occasions, most recently on November 21, 2016. The City's current cable franchise agreement expired on December 3, 2021, but it is still in effect under the terms of the agreement.

In preparation for its review the Select Committee initially requested the following information from Suddenlink/Altice: the total number of Suddenlink/Altice Cable subscribers in Charleston, West Virginia on October 1, 2016, 2017, 2018, 2019, and 2020; Suddenlink/Altice's current schedule of charges, contract or application forms for regular Subscriber service, its policy regarding the processing of Subscriber complaints, delinquent Subscriber disconnect and reconnect procedures and any other terms and conditions adopted as the policy in connection with the Subscribers; a copy of reports for monitoring Suddenlink/Altice's compliance with the terms of the Franchise Agreement and Applicable Law; a record of all complaints as required by West Virginia Code Chapter 24D; a list of all services Suddenlink/Altice provides via the Cable System for entertainment and other purposes, such as data transmission, local area networks, and voice transmission; and to the extent known, the services that are provided by third parties via the Cable System; and a list of all local offices within the City of Charleston or within a 10 mile radius of the City of Charleston that are available for a customer to make a complaint, request a repair, or request an adjustment in person. Additionally, the Select Committee reviewed the following materials in preparation for its directive as set forth above: The current Cable Franchise Agreement; The Cable Communications Policy Act of 1984; The Cable Television Systems Act, W. Va. Code §24D-1-1 et seq.; a relevant August 2019 FCC Opinion; The Residential Service Agreement; A Complaint Summary for the past 18 months; Suddenlink's Annual Report; and The Channel Lineup for the City of Charleston.

The Select Committee held it's first meeting on January 26, 2021. On July 17, 2021, the Select Committee heard public comment at the Kanawha City Community Center which was also attended by Suddenlink representatives. The Select Committee also met on October 25, 2021, to hear a presentation from CAS Cable, after it filed an application for a Franchise Agreement with the City. On December 15, 2021, the City of Charleston held the statutorily required and properly advertised public hearings on both the renewal application from Suddenlink and the new application from CAS Cable.

The Select Committee, having reviewed the above listed materials, heard public comment, and met over the course of the calendar year 2021, does hereby make the following report and recommendations:

1. The City's Cable Franchise Agreement deals solely with the regulation of cable television within the city limits of Charleston, West Virginia. However, over the last five (5) years, cable television and broadband internet have become nearly synonymous. The comments heard by the Select Committee reinforces this notion and as we turn to the future, it is anticipated that the City will see declining revenue from future Cable Franchise Agreements as customers continue to shift from traditional cable to streaming services.
2. Above all else, competition from additional cable and internet providers in the City of Charleston is a necessity to ensure better service to Charleston residents. With the City receiving two Franchise Agreement applications for the first time, it is in the best interest of the public that both entities be granted Franchise Agreements.
3. The Select Committee recommends that the City of Charleston renew its Cable Franchise Agreement with Suddenlink/Altice for a term of five (5) years.
4. The Select Committee recommends that the City of Charleston enter into a Cable Franchise Agreement with CAS Cable for a term of fifteen (15) years.
5. These two proposed agreements are substantially the same in all material terms and the Select Committee recommends that City Council approve both agreements in order to allow for an even playing field to allow CAS Cable more time to build out infrastructure into a market where it has none, thus giving CAS Cable a certain opportunity to recover its investment in a manner consistent with the relevant state and federal law, while also allowing Suddenlink/Altice to continue to operate with its infrastructure in place.
6. The Select Committee recommends that the City of Charleston and Kanawha County jointly explore improving broadband internet access, speeds, reliability, and infrastructure within the City and County and use funds collected from Suddenlink/Altice's franchise fee and CAS Cable's franchise fee to secure the services of a consultant to assist in this process.
7. Section 11 of the City's Cable Franchise Agreements sets forth the franchisee reporting requirements, record requirements, and mapping requirements. The Select Committee recommends that all documents available for production pursuant to Section 11 be requested on an annual basis and annually reviewed by one of the Standing Committees of The City of Charleston's City Council and public comment to be heard related to same.

FRANCHISE AGREEMENT

This Franchise Agreement ("Agreement") is between the CITY OF CHARLESTON, WEST VIRGINIA (hereinafter referred to as "CITY" or "FRANCHISE AUTHORITY") and COMMUNITY ANTENNA SERVICE, INC., doing business as CAS, (hereinafter referred to as "CAS" and "FRANCHISEE").

The City finds as follows:

A. CAS filed an Application for A Cable Franchise ("Application") to construct, operate and repair a Cable System in, over, along and under City roads and appropriate Rights-of-Way in the Franchise Area for the purpose of providing Cable Service.

B. The City has conducted hearings to consider CAS' future compliance with the terms of the franchise and with applicable law; the quality of CAS' service in light of community needs; the financial, technical, and legal qualifications of CAS; and to determine whether CAS' plans for constructing and operating its Cable System are adequate to meet the future cable-related community needs and interests.

C. The City has relied on CAS' written representations and has considered all information CAS has presented to it.

D. The City, having considered the interests proposed and advanced, has found that the granting of the non-exclusive Franchise requested, subject to conditions, is in the public interest.

E. CAS is willing to accept the conditions of the Franchise Agreement; and

F. The City held a public hearing on the Application on the 15th day of December, 2021, after providing legal notice of the Application and of the hearing, as required by law.

Upon the adoption of a Cable Ordinance by the City of Charleston, West Virginia, the City hereby grants a cable television franchise to CAS as follows:

SECTION 1
Definition of Terms

Terms. For the purpose of this franchise the following terms, phrases, words and their derivations shall have the meaning ascribed to them in the Cable Communications Policy Act of 1984, (the "Cable Act"), The Cable Television Systems Act, West Virginia Code §24D-1-1 *et seq.,* ("West Virginia Cable Law"), and relevant City policies and ordinances, including the City's Cable Ordinance, (collectively "Applicable Law"), all as amended from time to time, unless otherwise defined herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is mandatory and "may" is discretionary. Words not defined shall be given their common and ordinary meaning.

1.1 Access, PEG Access, or PEG Use. The availability of the Cable System for Public, Education or Government ("PEG") use by various agencies, institutions, organizations, groups, and individuals, including the City and its Designated Access Providers, to acquire, create, and distribute video communications not under Franchisee's editorial control, including, but not limited to:

1.1.1 Public Access or Public Use means Access where organizations, groups, or individual members of the general public, on a non-discriminatory basis, are the designated programmers or users having editorial control over their communications;

1.1.2 Education Access or Education Use means Access where Schools are the designated programmers or users having editorial control over their communications;

1.1.3 Government Access or Government Use means Access where government institutions or their designees are the designated programmers or users having editorial control over their communications;

1.2 Basic Service. Any service tier which includes the retransmission of local television broadcast signals.

1.3 Cable Ordinance. Bill Number _____ adopted _____________ approving the granting of a cable television franchise to Community Antenna Service, Inc.

1.4 Cable Service. (A) the one-way transmission to subscribers of (i) video programming, or (ii) other programming service, and (B) the subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

1.5 Cable System. Shall be as defined in the West Virginia Cable Law and, as used herein specifically refers to Franchisee's Cable System. A reference to a Cable System includes pedestals, enclosures (such as equipment cabinets), amplifiers power guards, nodes, cables, fiber optics and other equipment necessary to operate the Cable System.

1.6 Channel. A portion of the electromagnetic frequency spectrum which is used in a Cable System and which is capable of delivering a television channel.

1.7 Designated Access Provider. A non-commercial entity or entities designated by the City to manage some or all of the PEG Channels, facilities and equipment.

1.8 Franchise Area. The Franchise Area shall include all areas within the City Limits as currently exists, and as may be extended during the Term of the Franchise.

1.9 Franchise. The nonexclusive rights granted pursuant to this Agreement, and any amendments, exhibits, or appendices hereto, to construct, operate, and maintain a Cable System along the public Right-of-Way within the Franchise Area.

1.10 Franchisee. Community Antenna Service, Inc., doing business as CAS.

1.11 Gross Revenues. Any and all revenues derived directly or indirectly, now or in the future, by Franchisee, its affiliates, subsidiaries, parent company, and any person in which Franchisee has an interest, from the operation of the Cable System to provide Cable Service; provided, however, that gross revenues shall not include any taxes, fees or assessments of general applicability collected by Franchisee from Subscribers for pass-through to a government agency.

1.12 Person. An individual, partnership, association, organization, corporation, trust or government entity.

1.13 Standard Drop. An aerial connection extending no more than 150 feet from the potential Subscriber's demarcation point to the point nearest the property line on the public Right-of-Way from which Cable Service can be provided to that Subscriber most economically.

1.14 PEG Channel. Any capacity on a Cable System set aside by Franchisee for PEG Use, including by way of example and not limitation, a digital PEG Channel or an analog PEG Channel.

1.15 School. All accredited public or private, non-profit primary and secondary schools and colleges (which term includes all accredited post-secondary institutions, including by way of example and not limitation, community colleges, technical colleges and universities) located within the City and not in an incorporated area of the City or not otherwise referenced in a franchise agreement.

1.16 Subscriber. Any Person lawfully receiving Cable Service from Franchisee.

1.17 Subscriber Network. Fibers, coaxial cables and the electronic devices required to activate the same that are used primarily in the transmission of Cable Service to residential Subscribers.

1.18 Transfer of the Franchise. Shall Mean any transaction in which:

1.18.1 a fifty percent (50%) ownership or greater interest in Franchisee is transferred, directly or indirectly, from one Person or group of Persons to another Person or group of Persons, so that Control of Franchisee is transferred; or

1.18.2 the rights held by Franchisee under the Franchise are transferred or assigned to another Person or group of Persons.

1.18.3 However, notwithstanding Sub-subsections 1.18.1. and 1.18.2 above, a "Transfer of the Franchise" shall not include transfer of an ownership or other interest in Franchisee to the parent of Franchisee or to another Affiliate of Franchisee; transfer of an interest in the Franchise or the rights held by the Franchisee under the Franchise to the parent of Franchisee or to another Affiliate of Franchisee; any action which is the result of a merger of the parent of the Franchisee; or any action which is the result of a merger of another Affiliate of the Franchisee.

SECTION 2
Grant of Franchise; Limits and Reservations.

2.1 **Grant.** A Cable System Franchise is hereby granted to Franchisee, subject to the conditions set forth in this Agreement and all Applicable Laws. This Franchise grants the right, subject to conditions, to construct, operate and repair a Cable System and associated equipment in, over, along and under Public Rights-of-Way within the Franchise Area for the purpose of providing Cable Service, and for providing an institutional network ("I NET") and other facilities or services for PEG Use of the Cable System and for such other services that may lawfully be provided over the Cable System, commencing on the Effective Date of the Franchise through and including ____________________, 202___, unless terminated prior to that date in accordance with the Franchise or Applicable Law.

2.2 **Term.** The Franchise and the rights, privileges and authority hereby granted shall be for an initial term of fifteen (15) years, commencing on the Effective Date of this Franchise as set forth in subsection 14.5.

2.3 **Relation to Other Provisions of Law.**

2.3.1 The Franchise issued by the City is subject to, and Franchisee must exercise all rights granted to it in accordance with Applicable Law. This Franchise does not confer rights upon Franchisee other than as expressly provided herein, or as expressly provided under other Applicable Law. No privilege or power of eminent domain is bestowed by this grant. All rights and powers of the City now existing or hereafter obtained are reserved except as expressly provided to the contrary in the Franchise. Nothing passes by implication under this Franchise. Subject to the foregoing, Franchisee shall provide the Cable Service required hereunder throughout the Franchise Term and any holdover term and shall make any Cable Service it provides over its Cable System available to all entities in its Franchise Area, subject to the line extension provisions herein.

2.3.2 This Franchise and all rights granted under the Franchise are subject to the City police and other powers. However, once the Franchise grant is effective, this Franchise is a contract and except as to those changes which are the result of the City's exercise of its police and other powers, neither party may take any unilateral action which materially changes the explicit mutual promises in this contract.

2.3.3 The Franchise shall be interpreted to convey limited rights and interests only as to those City Rights-of-Way in which the City has an actual interest and only to the extent and for the purposes set out in the Franchise. The grant of the Franchise is not a warranty of title or interest in any Right-of-Way; it does not provide Franchisee any interest in any particular location within the Rights-of-Way. The issuance of the Franchise does not deprive the City of any powers, rights or privileges it now has or may later acquire in the future to use, perform work on, construct, operate or repair facilities or systems in, or regulate or control the use of the Rights-of-Way.

2.3.4 Subject to federal law, the Franchise issued and the franchise fee paid hereunder are not in lieu of any other required permit, authorization, fee, charge or tax. Without limiting the foregoing, the City, among other things, does not waive the requirements of, or Franchisee's duty to obtain, all applicable permits, and to comply with the conditions thereof; to comply with zoning laws; or to comply with codes, ordinances and regulations governing the construction of the Cable System.

2.4 **<u>Interpretation and Conflicts.</u>**

2.4.1 In the event of a conflict between the Cable Ordinance and this Agreement as of its effective date, the Cable Ordinance shall control except where expressly provided otherwise in the Agreement

2.4.2. The provisions of this Franchise shall be liberally construed in favor of the public interest in order to effectuate its purposes.

2.5 **<u>Affiliates Must Comply.</u>** Any Affiliate or joint venture or partner of Franchisee involved in the management or operation of the Cable System in the Franchise Area that would constitute a cable operator of the Cable System is subject to the limitations of, and shall comply with the terms and conditions of the Franchise. Franchisee shall be fully liable for any act or omission of an Affiliate that controls Franchisee or is responsible in any manner for the management of the Cable System that results in a breach of the Franchise or a violation of Applicable Law relating to the rights and obligations of the Franchise, as if the act or omission was Franchisee's act or omission.

2.6 **<u>Relation to Prior Franchise.</u>** CAS has no relation to any current or prior Franchise with the City of Charleston.

2.7 **<u>Validity.</u>** Both parties waive any claim or defense that any provision of this Franchise, or any provision of Applicable Law is unenforceable or otherwise invalid or void. Neither party waives the right to challenge the validity of any other Applicable Law.

2.8 **<u>Effect of Franchise Acceptance.</u>** By accepting the Franchise, Franchisee:

2.8.1 Acknowledges and accepts the City's legal right to issue and enforce the Franchise;

2.8.2 Accepts and agrees to comply with each and every provision of this Franchise; and

2.8.3 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.

2.9 **Franchisee Bears Its Own Costs.** Unless otherwise expressly provided in this Franchise, all acts that Franchisee is required to perform under this Franchise or the Cable Ordinance must be performed at its own expense.

2.10 **No Waiver.**

2.10.1 No course of dealing between Franchisee and the City, or any delay on the part of the City or Franchisee in exercising any rights shall operate as a waiver of any such rights, except to the extent expressly waived; *provided that,* nothing in this section is meant to alter any renewal protections afforded by 47 U.S.C. §546(d).

2.10.2 Waiver of a breach of this Franchise is not a waiver of any other breach, whether similar or different from that waived. Neither the granting of the Franchise nor any provision herein shall constitute a waiver or bar to the exercise of any governmental right or power of the City, including without limitation the right of eminent domain.

2.11 **No Recourse.** Without limiting such immunities as the City or other Persons may have under Applicable Law, and to the maximum extent permitted by State law, Franchisee will have no monetary recourse whatsoever against the City or its officials, boards, agents or employees for any loss, costs, expense or damage arising from the construction, operation or repair of its Cable System, or the activities of the City or any entity authorized by the City to use Rights-of-Way or other public property.

2.12 **Severability.** In the event that a court or agency or legislature of competent jurisdiction acts or declares that any nonmaterial provision of this Franchise is unenforceable according to its terms, or otherwise void, said provision shall be considered a separate, distinct, and independent part of this Franchise, and such holding shall not affect the validity and enforceability of all other provisions hereof. In the event that a court or agency or legislature of competent and controlling jurisdiction acts so that any material provision of this Agreement is unenforceable according to its terms, or is otherwise void, the parties agree to immediately enter into negotiations in good faith to restore the relative burdens and benefits of this Franchise, consistent with Applicable Law. If the parties are unable to agree to a modification of this Franchise within 60 days, either party may with 90 days prior notice, terminate or shorten the Franchise term; or resort to litigation to seek any available equitable relief; or do both. However, if a party does seek equitable relief before the effective date of termination or shortening, the termination or shortening will be stayed pending the resolution of the judicial proceedings. Each party agrees to participate in up to sixteen hours of negotiation during the 60-day period. Notwithstanding the foregoing, if a party believes a provision is not material, it must so notify the other party within 14 days of a request by such other party that it enter into negotiations, or else the materiality claim is waived. The obligation to negotiate is not tolled, and the parties must discharge their negotiation responsibility notwithstanding the dispute as to materiality. The remedies provided for herein do not prevent a party from contending that a particular provision is enforceable or foreclose any remedies if a provision is enforceable.

2.13 **Effect of Change in Law.** In the event that State or Federal laws, rules, or regulations preempt a provision or limit the enforceability of a provision of this Franchise, then the provision shall be read to be preempted to the extent and for the time, but only to the extent and for the time, that such laws, rules or regulations validly acted to preempt such provision. In the event such State or Federal law, rule, or regulation is subsequently repealed, rescinded, amended, or otherwise changed, so that the provision hereof that had been preempted is no longer preempted, such provision shall thereupon return to full force and effect and shall thereafter be binding on the parties hereto, without the requirement of further action on the part of the City.

SECTION 3
Transfer

3.1 **Procedures for Transfer.** Subject to Section 617 of the Federal Communications Act, 47 U.S.C. § 537, as amended, no Transfer of the Franchise shall occur without the prior consent of the City, provided that such consent shall not be unreasonably withheld, delayed or conditioned. In considering an application for the Transfer of the Franchise, the City may consider the applicant's: (i) technical ability; (ii) financial ability; (iii) good character; and (iv) other qualifications necessary to continue to operate the Cable System consistent with the terms of the Franchise. No such consent shall be required, however, for a transfer in trust, by mortgage, by other hypothecation, by assignment of any rights, title, or interest of the Franchisee in the Franchise or Cable System in order to secure indebtedness, for any transaction in which Franchisee retains the right, title or interest in the Franchise granted to it herein, or for transactions otherwise excluded under Section 1.18 above.

SECTION 4
Indemnification and Insurance

4.1 **Indemnification.** Without limiting and expressly preserving all immunities that the City has under Applicable Law, and to the maximum extent permitted by Applicable Law, Franchisee shall, by acceptance of the Franchise granted herein, hold harmless, indemnify and defend the City, its officers, boards, agents, and employees for all claims for injury to any Person or property caused by the negligence of Franchisee, or resulting from any condition, act, omission or error in judgment of Franchisee, in the construction or operation of the Cable System and in the event of a determination of liability shall indemnify, defend and hold the City, its officers, boards, agents, and employees harmless from any and all liabilities, claims, demands, or judgments growing out of any injury to any Person or property as a result of the negligence of City, or the result of any condition, act, omission, or error in judgment of Franchisee, arising out of the construction, repair, extension, maintenance, operation or removal of its wires, poles or other equipment of any kind or character used in connection with the operation of the Cable System; provided, that the City shall give Franchisee written notice of Franchisee's obligation to indemnify and defend the City within ninety (90) days of receipt of a claim or action pursuant to this section. The City's failure to provide such notice, however, shall not nullify Franchisee's obligation to indemnify and defend the City. In the event any such claim arises, the City shall tender the defense thereof to Franchisee, Franchisee shall be obligated pursuant to the terms herein to accept said tender, and Franchisee shall have the right to defend, settle or compromise any claims arising hereunder, at its own expense. If the City determines in good faith that its interests cannot be represented by Franchisee, Franchisee shall be excused from any non-monetary obligation to represent the City; provided, however, the decision of the City to obtain its own representation shall not serve to nullify Franchisee's monetary obligation to indemnify the City for the cost of its defense and any amounts for which the City is found liable. Notwithstanding the foregoing, Franchisee shall not be obligated to indemnify the City for any damages, liability or claims resulting from the City's use of the Cable System, including any PEG channels. The indemnity provided for herein shall be deemed in addition to and in no way a limitation upon the City's and its agents' right of common law indemnification from Franchisee.

4.2 Insurance.

4.2.1 Throughout the term of the Franchise, Franchisee shall maintain insurance in the amounts at least as follows:

Workers' Compensation	Statutory Limits
Commercial General Liability	$1,000,000.00 per occurrence,
	Combined Single Liability (C.S.L)
	$2,000,000.00 General Aggregate
Auto Liability, including coverage on all owned, non-owned hired autos	$1,000,000.00 per occurrence C.S.L.
Umbrella Liability	$1,000,000.00 per occurrence C.S.L.

4.2.2 The City shall be added as an additional insured to the above Commercial General Liability, Auto Liability and Umbrella Liability insurance coverage.

4.2.3 Franchisee shall furnish the City with current certificates of insurance evidencing such coverage upon request.

SECTION 5
Service Obligations

5.1 No Discrimination. Franchisee shall not deny service, deny access, or otherwise discriminate against Subscribers, channel users, or general citizens on the basis of race, religion, color, national origin, ancestry, sex, age, blindness, handicap, familial status, gender identity, or sexual orientation.

5.2 Privacy. Franchisee shall fully comply with the privacy rights of Subscribers as contained in Cable Act Section 631 (47 U.S.C. § 551).

5.3 No Limitation. Nothing herein prevents the City from adopting additional non-discrimination and privacy requirements by ordinance, resolution or regulation, which provisions, if otherwise permitted under Applicable Law, shall apply to Franchisee.

SECTION 6
Service Availability

6.1 Provision of Service. Within five years, or sooner if infrastructure construction is completed, Franchisee shall make Cable Service distributed over the Cable System available to every residence within the Service Area where there is a minimum density of at least twenty-five (25) residences per linear strand mile of cable (excluding any home subscribing to any satellite service) as measured from Franchisee's closest trunk line or distribution cable that is actively delivering Cable Service as of the date of such request for service. Grantor understands that supply, contractor availability, pole attachment authorizations, COVID and other factors may slow the construction project. Within the Franchise Area, Franchisee shall provide Cable Service upon request for no more than the prevailing installation charge, but without charging for line extension where there is either a minimum density of twenty-five (25) residential units per aerial or underground mile or where thirteen (13) locations per mile contract to subscribe to Cable Service for one year. Where these standards are not satisfied, service will be extended upon request for no more than the then-prevailing installation charge if the Person or Persons, other than those entitled to a free drop, requesting service contract to pay a pro rata share of the cost of extending the plant to the point nearest the potential Subscriber's property line on the public Right-of-Way from which Cable Service can be provided most economically to that potential Subscriber. For new subdivisions, the Franchisee shall extend service at no charge to the developer if the planned density exceeds the minimum levels, or for a pro rata share of costs where it does not; provided that where construction will be underground, this sentence will not apply unless the developer provides reasonable advance notice so that Franchisee can participate in joint trenching. Franchisee shall not be obligated to provide Cable Service to any area which is financially or technically infeasible.

6.2 **Economic Redlining.** Franchisee shall not discriminate between or among any individuals in the availability of Cable Service or based upon the income of the residents in a local area.

6.3 **Drops; Prevailing Charges.** In addition, except as Applicable Law may otherwise provide, and except with respect to those locations which are entitled to free drops under this Franchise:

6.3.1 The "then-prevailing installation charge" is the lowest lawful charge that applies at any given time to a particular class of users. If Applicable Law permits, nothing in this Franchise prohibits Franchisee from establishing separate charges for separate classes of drops, such as, for example, underground and aerial drops.

6.3.2 Where the drop to a Subscriber is not a Standard Drop, in addition to the then-prevailing installation charge for Standard Drops, Franchisee may charge the Subscriber the difference between Franchisee's cost of installing a Standard Drop and the actual additional cost of installing a drop from the nearest tap, or if closer, the point to which Franchisee could be required to extend its Cable System.

6.4 **Subscriber Option for Underground Drops.** Where Franchisee may locate a drop above ground, but a potential Subscriber requests that the cable drop be placed underground, the Franchisee shall locate the drop underground, but in addition to the then-prevailing installation charge may charge the Subscriber for the actual difference in cost of installing the underground drop, rather than an aerial drop. An existing Subscriber may require Franchisee to relocate an existing aerial drop underground, and Franchisee may charge the requesting Subscriber for the cost of relocating the drop underground.

SECTION 7
Construction and Technical Standards

7.1 **Compliance with Codes.** Without limiting Section 2, Franchisee agrees that at all times it will satisfy the following, minimum conditions:

7.1.1 **Minimum Conditions.** The construction, operation, and repair of the Cable System will be in accord with all Applicable Law. At a minimum, Franchisee shall comply with construction procedures approved by the City; IEEE standards, the National Electric Code, the National Electrical Safety Code and any other applicable safety codes. The most stringent applicable code or standard will apply in the event of any conflict (except insofar as that standard, if followed, would result in a system that could not meet requirements of Federal, State, or local law). Franchisee will employ reasonable care at all times, within the meaning of Applicable Law, and will install and maintain in use commonly accepted methods and/or devices to reduce the likelihood of damage, injury, or nuisance to the public. The construction, operation, and maintenance of the Cable System shall be performed by experienced and properly trained maintenance and construction personnel.

7.1.2 **Compliance with Laws**. Franchisee must install, locate, relocate and remove its Cable System in accordance with the Franchise and all other Applicable Laws, including City codes as the same may be amended from time to time. Franchisee shall not place or maintain its Cable System, including any poles or other structures, in Public Rights-of-Way or on private property except in strict accordance with the requirements of the Franchise and all other Applicable Laws.

7.1.3 All of Franchisee's plant and equipment, including but not limited to the antenna site, head-end and distribution system, towers, house connections, structures, poles, wire, cable, coaxial cable, fixtures and appurtenances shall be installed, located, erected, constructed, reconstructed, replaced, removed, repaired, maintained and operated in accordance with good engineering practices and performed by experienced maintenance and construction personnel.

7.2 **Pole attachments and conduits.** For I-NET and PEG Uses, pole and conduit space owned by Franchisee will be provided at no charge. Pole and conduit space will be provided to the City for all its other uses at the prevailing rate charged by regulated utilities for similar pole and conduit space in the City of Charleston, and under prevailing terms and conditions under which access is provided to similar pole or conduit space by such regulated utilities. In addition, whenever underground conduit is to be placed by the Franchisee, the Franchisee shall notify the City 90 days in advance and if requested, and if the same shall be in compliance with applicable purchasing laws, the Franchisee shall lay conduit for the City at the cost of the conduit, plus (where boring is involved), the incremental cost of the boring. Whenever underground conduit is to be placed by the City, the City will, if requested by the Franchisee, permit the Franchisee to lay conduit at the Franchisee's cost.

7.3 **Notice of use.** Franchisee will notify the City when it enters into an agreement for use of its poles and conduits.

7.4 **Contractors and Subcontractors.** Franchisee shall ensure that any contractor or subcontractor used for work on construction, operation, or repair of the Cable System is properly licensed under laws of the State and all applicable local ordinances. Each contractor or subcontractor shall have the same obligations with respect to its work as Franchisee would have under this Franchise and Applicable Law if the work were performed by Franchisee. Franchisee shall be responsible for ensuring that the work of contractors and subcontractors is performed consistent with this Franchise and Applicable Law, shall be responsible for all acts or omissions of contractors or subcontractors, and shall be responsible for promptly correcting acts or omissions by any contractor or subcontractor. This section is not meant to alter the tort liability, if any, of Franchisee to third parties, or of any contractor or subcontractor to third parties or to Franchisee. Franchisee shall institute procedures adequate to ensure that the work performed by its contractors and subcontractors complies with the requirements of this Franchise and Applicable Law.

7.5 **Safety.** Franchisee shall at all times employ ordinary care and shall use commonly accepted methods and devices preventing failures and accidents which are likely to cause damage.

7.6 **Network Technical Requirements.** The Cable System must meet or exceed the technical standards set forth in 47 C.F.R. § 76.601 and any other applicable standards, as amended from time to time, *provided that,* nothing in this provision is intended to permit the City to exercise any authority that it is prohibited from exercising under applicable federal law.

7.7 **Future Upgrades.** It is Franchisee's responsibility to make such improvements to its Cable System as are necessary so that the Cable System performs as promised as Subscribers to services are added. In addition, it is Franchisee's responsibility to make such commercially practicable improvements to its Cable System throughout the Franchise term to ensure that Subscribers are able to obtain advanced Cable Service, and so that services can be added throughout the Franchise term. Commercial practicability may be determined by examining the improvements being made and the services being rolled out on similar cable systems.

7.8 **Inspection and Testing.** The City shall have the right to inspect the Cable System to ensure compliance with this Franchise, and applicable provisions of local, State and Federal law. The City (i) may require Franchisee to perform tests based on the City's investigation of Cable System performance or on Subscriber complaints; and (ii) may require Franchisee to prepare a report to the City on the results of those tests, including a statement identifying any problems found and the actions taken to correct those problems. This provision is subject to any limitations on the City's authority under Applicable Law.

7.9 **FCC-Mandated Testing.** Franchisee shall, if requested, notify the City in advance of conducting any Proof-of-Performance test required by the FCC, so that the City may observe the testing. Upon request, the City shall be provided the test results and any supporting documentation regarding the tests and testing equipment and procedures.

SECTION 8
Conditions on Street Occupancy

8.1 **General Conditions.** Without limiting Section 2, Franchisee agrees that at all times it shall, as a minimum condition of its use of the rights of way, comply with the requirements of this Section 8 and that Franchisee shall have the right to utilize existing poles, conduits and other facilities whenever possible, and shall not construct or install any new, different, or additional poles, conduits, or other facilities on public property without obtaining all legally required permits of the City.

8.2 **Underground Construction.** The facilities of Franchisee shall be installed underground in those service areas where existing telephone facilities of a provider other than Franchisee or its affiliates and electric utility local distribution facilities are both underground at the time of system construction. In areas where either of such telephone or electric utility facilities are installed aerially at the time of system construction, Franchisee may install its facilities aerially with the understanding that at such time as the existing aerial facilities are required to be placed underground by the City, Franchisee shall likewise place its facilities underground. Nothing in this section shall preclude Franchisee from receiving funds for relocation for which it is eligible.

8.3 **Construction Codes and Permits.** Franchisee shall obtain all legally required permits before commencing any work requiring a permit, including the opening or disturbance of any Street within the Franchise Area. The City shall cooperate with Franchisee in granting any permits required, providing such grant and subsequent construction by Franchisee shall not unduly interfere with the use of such Streets. Franchisee shall adhere to all building and zoning codes currently or hereafter applicable to construction, operation or maintenance of the Cable System in the service area.

8.4 **System Construction.** All transmission lines, equipment and structures shall be so installed and located as to cause minimum interference with the rights and reasonable convenience of property owners and at all times shall be kept and maintained in a safe, adequate and substantial condition, and in good order and repair. Franchisee shall, at all times, employ ordinary care and use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries, or nuisances to the public. Suitable barricades, flags, lights, flares or other devices shall be used at such times and places as are reasonably required for the safety of all members of the public. Any poles or other fixtures placed in any public way by Franchisee shall be placed in such a manner as not to interfere with the usual travel on such public way.

8.5 **Restoration of Public Ways.** Franchisee shall repair any disturbance or damage to public property or private property caused by Franchisee's construction, operation or repair of the Cable System promptly and in compliance with such standards and deadlines as may be specified by the City in writing. Franchisee agrees to compensate any entity whose person or property is damaged by Franchisee, or any contractor, subcontractor or agent of Franchisee in the course of the construction, operation or repair of the Cable System where the property is not fully restored by Franchisee to a condition as good or better than existed before the damage.

8.6 **Removal in Emergency.** In an emergency, or where the Cable System creates or is contributing to an imminent danger to public health, safety, or property, the City may remove, relay, or relocate any or all parts of the Cable System without prior notice; however, the City will make reasonable efforts to provide prior notice.

8.7 **Tree Trimming.** Franchisee or its designee shall have the authority to trim trees on public property at its own expense as may be necessary to protect its wires and facilities, subject to the supervision of the City, and any lawful, generally applicable regulations that the City may adopt regarding the same.

8.8 **Relocation for Government.** Except as provided below, Franchisee will protect, support, temporarily disconnect, relocate, or remove any of its property at the time and in the manner required by the City or any other governmental entity for any governmental purpose.

8.8.1. Except in an emergency, the City will provide written notice describing where the work is to be performed at least thirty (30) days before the deadline for performing the work; Franchisee may seek an extension of the time to perform the work where it cannot be performed in a week even with the exercise of due diligence, and such request for an extension will not be unreasonably refused.

8.8.2. Franchisee may abandon any property in Public Rights-of-Way that is in place upon written notice to the City and separate notice to the City Manager, unless the City determines, in the exercise of its reasonable discretion exercised within ninety (90) days of the date the required written notices are received, that the safety, appearance, functioning or use of Public Rights-of-Way and facilities in Public Rights-of-Way will be adversely affected. Abandonment shall be in a manner acceptable to the City Manager.

8.9 **Relocation for a Third Party.**

8.9.1 If any removal, relaying, or relocation is required to accommodate the construction, operation, or repair of the facilities of another Person authorized to use Public Rights-of-Way (other than entities covered by Section 8.8 above), Franchisee will, after thirty (30) days' advance written notice, take action to effect the necessary changes requested by such Person.

8.9.2 Unless the matter is governed by a valid contract or Applicable Law, or unless Franchisee's Cable System was improperly installed and if installed properly, the removal, relocation or relaying would be unnecessary, the reasonable cost of removal, relaying, or relocation will be borne by such Person requesting the removal, relaying, or relocation.

8.9.3 The City may direct Franchisee to remove, relay, or relocate its facilities pending resolution of a dispute as to responsibility for costs upon posting of a bond by such Person requesting such removal, relaying or relocation in the amount of Franchisee's estimated costs.

8.9.4 Upon the request of a Person holding a valid permit, other than an entity covered by Section 8.8 above, Franchisee will temporarily raise or lower its wires to allow buildings or other objects to be moved. The requesting Person will pay for any expense associated with such temporary removal or raising or lowering of wires. Franchisee will have the authority to estimate the reasonable material and labor costs and require payment of the same in advance. Franchisee will be given not less than thirty (30) days advance notice to arrange for such temporary wire changes.

8.10 **Emergency Alert System.** Franchisee shall comply with the Emergency Alert System ("EAS") requirements of the FCC and the State of West Virginia, including the current state EAS Plan, in order that emergency messages may be distributed over the Cable System.

SECTION 9
Service and Rates

9.1 **Phone Service.** The Franchisee shall maintain a local or toll free telephone number and a phone service operated and a local office in or near the service area once Franchisee has a significant plant in place and activated service to five hundred customers, such that complaints and requests for repairs or adjustments may be received at any time.

9.2 **Notification of Service Procedures.** Franchisee shall furnish each Subscriber at the time service is installed, written instructions that clearly set forth information concerning the procedures for making inquiries or complaints, including Franchisee's name, address and local or toll free telephone number. Franchisee shall give the City and subscribers at least thirty (30) days prior notice of any rate increases, channel lineup or other substantive service changes.

9.3 **Rate Regulation.** Franchisee's rates and charges are subject to regulation by the City, to the extent not prohibited by law. If and when exercising rate regulation, the City shall abide by the terms and conditions set forth by the state and FCC.

9.4 **Continuity of Service.** It is the right of each Subscriber in the Franchise Area to receive all available Cable Service from Franchisee as long as the Subscriber's financial and other obligations to Franchisee are satisfied.

9.4.1 **Rights Upon Franchise Termination or Revocation**. If the City revokes the Franchise or Franchisee otherwise terminates, the City shall have the following rights, in addition to the rights specified in this Franchise or under Applicable Law:

9.4.1.1 The City may require Franchisee to remove its facilities and equipment at Franchisee's expense. If Franchisee fails to do so within a reasonable period of time, the City may have the removal done at Franchisee's and/or surety's expense, subject to any right of abandonment that may be provided for under Applicable Law.

SECTION 10
Franchise Fee

10.1 **Amount of Fee.** Franchisee shall pay the City a Franchise Fee in an amount equal to five percent (5%) of Gross Revenues derived from the operation of the Cable System to provide Cable Service. The Franchise Fee is not a payment in lieu of any tax, fee, or other assessment of general applicability (including any such tax, fee or assessment imposed on both utilities and cable operators or their services), consistent with 47 U.S.C. §542(g)(2). However, to the extent required by law, payments to the Public Service Commission of West Virginia under Chapter 24D of the West Virginia Code for subscribers in the Franchise Area shall be offset against amounts owed to the City under this section. Franchise fees may be passed through to Subscribers as a line item on Subscriber bills or otherwise as Franchisee chooses, consistent with Federal law.

10.2 **Payment of Fee.** Payment of the fee due the City shall be made on a quarterly basis, within forty-five (45) days of the close of each calendar quarter. The payment period and the collection of the franchise fees that are to be paid to the City pursuant to the Franchise shall commence sixty (60) days after the Effective Date of the Franchise. Franchisee may use electronic funds transfer to make any payments to the City required under this Agreement. The City shall be furnished a statement of said payment, reflecting the Gross Revenues and the applicable charges. To the extent that Franchisee or its Affiliates offer bundles of Cable and non-Cable Service at discounted rates, fees attributable to Cable Service will be based on a pro rata comparison of charges that apply to persons who purchase the Cable Service and non-Cable Service from Franchisee separately; and if that is not practicable (because some of the bundled services are not offered separately, or are not offered separately as a realistic service offering) payment shall be based on charges that apply to persons who purchase only cable service.

10.3 **Accord and Satisfaction.** No acceptance of any payment by the City shall be construed as a release or as an accord and satisfaction of any claim the City may have for further or additional sums payable as a Franchise Fee or for the performance of any other obligation of Franchisee.

10.4 **Audit.** The City may, from time to time, but not more often than every three (3) years, and upon reasonable advance written notice, inspect and audit any and all books and records to determine whether Gross Revenues and Franchise Fees have been accurately computed and paid. In addition to paying all fees owed plus interest, in the event that the City reviews Franchisee's franchise fee payments, and finds that Franchisee has underpaid the fee owed for any year in an amount exceeding five percent (5%) of the franchise fees actually paid or Ten Thousand Dollars ($10,000), whichever underpayment amount is less, Franchisee shall pay the reasonable cost of the City's review.

10.5 **Limitation on Recovery.** In the event that any Franchise payment or recomputed payment is not made on or before the dates specified herein, Franchisee shall pay an interest charge, computed from such due date, at the annual rate of one percent over the prime interest rate. The period of limitation for recovery of any franchise fee payable hereunder shall be as provided under Applicable Law.

SECTION 11
Records, Reports and Maps

11.1 **Reports Required.** Franchisee's schedule of charges, contract or application forms for regular Subscriber service, policy regarding the processing of Subscriber complaints, delinquent Subscriber disconnect and reconnect procedures and any other terms and conditions adopted as Franchisee's policy in connection with its Subscribers shall be filed with the City upon written request. Upon written request by the City, Franchisee shall provide a copy of reports for monitoring Franchisee's compliance with the terms of this Franchise and Applicable Law.

11.2 **Records Required.**

Franchisee shall at all times maintain:

11.2.1 A record of all complaints as required by West Virginia Code §24D-1-19(a) and as such statute may be amended from time to time.

11.2.2 A full and complete set of as-built plans, records and strand maps showing the location of the Cable System. Upon written request by the City, copies of strand maps shall be provided to the City in an electronic format consistent with that used by the City.

11.2.3 Franchisee shall maintain records sufficient to comply with the requirements of Applicable Law, and to show compliance with all the provisions of this Franchise.

11.3 **Inspection of Records.** Franchisee agrees that it will collect and make available books and records for inspection and copying by the City in accordance with the terms of this Agreement.

11.4 **Time for Production.** Books and records shall be produced to the City at the City's primary office, or such other location as the parties may agree. If Franchisee objects to a request for books and records, it must nonetheless produce the books and records requested, unless the City agrees that they need not be produced, or a court of competent jurisdiction rules otherwise. If documents cannot be copied or moved because (i) they are too voluminous; (ii) of security reasons; or (iii) the requested records contain trade secrets, then Franchisee may request that City's inspection of such records take place at some other location mutually agreed to by the City and Franchisee, provided that:

11.4.1 Franchisee must make necessary arrangements for copying documents selected by the City after its review; and

11.4.2 Franchisee must pay all reasonable travel and additional copying expenses incurred by the City (above those that would have been incurred had the documents been produced in the City's primary office) in inspecting those documents or having those documents inspected by its designee.

11.4.3 The parties agree that any amounts paid pursuant to this Section 11.4 are not a franchise fee within the meaning of 47 U.S.C. § 542 and fall within one of the exceptions listed in 47 U.S.C. §542(g)(2).

11.5 **Uses of System.** Without limiting the foregoing, upon request, Franchisee must advise the City of all services it provides via the Cable System (the term "services" for purposes of this section, would include, without limitation, the provision of dark fiber), for entertainment and other purposes, such as data transmission, local area networks, and voice transmission; and to the extent known, the services that are provided by third parties via the Cable System.

11.6 **<u>Retention of Records; Relation to Privacy Rights.</u>** Franchisee shall take all steps required, if any, to ensure that it is able to provide the City all information which must be provided to the City or that may be requested by the City under Applicable Law or this Franchise, including by providing appropriate Subscriber privacy notices. Nothing in this section shall be read to require Franchisee to violate 47 U.S.C. § 551 or other Applicable Law governing privacy. Franchisee shall be responsible for redacting any data that State or Federal law prevents it from providing to the City. Financial records necessary to establish compliance with this agreement shall be kept for at least seven (7) years, other records shall be kept for at least three (3) years except that service call logs may be retained for two (2) years, so long as the information contained therein is reflected in other documents.

11.7 **<u>Confidentiality of Certain Information.</u>** The City agrees to treat as confidential any books, records or maps that constitute proprietary or confidential information to the extent Franchisee makes the City aware of such confidentiality, and to the extent that the City is permitted to do so by Applicable Law. If the City believes it must release any such confidential books or records in the course of enforcing this Franchise, or for any other reason, it shall advise Franchisee in advance in writing so that Franchisee may take appropriate steps to protect its interests. To the extent permitted by State and federal law, if Franchisee takes appropriate steps to protect its interests in maintaining such information as confidential, Franchisee agrees that it shall deny access to any of Franchisee's books and records marked confidential, as set forth above, to any Person.

<u>SECTION 12</u>
<u>Community Programming</u>

12.1 **<u>Preservation of Existing Benefits.</u>** Franchisee shall continue to provide and maintain all existing equipment, facilities and other support for PEG use that it was providing prior to and upon the effective date of this Franchise, until and unless the City notifies Franchisee that such support is no longer necessary.

12.2 **<u>Provision of Channel Capacity for PEG Use.</u>**

12.2.1 Franchisee shall provide up to three Channels for PEG use upon request. The City is deemed to have requested any PEG Channel currently being provided in the City. PEG capacity used for video programming may not be used to transmit "commercial matter" as that term is defined and interpreted under Section 73 .670, Note 1, of the FCC rules, 47 C.F.R. §73.670. PEG Channel capacity may not be leased to third parties for delivery of commercial matter, or for delivery of video programming that a Subscriber is charged a separate fee to receive (over and above the fee that Franchisee charges for the service tier with which the signal is provided); but nothing in this sentence prevents the levy of a fee by the City to defray costs that the City may incur in connection with the PEG Channels, subject to Applicable Law. By way of example and not limitation, the parties do not intend to limit sponsorship announcements comparable to those that might be carried on a noncommercial broadcast station, or to prevent Schools from charging course fees, and then delivering the course via the PEG Channels; or to prevent solicitations of financial support for the provision of PEG Channels by the entities responsible for managing those channels.

12.3 **Timing for Provision of Channels.** With respect to the channel capacity required by Section 12.2:

12.3.1 Franchise shall continue to provide channels it is providing as of the effective date of this agreement.

12.3.2 In other cases, within one hundred eighty (180) days of receipt of a written request by the Franchising Authority, the Franchisee shall provide the Franchising Authority with the additional PEG Channels. Franchisee shall have the right to petition the Franchising Authority to recapture any unused portion of the channels. In deciding whether to grant such a petition, the Franchising Authority shall consider the comments and views of the Franchisee and all other interested persons or entities. Upon thirty (30) days written request and demonstration that the channel time recaptured by the Franchisee may be utilized by the Franchising Authority, the Franchisee shall make the channel time available.

12.4 **Management of Channels.** The City may manage the PEG channels in whole or in part, or designate entities to manage the PEG channels in whole or in part. The City may establish rules for use of PEG capacity, or delegate that authority to an entity responsible for managing a channel.

12.5 **Availability of channels.**

12.5.1 PEG channel capacity must be viewable by any Subscriber without the need for obtaining any equipment other than the equipment required for the other services to which the Subscriber subscribes; and, to the extent required by applicable law, shall be provided as part of Basic Service tier, or if there is no basic service tier, as part of the service provided to any Subscriber.

12.5.2 To the extent technically feasible, PEG programming choices shall be displayed on menus in a manner equivalent to the manner commercial programming choices are displayed. It is the responsibility of the entity managing a PEG channel to timely provide information that it wishes to have displayed on the menu.

12.5.3 All PEG channels provided by the Franchisee may be offered in any format using any transmission method.

12.6 **Franchisee's System Responsibilities.**

12.6.1 Franchisee shall be responsible for: providing and maintaining links ("PEG links") to and from any locations for purposes of: transporting PEG signals to locations responsible for playback or editing of PEG programming; transporting signals from those locations to Franchisee's headend/control facilities; converting the PEG signals as necessary; and placing the PEG signals, as appropriate, on proper channels, all without any noticeable PEG signal deterioration. Each location must be capable of monitoring signals Franchisee delivers to Subscribers. This section does not apply if Franchisee is not able to gain access to needed conduits or poles.

12.6.2 The City has designated the following locations for PEG links:

Capital High School

Culture Center at State Capitol

Clay Center

City Hall

Charleston Coliseum & Convention Center

Downtown Kanawha County Public Library Main Branch

City Service Center Building

12.6.3 With the exception of the City Service Center Building referred to above, Franchisee shall be responsible for the cost of providing the links upon request, however the City shall be responsible for the incremental cost of such link if it is more than one mile from Franchisee's fiber. The City may designate additional locations for PEG links, as long as it agrees to pay the incremental cost of extending the cable system to provide the link.

12.6.4 The links shall be configured as needed to allow any of the designated locations to function as a playback facility for one or more PEG channels, as the City may direct. If Franchisee makes changes to its System that necessitate modifications to PEG facilities and equipment, including but not limited to the links, Franchisee shall provide any additional equipment necessary to implement such modifications within 30 days of the date that the System changes are made, so that PEG facilities and equipment may be used and operated as intended.

12.6.5 Franchisee shall not be responsible for the quality of the PEG signal it receives.

12.6.6 Franchisee must provide the links upon request within one-hundred twenty (120) days.

12.7 **<u>Capital Support for PEG</u>**

12.7.1 In addition to satisfying its other obligations herein, upon one hundred eighty (180) days advance written request, Franchisee shall provide funding, which may be used only for capital costs associated with the channel capacity designated for PEG use and with the facilities and equipment for the use of such channel capacity in an amount up to twenty-five (25) cents per Subscriber per month. PEG use includes institutional network capital costs.

12.7.2 Prior to requesting Franchisee to provide the capital support for PEG channels, the City must conduct a public hearing to review the need for the support, and how the support will be used. Franchisee shall be provided an opportunity to present information as to the effect of the request upon Subscribers, and to introduce any surveys or other pertinent information regarding fees.

12.7.3 If Franchisee enters into a contract with an entity responsible for managing a PEG channel for operational support of PEG, the City may relieve Franchisee of all or part of its capital funding obligations under this Section.

12.7.4 Both parties agree that other than as provided in section 12.7.1 of this Agreement, capital support funds shall not be deducted from the franchise fee but may be passed through to all Basic Subscribers in the Franchise Area as a separate line item on Subscriber billing statements.

12.8 **<u>Channel Location.</u>**

12.8.1 Franchisee agrees to use reasonable efforts to locate PEG channels so that they are grouped with the majority of channels a Subscriber receives as part of the lowest level of service offered on the System.

12.8.2 Franchisee shall be permitted to change the channel position for any PEG channel upon at least sixty (60) days notice.

12.8.3 Franchisee shall pay reasonable expenses associated with a change in the PEG channel positions, up to $3,000 per change.

12.9 **Free Service to Certain Locations.**

12.9.1 Subject to federal law and FCC rules and regulations, Franchisee shall, without charge, provide the following to each School, municipal and county government building within the City upon request or automatically to any site to which it has a drop as of the date of this Agreement: (i) at least one activated drop and outlet (with signal levels to the ground block comparable to the signal levels provided to multiple dwelling units); (ii) Basic Service (iii) all PEG channels; and (iv) all terminal equipment necessary to receive the services described in this subsection. There will be no charge for the drop at any location *where* the location to be served is already connected to the cable system or where the location is 300 feet or less from the public right of way. Where a location is more than 300 feet from the public right of way, or where the location requires underground and/or inside-wiring beyond the demarcation point of the drop, the location must agree to pay the actual, additional labor and material cost of providing the drop beyond the first 300 feet, and for any such underground or inside wiring.

12.9.2 Each location may itself extend service from the drop to additional outlets. Franchisee shall not be responsible for signal leakage or the signal quality at any additional outlet or inside wiring that was not installed by Franchisee. Consistent with federal rules, Franchisee may terminate service to a location where there is a leakage problem until the leakage is repaired. Franchisee shall not be obligated to repair inside wiring or additional outlets not installed by Franchisee. If a location extends service to multiple drops, the location shall pay for any additional line amplifiers required to deliver the service.

12.9.3 Subject to federal law and FCC rules and regulations, for nonprofit colleges and universities, Franchisee will provide no more than one drop and free outlet of Cable Service. Such drops will not be provided and may not be extended to: (a) residential dwelling units; (b) areas in stadiums, auditoriums, or dining halls used by members of the general public. The same rules that apply to locations for drop cost under Section 12.9.1 apply to drops to colleges and universities under this section.

12.10 **No Charge for Use.** Except as otherwise provided herein, the facilities, equipment and channel capacity provided for PEG Use shall be available at no charge from Franchisee to users, to the City or to any Designated Access Entity.

12.11 **Costs Caused by Franchisee.** If Franchisee makes changes to its Cable System that necessitate modifications to PEG facilities and equipment (including but not limited to the upstream paths), Franchisee shall at the same time provide any additional facilities or equipment necessary to implement such modifications so that PEG facilities and equipment may be used and operated as intended in this Agreement. By way of example, and not limitation, should Franchisee cease delivery of all signals in an analog format to Subscribers, it shall provide the facilities and equipment necessary so that PEG signals can be delivered in a digital format.

12.12 **Limitations on Use.** The Cable Service provided pursuant to this Section shall not be used for commercial purposes.

SECTION 13
Performance Guarantees and Remedies

13.1 **Bond or Letter of Credit.**

13.1.1 Franchisee shall file with the City, and at all times thereafter, maintain in full force and effect during the continuance of this franchise, at Franchisee's sole expense, a corporate surety bond or letter of credit in a form acceptable to and approved by the City in the amount of $100,000.

13.1.2 The bond or letter of credit shall:

13.1.2.1 Secure the faithful performance of all work required by the Franchise, and;

13.1.2.2 Be sufficient to provide for restoration of the Public Rights-of-Way and other property that may be affected by the construction, given the scope and nature of the work proposed.

13.1.3 The bond or letter of credit shall provide that, in the event Franchisee fails to comply with its obligations under the Franchise or Applicable Law, there shall be recoverable, jointly and severally from the principal and surety of the bond, any damages or loss suffered by the City as a result, including the full amount of any compensation, indemnification, or cost of removal or abandonment of any property of Franchisee, or the cost of completing or repairing the Cable System construction, upgrade, or other work in the Public Rights-of-Way, plus a reasonable allowance for attorneys' fees, up to the full amount of the bond or letter of credit.

13.1.4 The performance bond or letter of credit shall provide that it shall be forfeited to the City under following conditions:

13.1.4.1 Franchisee abandons the Cable System; or

13.1.4.2 the Franchise is revoked for cause.

13.1.5 The performance bond shall be issued by a surety licensed to do business in West Virginia and shall contain the following endorsement: "This bond may not be canceled, or allowed to lapse, until sixty (60) days after receipt by the City, by certified mail, return receipt requested, of a written notice from the issuer of the bond of intent to cancel or not to renew."

13.2 **Material Term.** The required bond or letter of credit is a material term of this Franchise.

13.3 **Revocation or Termination of Franchise.** In addition to all other rights of the City under this Franchise, the City shall, subject to federal law, have the right to revoke or shorten the term of the Franchise for material violation of the terms of this Franchise and for any of the other reasons specified in West Virginia Code §24D-1-10.

13.3.1 **Notice of Violation.** If the City believes that Franchisee has not complied with the terms of the Franchise, the City shall first informally discuss the matter with Franchisee. If these discussions do not lead to resolution of the problem, the City shall notify Franchisee in writing of the exact nature of the alleged noncompliance (the "Violation Notice").

13.3.2 **Franchisee's Right to Cure or Respond.** The Franchisee shall have thirty (30) days from receipt of the Violation Notice to (i) respond to the City, contesting the assertion of noncompliance, or (ii) to cure such default, or (iii) if, by the nature of default, such default cannot be cured within the thirty (30) day period, initiate reasonable steps to remedy such default and notify the City of the steps being taken and the projected date that they will be completed.

13.3.3 **Public Hearing.** If Franchisee fails to respond to the Violation Notice received from the City, or if the default is not remedied within the cure period set forth above, the City shall schedule a public hearing if it intends to pursue action to seek correction of the violation or to take further action; including possible revocation. The City shall provide Franchisee at least thirty (30) days prior written notice of such hearing specifying the time and place of such hearing. Franchisee and other interested parties shall have an opportunity to submit data, views or argument orally or in writing for the record of the hearing. The public hearing shall be on the record and a written transcript shall be made available to Franchisee within ten (10) business days. The City shall determine if Franchisee has committed a violation and shall enter a written decision. Nothing in this Franchise prevents Franchisee from seeking review of the City's decision in a court of competent jurisdiction.

13.3.4 **Enforcement.** Subject to Applicable Law, in the event the City, after the hearing set forth in subsection 13.3.3 above, determines that Franchisee has materially violated any provision of the Franchise, the City may, in addition to the remedies set forth in Chapter Twenty-Four D of the West Virginia Code:

13.3.4.1 Revoke the franchise; or

13.3.4.2 Seek appropriate relief from a court or agency of competent jurisdiction under this franchise or Applicable Law.

13.4 **Remedies Cumulative.** All remedies under the West Virginia Cable Television Law and this Franchise are cumulative unless otherwise expressly stated. The exercise of one remedy shall not foreclose use of another, nor shall the exercise of a remedy or the payment of penalties relieve Franchisee of its obligations to comply with its Franchise. Remedies may be used singly or in combination; in addition, the City may exercise any rights it has at law or equity. Except that, the City is not entitled to recover damages for the same injury under two separate sections where doing so would result in a double recovery.

13.5 **Relation to Insurance and Indemnity Requirements.** Recovery by the City of any amounts under insurance, the bond, the letter of credit, or otherwise does not limit Franchisee's duty to indemnify the City in any way; nor shall such recovery relieve Franchisee of its obligations under the Franchise, limit the amounts owed to the City, or in any respect prevent the City from exercising any other right or remedy it may have.

SECTION 14
Miscellaneous Provisions

14.1 **Force Majeure.** Franchisee shall not be deemed in default with provisions of its Franchise where performance was rendered impossible by war or riots, civil disturbances, acts of terrorism, epidemics, floods or other natural catastrophes beyond Franchisee's control or the unforeseeable unavailability of labor or materials. The acts or omissions of Affiliates are not beyond Franchisee's control, and the knowledge of Affiliates shall be imputed to Franchisee. The Franchise shall not be revoked or Franchisee penalized for such noncompliance, provided that Franchisee takes immediate and diligent steps to bring itself back into compliance and to comply as soon as possible under the circumstances with its Franchise without unduly endangering the health, safety and integrity of Franchisee's employees or property, or the health, safety and integrity of the public, Public Rights-of-Way, public property, or private property.

14.2 Equal Protection.

14.2.1 In the event the City enters into, or has entered into, a franchise, permit, license, authorization, or other agreement of any kind with any Person other than Franchisee to enter into the City's streets and public ways for the purpose of constructing or operating a cable system or providing Cable Service or video service to any part of the Franchise Area, the material provisions thereof shall be reasonably comparable to those contained herein, in order that one operator not be granted an unfair competitive advantage over another, and to provide all parties equal protection under the law. For the avoidance of doubt, the Franchisee acknowledges that the City's Franchise Agreement with Cebridge Acquisition, LLC that is currently in effect and up for renewal on or around the same date as the effective date of this Agreement is reasonably comparable to this Agreement.

14.2.2 If another provider of Cable Services, video services or other television services utilizing any system or technology requiring use of the Rights of Way in the Franchise Area, is lawfully authorized by any governmental entity or otherwise exempt from obtaining a franchise to provide such services Franchising Authority hereby agrees that it will notify Franchisee prior to the effective date of the existence of such exemption or authorization, and, upon a request from Franchisee, as a matter of law, Franchisee's Franchise will be modified within thirty (30) days of the granting of such authorization or exemption for the purpose of establishing the same terms and conditions as such person(s) on a competitively neutral basis.

14.2.3 If, after the effective date of this Franchise, an entity constructs facilities in the rights of way in the City that it uses to deliver multi-channel video programming equivalent to cable service directly to subscribers, and such entity is not subject to requirements under Applicable Law or an authorization issued by the City, Franchisee shall be relieved of its build out obligations under Section 6 of this Agreement. This section may not be read to apply where the service is provided via an open video system or by a system that offers video carriage on a common carrier basis.

14.2.4 This section does not permit Franchisee to recover any money, facilities or equipment from the City, or permit Franchisee to refuse to provide facilities or equipment for which the City pay in whole or in part under this agreement.

14.2.5 If federal or state law permits an existing Franchisee to opt out of its Franchise, nothing in this section shall be read to prevent Franchisee from exercising its rights under federal or state law.

14.3 Action of Parties. In any action by the City or the Franchisee that is mandated or permitted under the terms hereof, such party shall act in a reasonable, expeditious and timely manner.

Furthermore, in any instance where approval or consent is required under the terms hereof, such approval or consent shall not be unreasonably withheld.

14.4 **Notices.** All notices, reports or demands required to be given under this Franchise shall be in writing and shall be deemed to be given upon delivery if delivered personally to the person designated below, or on the fifth day following mailing if sent in accordance with the notice requirement of this Section and deposited in the United States mail in a sealed envelope, with registered or certified mail postage prepaid thereon, or on the next business day if sent by express mail or overnight air courier addressed to the party to which notice is being given, as follows:

If to the City:

City of Charleston
501 Virginia St. E
Charleston, WV 25301
Attn: Mayor

And a courtesy copy to:

City of Charleston
Post Office Box 2749
Charleston, WV 25330
Attn: City Attorney

If to Franchisee CAS Communications:

Community Antenna Service, Inc
1525 Dupont Road
Parkersburg, WV 26101
Attn: Vice President

14.5 **Effective Date.** The Franchise granted herein will take effect and be in full force from such date of acceptance by Franchisee recorded on the signature page of this Agreement. This Franchise shall expire on ________________, 20_____, unless extended in accordance with the provisions of this Agreement or by the mutual agreement of the parties.

Considered and approved this _________day of _____________________, 2022.

CITY OF CHARLESTON, WEST VIRGINIA

Signature: ____

Name:____

Title:____

Accepted this this ______ day of ______________________________, 2022, subject to applicable federal, state, and local law.

COMMUNITY ANTENNA SERVICE, INC., DOING BUSINESS AS CAS

Signature: __________________________________

Name: _____________________________________

Title: ______________________________________

FRANCHISE AGREEMENT

This Franchise Agreement ("Agreement") is between the CITY OF CHARLESTON, WEST VIRGINIA (hereinafter referred to as "CITY" or "FRANCHISE AUTHORITY") and CEBRIDGE ACQUISITION, LLC, doing business as SUDDENLINK COMMUNICATIONS, (hereinafter referred to as "SUDDENLINK" and "FRANCHISEE").

The City finds as follows:

A. Suddenlink filed an Application for A Cable Franchise ("Application") to construct, operate and repair a Cable System in, over, along and under City roads and appropriate Rights-of-Way in the Franchise Area for the purpose of providing Cable Service.

B. The City has conducted hearings to consider Suddenlink's future compliance with the terms of the franchise and with applicable law; the quality of Suddenlink's service in light of community needs; the financial, technical, and legal qualifications of Suddenlink; and to determine whether Suddenlink's plans for constructing and operating its Cable System are adequate to meet the future cable-related community needs and interests.

C. The City has relied on Suddenlink's written representations and has considered all information Suddenlink has presented to it.

D. The City, having considered the interests proposed and advanced, has found that the granting of the non-exclusive Franchise requested, subject to conditions, is in the public interest.

E. Suddenlink is willing to accept the conditions of the Franchise Agreement; and

F. The City held a public hearing on the Application on the 15th day of December, 2021, after providing legal notice of the Application and of the hearing, as required by law.

Upon the adoption of a Cable Ordinance by the City of Charleston, West Virginia, the City hereby grants a cable television franchise to Suddenlink as follows:

SECTION 1
Definition of Terms

Terms. For the purpose of this franchise the following terms, phrases, words and their derivations shall have the meaning ascribed to them in the Cable Communications Policy Act of 1984, (the "Cable Act"), The Cable Television Systems Act, West Virginia Code §24D-1-1 *et seq.,* ("West Virginia Cable Law"), and relevant City policies and ordinances, including the City's Cable Ordinance, (collectively "Applicable Law"), all as amended from time to time, unless otherwise defined herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is mandatory and "may" is discretionary. Words not defined shall be given their common and ordinary meaning.

1.1 Access, PEG Access, or PEG Use. The availability of the Cable System for Public, Education or Government ("PEG") use by various agencies, institutions, organizations, groups, and individuals, including the City and its Designated Access Providers, to acquire, create, and distribute video communications not under Franchisee's editorial control, including, but not limited to:

1.1.1 Public Access or Public Use means Access where organizations, groups, or individual members of the general public, on a non-discriminatory basis, are the designated programmers or users having editorial control over their communications;

1.1.2 Education Access or Education Use means Access where Schools are the designated programmers or users having editorial control over their communications;

1.1.3 Government Access or Government Use means Access where government institutions or their designees are the designated programmers or users having editorial control over their communications;

1.2 Basic Service. Any service tier which includes the retransmission of local television broadcast signals.

1.3 Cable Ordinance. Bill Number _____ adopted _____________ approving the renewal of a cable television franchise now held by Cebridge Acquisition, LLC.

1.4 Cable Service. (A) the one-way transmission to subscribers of (i) video programming, or (ii) other programming service, and (B) the subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

1.5 Cable System. Shall be as defined in the West Virginia Cable Law and, as used herein specifically refers to Franchisee's Cable System. A reference to a Cable System includes pedestals, enclosures (such as equipment cabinets), amplifiers power guards, nodes, cables, fiber optics and other equipment necessary to operate the Cable System.

1.6 Channel. A portion of the electromagnetic frequency spectrum which is used in a Cable System and which is capable of delivering a television channel.

1.7 Designated Access Provider. A non-commercial entity or entities designated by the City to manage some or all of the PEG Channels, facilities and equipment.

1.8 Franchise Area. The Franchise Area shall include all areas within the City Limits as currently exists, and as may be extended during the Term of the Franchise.

1.9 Franchise. The nonexclusive rights granted pursuant to this Agreement, and any amendments, exhibits, or appendices hereto, to construct, operate, and maintain a Cable System along the public Right-of-Way within the Franchise Area.

1.10 Franchisee. Cebridge Acquisition, LLC, doing business as Suddenlink Communications.

1.11 Gross Revenues. Any and all revenues derived directly or indirectly, now or in the future, by Franchisee, its affiliates, subsidiaries, parent company, and any person in which Franchisee has an interest, from the operation of the Cable System to provide Cable Service; provided, however, that gross revenues shall not include any taxes, fees or assessments of general applicability collected by Franchisee from Subscribers for pass-through to a government agency.

1.12 Person. An individual, partnership, association, organization, corporation, trust or government entity.

1.13 Standard Drop. An aerial connection extending no more than 150 feet from the potential Subscriber's demarcation point to the point nearest the property line on the public Right-of-Way from which Cable Service can be provided to that Subscriber most economically.

1.14 PEG Channel. Any capacity on a Cable System set aside by Franchisee for PEG Use, including by way of example and not limitation, a digital PEG Channel or an analog PEG

Channel.

1.15 School. All accredited public or private, non-profit primary and secondary schools and colleges (which term includes all accredited post-secondary institutions, including by way of example and not limitation, community colleges, technical colleges and universities) located within the City and not in an incorporated area of the City or not otherwise referenced in a franchise agreement.

1.16 Subscriber. Any Person lawfully receiving Cable Service from Franchisee.

1.17 Subscriber Network. Fibers, coaxial cables and the electronic devices required to activate the same that are used primarily in the transmission of Cable Service to residential Subscribers.

1.18 Transfer of the Franchise. Shall Mean any transaction in which:

1.18.1 a fifty percent (50%) ownership or greater interest in Franchisee is transferred, directly or indirectly, from one Person or group of Persons to another Person or group of Persons, so that Control of Franchisee is transferred; or

1.18.2 the rights held by Franchisee under the Franchise are transferred or assigned to another Person or group of Persons.

1.18.3 However, notwithstanding Sub-subsections 1.18.1. and 1.18.2 above, a "Transfer of the Franchise" shall not include transfer of an ownership or other interest in Franchisee to the parent of Franchisee or to another Affiliate of Franchisee; transfer of an interest in the Franchise or the rights held by the Franchisee under the Franchise to the parent of Franchisee or to another Affiliate of Franchisee; any action which is the result of a merger of the parent of the Franchisee; or any action which is the result of a merger of another Affiliate of the Franchisee.

SECTION 2
Grant of Franchise; Limits and Reservations.

2.1 **Grant.** A Cable System Franchise is hereby granted to Franchisee, subject to the conditions set forth in this Agreement and all Applicable Laws. This Franchise grants the right, subject to conditions, to construct, operate and repair a Cable System and associated equipment in, over, along and under Public Rights-of-Way within the Franchise Area for the purpose of providing Cable Service, and for providing an institutional network ("I NET") and other facilities or services for PEG Use of the Cable System and for such other services that may lawfully be provided over the Cable System, commencing on the Effective Date of the Franchise through and including ____________________, 202___, unless terminated prior to that date in accordance with the Franchise or Applicable Law.

2.2 **Term.** The Franchise and the rights, privileges and authority hereby granted shall be for a renewal term of five (5) years, commencing on the Effective Date of this Franchise as set forth in subsection 14.5.

2.3 **Relation to Other Provisions of Law.**

2.3.1 The Franchise issued by the City is subject to, and Franchisee must exercise all rights granted to it in accordance with Applicable Law. This Franchise does not confer rights upon Franchisee other than as expressly provided herein, or as expressly provided under other Applicable Law. No privilege or power of eminent domain is bestowed by this grant. All rights and powers of the City now existing or hereafter obtained are reserved except as expressly provided to the contrary in the Franchise. Nothing passes by implication under this Franchise. Subject to the foregoing, Franchisee shall provide the Cable Service required hereunder throughout the Franchise Term and any holdover term and shall make any Cable Service it provides over its Cable System available to all entities in its Franchise Area, subject to the line extension provisions herein.

2.3.2 This Franchise and all rights granted under the Franchise are subject to the City police and other powers. However, once the Franchise grant is effective, this Franchise is a contract and except as to those changes which are the result of the City's exercise of its police and other powers, neither party may take any unilateral action which materially changes the explicit mutual promises in this contract.

2.3.3 The Franchise shall be interpreted to convey limited rights and interests only as to those City Rights-of-Way in which the City has an actual interest and only to the extent and for the purposes set out in the Franchise. The grant of the Franchise is not a warranty of title or interest in any Right-of-Way; it does not provide Franchisee any interest in any particular location within the Rights-of-Way. The issuance of the Franchise does not deprive the City of any powers, rights or privileges it now has or may later acquire in the future to use, perform work on, construct, operate or repair facilities or systems in, or regulate or control the use of the Rights-of-Way.

2.3.4 Subject to federal law, the Franchise issued and the franchise fee paid hereunder are not in lieu of any other required permit, authorization, fee, charge or tax. Without limiting the foregoing, the City, among other things, does not waive the requirements of, or Franchisee's duty to obtain, all applicable permits, and to comply with the conditions thereof; to comply with zoning laws; or to comply with codes, ordinances and regulations governing the construction of the Cable System.

2.4 **Interpretation and Conflicts.**

2.4.1 In the event of a conflict between the Cable Ordinance and this Agreement as of its effective date, the Cable Ordinance shall control except where expressly provided otherwise in the Agreement

2.4.2. The provisions of this Franchise shall be liberally construed in favor of the public interest in order to effectuate its purposes.

2.5 **Affiliates Must Comply.** Any Affiliate or joint venture or partner of Franchisee involved in the management or operation of the Cable System in the Franchise Area that would constitute a cable operator of the Cable System is subject to the limitations of, and shall comply with the terms and conditions of the Franchise. Franchisee shall be fully liable for any act or omission of an Affiliate that controls Franchisee or is responsible in any manner for the management of the Cable System that results in a breach of the Franchise or a violation of Applicable Law relating to the rights and obligations of the Franchise, as if the act or omission was Franchisee's act or omission.

2.6 **Relation to Prior Franchise.** As of the effective date of this Franchise, the franchise previously held by the Franchisee is superseded and of no further force and effect. Subject to any applicable statute of limitations, nothing in this paragraph shall be deemed to release the Franchisee from any liability arising under the prior franchise during the time it was in effect, including, but not limited to, Franchisee's compliance with the franchise fee requirements of prior franchise agreements. Upon prior written request by the Franchising Authority, Franchisee shall provide proof satisfactory to the City that it will continue to provide the same or greater indemnity required under the prior franchise, and that it continues to maintain adequate insurance for injuries to persons or property that may have occurred during the prior franchise term, subject to any limitations to which the City may have agreed in settlement of claims arising under the prior franchise.

2.7 **Validity.** Both parties waive any claim or defense that any provision of this Franchise, or any provision of Applicable Law is unenforceable or otherwise invalid or void. Neither party waives the right to challenge the validity of any other Applicable Law.

2.8 **Effect of Franchise Acceptance.** By accepting the Franchise, Franchisee:

2.8.1 Acknowledges and accepts the City's legal right to issue and enforce the Franchise;

2.8.2 Accepts and agrees to comply with each and every provision of this Franchise; and

2.8.3 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.

2.9 **Franchisee Bears Its Own Costs.** Unless otherwise expressly provided in this Franchise, all acts that Franchisee is required to perform under this Franchise or the Cable Ordinance must be performed at its own expense.

2.10 **No Waiver.**

2.10.1 No course of dealing between Franchisee and the City, or any delay on the part of the City or Franchisee in exercising any rights shall operate as a waiver of any such rights, except to the extent expressly waived; *provided that,* nothing in this section is meant to alter any renewal protections afforded by 47 U.S.C. §546(d).

2.10.2 Waiver of a breach of this Franchise is not a waiver of any other breach, whether similar or different from that waived. Neither the granting of the Franchise nor any provision herein shall constitute a waiver or bar to the exercise of any governmental right or power of the City, including without limitation the right of eminent domain.

2.11 **No Recourse.** Without limiting such immunities as the City or other Persons may have under Applicable Law, and to the maximum extent permitted by State law, Franchisee will have no monetary recourse whatsoever against the City or its officials, boards, agents or employees for any loss, costs, expense or damage arising from the construction, operation or repair of its Cable System, or the activities of the City or any entity authorized by the City to use Rights-of-Way or other public property.

2.12 **Severability.** In the event that a court or agency or legislature of competent jurisdiction acts or declares that any nonmaterial provision of this Franchise is unenforceable according to its terms, or otherwise void, said provision shall be considered a separate, distinct, and independent part of this Franchise, and such holding shall not affect the validity and enforceability of all other provisions hereof. In the event that a court or agency or legislature of competent and controlling jurisdiction acts so that any material provision of this Agreement is unenforceable according to its terms, or is otherwise void, the parties agree to immediately enter into negotiations in good faith to restore the relative burdens and benefits of this Franchise, consistent with Applicable Law. If the parties are unable to agree to a modification of this Franchise within 60 days, either party may with 90 days prior notice, terminate or shorten the Franchise term; or resort to litigation to seek any available equitable relief; or do both. However, if a party does seek equitable relief before the effective date of termination or shortening, the termination or shortening will be stayed pending the resolution of the judicial proceedings. Each party agrees to participate in up to sixteen hours of negotiation during the 60-day period. Notwithstanding the foregoing, if a party believes a provision is not material, it must so notify the other party within 14 days of a request by such other party that it enter into negotiations, or else the materiality claim is waived. The obligation to negotiate is not tolled, and the parties must discharge their negotiation responsibility notwithstanding the dispute as to materiality. The remedies provided for herein do not prevent a party from contending that a particular provision is enforceable or foreclose any remedies if a provision is enforceable.

2.13 **Effect of Change in Law.** In the event that State or Federal laws, rules, or regulations preempt a provision or limit the enforceability of a provision of this Franchise, then the provision shall be read to be preempted to the extent and for the time, but only to the extent and for the time, that such laws, rules or regulations validly acted to preempt such provision. In the event such State or Federal law, rule, or regulation is subsequently repealed, rescinded, amended, or otherwise changed, so that the provision hereof that had been preempted is no longer preempted, such provision shall thereupon return to full force and effect and shall thereafter be binding on the parties hereto, without the requirement of further action on the part of the City.

SECTION 3
Transfer

3.1 **Procedures for Transfer.** Subject to Section 617 of the Federal Communications Act, 47 U.S.C. § 537, as amended, no Transfer of the Franchise shall occur without the prior consent of the City, provided that such consent shall not be unreasonably withheld, delayed or conditioned. In considering an application for the Transfer of the Franchise, the City may consider the applicant's: (i) technical ability; (ii) financial ability; (iii) good character; and (iv) other qualifications necessary to continue to operate the Cable System consistent with the terms of the Franchise. No such consent shall be required, however, for a transfer in trust, by mortgage, by other hypothecation, by assignment of any rights, title, or interest of the Franchisee in the Franchise or Cable System in order to secure indebtedness, for any transaction in which Franchisee retains the right, title or interest in the Franchise granted to it herein, or for transactions otherwise excluded under Section 1.18 above.

SECTION 4
Indemnification and Insurance

4.1 **Indemnification.** Without limiting and expressly preserving all immunities that the City has under Applicable Law, and to the maximum extent permitted by Applicable Law, Franchisee shall, by acceptance of the Franchise granted herein, hold harmless, indemnify and defend the City, its officers, boards, agents, and employees for all claims for injury to any Person or property caused by the negligence of Franchisee, or resulting from any condition, act, omission or error in judgment of Franchisee, in the construction or operation of the Cable System and in the event of a determination of liability shall indemnify, defend and hold the City, its officers, boards, agents, and employees harmless from any and all liabilities, claims, demands, or judgments growing out of any injury to any Person or property as a result of the negligence of City, or the result of any condition, act, omission, or error in judgment of Franchisee, arising out of the construction, repair, extension, maintenance, operation or removal of its wires, poles or other equipment of any kind or character used in connection with the operation of the Cable System; provided, that the City shall give Franchisee written notice of Franchisee's obligation to indemnify and defend the City within ninety (90) days of receipt of a claim or action pursuant to this section. The City's failure to provide such notice, however, shall not nullify Franchisee's obligation to indemnify and defend the City. In the event any such claim arises, the City shall tender the defense thereof to Franchisee, Franchisee shall be obligated pursuant to the terms herein to accept said tender, and Franchisee shall have the right to defend, settle or compromise any claims arising hereunder, at its own expense. If the City determines in good faith that its interests cannot be represented by Franchisee, Franchisee shall be excused from any non-monetary obligation to represent the City; provided, however, the decision of the City to obtain its own representation shall not serve to nullify Franchisee's monetary obligation to indemnify the City for the cost of its defense and any amounts for which the City is found liable. Notwithstanding the foregoing, Franchisee shall not be obligated to indemnify the City for any damages, liability or claims resulting from the City's use of the Cable System, including any PEG channels. The indemnity provided for herein shall be deemed in addition to and in no way a limitation upon the City's and its agents' right of common law indemnification from Franchisee.

4.2 Insurance.

4.2.1 Throughout the term of the Franchise, Franchisee shall maintain insurance in the amounts at least as follows:

Workers' Compensation	Statutory Limits
Commercial General Liability	$1,000,000.00 per occurrence,
	Combined Single Liability (C.S.L)
	$2,000,000.00 General Aggregate
Auto Liability, including coverage on all owned, non-owned hired autos	$1,000,000.00 per occurrence C.S.L.
Umbrella Liability	$1,000,000.00 per occurrence C.S.L.

4.2.2 The City shall be added as an additional insured to the above Commercial General Liability, Auto Liability and Umbrella Liability insurance coverage.

4.2.3 Franchisee shall furnish the City with current certificates of insurance evidencing such coverage upon request.

SECTION 5
Service Obligations

5.1 No Discrimination. Franchisee shall not deny service, deny access, or otherwise discriminate against Subscribers, channel users, or general citizens on the basis of race, religion, color, national origin, ancestry, sex, age, blindness, handicap, familial status, gender identity, or sexual orientation.

5.2 Privacy. Franchisee shall fully comply with the privacy rights of Subscribers as contained in Cable Act Section 631 (47 U.S.C. § 551).

5.3 No Limitation. Nothing herein prevents the City from adopting additional non-discrimination and privacy requirements by ordinance, resolution or regulation, which provisions, if otherwise permitted under Applicable Law, shall apply to Franchisee.

SECTION 6
Service Availability

6.1 Provision of Service. The Cable System, as constructed as of the date of the passage and final adoption of this Agreement, substantially complies with the material provisions hereof. Within the Franchise Area, Franchisee shall provide Cable Service upon request for no more than the prevailing installation charge, but without charging for line extension where there is either a minimum density of twenty-five (25) residential units per aerial or underground mile or where thirteen (13) locations per mile contract to subscribe to Cable Service for one year. Where these standards are not satisfied, service will be extended upon request for no more than the then-prevailing installation charge if the Person or Persons, other than those entitled to a free drop, requesting service contract to pay a pro rata share of the cost of extending the plant to the point nearest the potential Subscriber's property line on the public Right-of-Way from which Cable Service can be provided most economically to that potential Subscriber. For new subdivisions, the Franchisee shall extend service at no charge to the developer if the planned density exceeds the minimum levels, or for a pro rata share of costs where it does not; provided that where construction will be underground, this sentence will not apply unless the developer provides reasonable advance notice so that Franchisee can participate in joint trenching. Franchisee shall not be obligated to provide Cable Service to any area which is financially or technically infeasible.

6.2 **Economic Redlining.** Franchisee shall not discriminate between or among any individuals in the availability of Cable Service or based upon the income of the residents in a local area.

6.3 **Drops; Prevailing Charges.** In addition, except as Applicable Law may otherwise provide, and except with respect to those locations which are entitled to free drops under this Franchise:

6.3.1 The "then-prevailing installation charge" is the lowest lawful charge that applies at any given time to a particular class of users. If Applicable Law permits, nothing in this Franchise prohibits Franchisee from establishing separate charges for separate classes of drops, such as, for example, underground and aerial drops.

6.3.2 Where the drop to a Subscriber is not a Standard Drop, in addition to the then-prevailing installation charge for Standard Drops, Franchisee may charge the Subscriber the difference between Franchisee's cost of installing a Standard Drop and the actual additional cost of installing a drop from the nearest tap, or if closer, the point to which Franchisee could be required to extend its Cable System.

6.4 **Subscriber Option for Underground Drops.** Where Franchisee may locate a drop above ground, but a potential Subscriber requests that the cable drop be placed underground, the Franchisee shall locate the drop underground, but in addition to the then-prevailing installation charge may charge the Subscriber for the actual difference in cost of installing the underground drop, rather than an aerial drop. An existing Subscriber may require Franchisee to relocate an existing aerial drop underground, and Franchisee may charge the requesting Subscriber for the cost of relocating the drop underground.

SECTION 7
Construction and Technical Standards

7.1 **Compliance with Codes.** Without limiting Section 2, Franchisee agrees that at all times it will satisfy the following, minimum conditions:

7.1.1 **Minimum Conditions.** The construction, operation, and repair of the Cable System will be in accord with all Applicable Law. At a minimum, Franchisee shall comply with construction procedures approved by the City; IEEE standards, the National Electric Code, the National Electrical Safety Code and any other applicable safety codes. The most stringent applicable code or standard will apply in the event of any conflict (except insofar as that standard, if followed, would result in a system that could not meet requirements of Federal, State, or local law). Franchisee will employ reasonable care at all times, within the meaning of Applicable Law, and will install and maintain in use commonly accepted methods and/or devices to reduce the likelihood of damage, injury, or nuisance to the public. The construction, operation, and maintenance of the Cable System shall be performed by experienced and properly trained maintenance and construction personnel.

7.1.2 **Compliance with Laws**. Franchisee must install, locate, relocate and remove its Cable System in accordance with the Franchise and all other Applicable Laws, including City codes as the same may be amended from time to time. Franchisee shall not place or maintain its Cable System, including any poles or other structures, in Public Rights-of-Way or on private property except in strict accordance with the requirements of the Franchise and all other Applicable Laws.

7.1.3 All of Franchisee's plant and equipment, including but not limited to the antenna site, head-end and distribution system, towers, house connections, structures, poles, wire, cable, coaxial cable, fixtures and appurtenances shall be installed, located, erected, constructed, reconstructed, replaced, removed, repaired, maintained and operated in accordance with good engineering practices and performed by experienced maintenance and construction personnel.

7.2 **Pole attachments and conduits.** For I-NET and PEG Uses, pole and conduit space owned by Franchisee will be provided at no charge. Pole and conduit space will be provided to the City for all its other uses at the prevailing rate charged by regulated utilities for similar pole and conduit space in the City of Charleston, and under prevailing terms and conditions under which access is provided to similar pole or conduit space by such regulated utilities. In addition, whenever underground conduit is to be placed by the Franchisee, the Franchisee shall notify the City 90 days in advance and if requested, and if the same shall be in compliance with applicable purchasing laws, the Franchisee shall lay conduit for the City at the cost of the conduit, plus (where boring is involved), the incremental cost of the boring. Whenever underground conduit is to be placed by the City, the City will, if requested by the Franchisee, permit the Franchisee to lay conduit at the Franchisee's cost.

7.3 **Notice of use.** Franchisee will notify the City when it enters into an agreement for use of its poles and conduits.

7.4 **Contractors and Subcontractors.** Franchisee shall ensure that any contractor or subcontractor used for work on construction, operation, or repair of the Cable System is properly licensed under laws of the State and all applicable local ordinances. Each contractor or subcontractor shall have the same obligations with respect to its work as Franchisee would have under this Franchise and Applicable Law if the work were performed by Franchisee. Franchisee shall be responsible for ensuring that the work of contractors and subcontractors is performed consistent with this Franchise and Applicable Law, shall be responsible for all acts or omissions of contractors or subcontractors, and shall be responsible for promptly correcting acts or omissions by any contractor or subcontractor. This section is not meant to alter the tort liability, if any, of Franchisee to third parties, or of any contractor or subcontractor to third parties or to Franchisee. Franchisee shall institute procedures adequate to ensure that the work performed by its contractors and subcontractors complies with the requirements of this Franchise and Applicable Law.

7.5 **Safety.** Franchisee shall at all times employ ordinary care and shall use commonly accepted methods and devices preventing failures and accidents which are likely to cause damage.

7.6 **Network Technical Requirements.** The Cable System must meet or exceed the technical standards set forth in 47 C.F.R. § 76.601 and any other applicable standards, as amended from time to time, *provided that,* nothing in this provision is intended to permit the City to exercise any authority that it is prohibited from exercising under applicable federal law.

7.7 **Future Upgrades.** It is Franchisee's responsibility to make such improvements to its Cable System as are necessary so that the Cable System performs as promised as Subscribers to services are added. In addition, it is Franchisee's responsibility to make such commercially practicable improvements to its Cable System throughout the Franchise term to ensure that Subscribers are able to obtain advanced Cable Service, and so that services can be added throughout the Franchise term. Commercial practicability may be determined by examining the improvements being made and the services being rolled out on similar cable systems.

7.8 **Inspection and Testing.** The City shall have the right to inspect the Cable System to ensure compliance with this Franchise, and applicable provisions of local, State and Federal law. The City (i) may require Franchisee to perform tests based on the City's investigation of Cable System performance or on Subscriber complaints; and (ii) may require Franchisee to prepare a report to the City on the results of those tests, including a statement identifying any problems found and the actions taken to correct those problems. This provision is subject to any limitations on the City's authority under Applicable Law.

7.9 **FCC-Mandated Testing.** Franchisee shall, if requested, notify the City in advance of conducting any Proof-of-Performance test required by the FCC, so that the City may observe the testing. Upon request, the City shall be provided the test results and any supporting documentation regarding the tests and testing equipment and procedures.

SECTION 8
Conditions on Street Occupancy

8.1 **General Conditions.** Without limiting Section 2, Franchisee agrees that at all times it shall, as a minimum condition of its use of the rights of way, comply with the requirements of this Section 8 and that Franchisee shall have the right to utilize existing poles, conduits and other facilities whenever possible, and shall not construct or install any new, different, or additional poles, conduits, or other facilities on public property without obtaining all legally required permits of the City.

8.2 **Underground Construction.** The facilities of Franchisee shall be installed underground in those service areas where existing telephone facilities of a provider other than Franchisee or its affiliates and electric utility local distribution facilities are both underground at the time of system construction. In areas where either of such telephone or electric utility facilities are installed aerially at the time of system construction, Franchisee may install its facilities aerially with the understanding that at such time as the existing aerial facilities are required to be placed underground by the City, Franchisee shall likewise place its facilities underground. Nothing in this section shall preclude Franchisee from receiving funds for relocation for which it is eligible.

8.3 **Construction Codes and Permits.** Franchisee shall obtain all legally required permits before commencing any work requiring a permit, including the opening or disturbance of any Street within the Franchise Area. The City shall cooperate with Franchisee in granting any permits required, providing such grant and subsequent construction by Franchisee shall not unduly interfere with the use of such Streets. Franchisee shall adhere to all building and zoning codes currently or hereafter applicable to construction, operation or maintenance of the Cable System in the service area.

8.4 **System Construction.** All transmission lines, equipment and structures shall be so installed and located as to cause minimum interference with the rights and reasonable convenience of property owners and at all times shall be kept and maintained in a safe, adequate and substantial condition, and in good order and repair. Franchisee shall, at all times, employ ordinary care and use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries, or nuisances to the public. Suitable barricades, flags, lights, flares or other devices shall be used at such times and places as are reasonably required for the safety of all members of the public. Any poles or other fixtures placed in any public way by Franchisee shall be placed in such a manner as not to interfere with the usual travel on such public way.

8.5 **Restoration of Public Ways.** Franchisee shall repair any disturbance or damage to public property or private property caused by Franchisee's construction, operation or repair of the Cable System promptly and in compliance with such standards and deadlines as may be specified by the City in writing. Franchisee agrees to compensate any entity whose person or property is damaged by Franchisee, or any contractor, subcontractor or agent of Franchisee in the course of the construction, operation or repair of the Cable System where the property is not fully restored by Franchisee to a condition as good or better than existed before the damage.

8.6 **Removal in Emergency.** In an emergency, or where the Cable System creates or is contributing to an imminent danger to public health, safety, or property, the City may remove, relay, or relocate any or all parts of the Cable System without prior notice; however, the City will make reasonable efforts to provide prior notice.

8.7 **Tree Trimming.** Franchisee or its designee shall have the authority to trim trees on public property at its own expense as may be necessary to protect its wires and facilities, subject to the supervision of the City, and any lawful, generally applicable regulations that the City may adopt regarding the same.

8.8 **Relocation for Government.** Except as provided below, Franchisee will protect, support, temporarily disconnect, relocate, or remove any of its property at the time and in the manner required by the City or any other governmental entity for any governmental purpose.

8.8.1. Except in an emergency, the City will provide written notice describing where the work is to be performed at least thirty (30) days before the deadline for performing the work; Franchisee may seek an extension of the time to perform the work where it cannot be performed in a week even with the exercise of due diligence, and such request for an extension will not be unreasonably refused.

8.8.2. Franchisee may abandon any property in Public Rights-of-Way that is in place upon written notice to the City and separate notice to the City Manager, unless the City determines, in the exercise of its reasonable discretion exercised within ninety (90) days of the date the required written notices are received, that the safety, appearance, functioning or use of Public Rights-of-Way and facilities in Public Rights-of-Way will be adversely affected. Abandonment shall be in a manner acceptable to the City Manager.

8.9 **Relocation for a Third Party.**

8.9.1 If any removal, relaying, or relocation is required to accommodate the construction, operation, or repair of the facilities of another Person authorized to use Public Rights-of-Way (other than entities covered by Section 8.8 above), Franchisee will, after thirty (30) days' advance written notice, take action to effect the necessary changes requested by such Person.

8.9.2 Unless the matter is governed by a valid contract or Applicable Law, or unless Franchisee's Cable System was improperly installed and if installed properly, the removal, relocation or relaying would be unnecessary, the reasonable cost of removal, relaying, or relocation will be borne by such Person requesting the removal, relaying, or relocation.

8.9.3 The City may direct Franchisee to remove, relay, or relocate its facilities pending resolution of a dispute as to responsibility for costs upon posting of a bond by such Person requesting such removal, relaying or relocation in the amount of Franchisee's estimated costs.

8.9.4 Upon the request of a Person holding a valid permit, other than an entity covered by Section 8.8 above, Franchisee will temporarily raise or lower its wires to allow buildings or other objects to be moved. The requesting Person will pay for any expense associated with such temporary removal or raising or lowering of wires. Franchisee will have the authority to estimate the reasonable material and labor costs and require payment of the same in advance. Franchisee will be given not less than thirty (30) days advance notice to arrange for such temporary wire changes.

8.10 **Emergency Alert System.** Franchisee shall comply with the Emergency Alert System ("EAS") requirements of the FCC and the State of West Virginia, including the current state EAS Plan, in order that emergency messages may be distributed over the Cable System.

SECTION 9
Service and Rates

9.1 **Phone Service.** The Franchisee shall maintain a local or toll free telephone number and a phone service operated and a local office in or near the service area such that complaints and requests for repairs or adjustments may be received at any time.

9.2 **Notification of Service Procedures.** Franchisee shall furnish each Subscriber at the time service is installed, written instructions that clearly set forth information concerning the procedures for making inquiries or complaints, including Franchisee's name, address and local or toll free telephone number. Franchisee shall give the City and subscribers at least thirty (30) days prior notice of any rate increases, channel lineup or other substantive service changes.

9.3 **Rate Regulation.** Franchisee's rates and charges are subject to regulation by the City, to the extent not prohibited by law. If and when exercising rate regulation, the City shall abide by the terms and conditions set forth by the state and FCC.

9.4 **Continuity of Service.** It is the right of each Subscriber in the Franchise Area to receive all available Cable Service from Franchisee as long as the Subscriber's financial and other obligations to Franchisee are satisfied.

9.4.1 **Rights Upon Franchise Termination or Revocation**. If the City revokes the Franchise or Franchisee otherwise terminates, the City shall have the following rights, in addition to the rights specified in this Franchise or under Applicable Law:

9.4.1.1 The City may require Franchisee to remove its facilities and equipment at Franchisee's expense. If Franchisee fails to do so within a reasonable period of time, the City may have the removal done at Franchisee's and/or surety's expense, subject to any right of abandonment that may be provided for under Applicable Law.

SECTION 10
Franchise Fee

10.1 **Amount of Fee.** Franchisee shall pay the City a Franchise Fee in an amount equal to five percent (5%) of Gross Revenues derived from the operation of the Cable System to provide Cable Service. The Franchise Fee is not a payment in lieu of any tax, fee, or other assessment of general applicability (including any such tax, fee or assessment imposed on both utilities and cable operators or their services), consistent with 47 U.S.C. §542(g)(2). However, to the extent required by law, payments to the Public Service Commission of West Virginia under Chapter 24D of the West Virginia Code for subscribers in the Franchise Area shall be offset against amounts owed to the City under this section. Franchise fees may be passed through to Subscribers as a line item on Subscriber bills or otherwise as Franchisee chooses, consistent with Federal law.

10.2 **Payment of Fee.** Payment of the fee due the City shall be made on a quarterly basis, within forty-five (45) days of the close of each calendar quarter. The payment period and the collection of the franchise fees that are to be paid to the City pursuant to the Franchise shall commence sixty (60) days after the Effective Date of the Franchise. Franchisee may use electronic funds transfer to make any payments to the City required under this Agreement. The City shall be furnished a statement of said payment, reflecting the Gross Revenues and the applicable charges. To the extent that Franchisee or its Affiliates offer bundles of Cable and non-Cable Service at discounted rates, fees attributable to Cable Service will be based on a pro rata comparison of charges that apply to persons who purchase the Cable Service and non-Cable Service from Franchisee separately; and if that is not practicable (because some of the bundled services are not offered separately, or are not offered separately as a realistic service offering) payment shall be based on charges that apply to persons who purchase only cable service.

10.3 **Accord and Satisfaction.** No acceptance of any payment by the City shall be construed as a release or as an accord and satisfaction of any claim the City may have for further or additional sums payable as a Franchise Fee or for the performance of any other obligation of Franchisee.

10.4 **Audit.** The City may, from time to time, but not more often than every three (3) years, and upon reasonable advance written notice, inspect and audit any and all books and records to determine whether Gross Revenues and Franchise Fees have been accurately computed and paid. In addition to paying all fees owed plus interest, in the event that the City reviews Franchisee's franchise fee payments, and finds that Franchisee has underpaid the fee owed for any year in an amount exceeding five percent (5%) of the franchise fees actually paid or Ten Thousand Dollars ($10,000), whichever underpayment amount is less, Franchisee shall pay the reasonable cost of the City's review.

10.5 **Limitation on Recovery.** In the event that any Franchise payment or recomputed payment is not made on or before the dates specified herein, Franchisee shall pay an interest charge, computed from such due date, at the annual rate of one percent over the prime interest rate. The period of limitation for recovery of any franchise fee payable hereunder shall be as provided under Applicable Law.

SECTION 11
Records, Reports and Maps

11.1 **Reports Required.** Franchisee's schedule of charges, contract or application forms for regular Subscriber service, policy regarding the processing of Subscriber complaints, delinquent Subscriber disconnect and reconnect procedures and any other terms and conditions adopted as Franchisee's policy in connection with its Subscribers shall be filed with the City upon written request. Upon written request by the City, Franchisee shall provide a copy of reports for monitoring Franchisee's compliance with the terms of this Franchise and Applicable Law.

11.2 **Records Required.**

Franchisee shall at all times maintain:

11.2.1 A record of all complaints as required by West Virginia Code §24D-1-19(a) and as such statute may be amended from time to time.

11.2.2 A full and complete set of as-built plans, records and strand maps showing the location of the Cable System. Upon written request by the City, copies of strand maps shall be provided to the City in an electronic format consistent with that used by the City.

11.2.3 Franchisee shall maintain records sufficient to comply with the requirements of Applicable Law, and to show compliance with all the provisions of this Franchise.

11.3 **Inspection of Records.** Franchisee agrees that it will collect and make available books and records for inspection and copying by the City in accordance with the terms of this Agreement.

11.4 **Time for Production.** Books and records shall be produced to the City at the City's primary office, or such other location as the parties may agree. If Franchisee objects to a request for books and records, it must nonetheless produce the books and records requested, unless the City agrees that they need not be produced, or a court of competent jurisdiction rules otherwise. If documents cannot be copied or moved because (i) they are too voluminous; (ii) of security reasons; or (iii) the requested records contain trade secrets, then Franchisee may request that City's inspection of such records take place at some other location mutually agreed to by the City and Franchisee, provided that:

11.4.1 Franchisee must make necessary arrangements for copying documents selected by the City after its review; and

11.4.2 Franchisee must pay all reasonable travel and additional copying expenses incurred by the City (above those that would have been incurred had the documents been produced in the City's primary office) in inspecting those documents or having those documents inspected by its designee.

11.4.3 The parties agree that any amounts paid pursuant to this Section 11.4 are not a franchise fee within the meaning of 47 U.S.C. § 542 and fall within one of the exceptions listed in 47 U.S.C. §542(g)(2).

11.5 **Uses of System.** Without limiting the foregoing, upon request, Franchisee must advise the City of all services it provides via the Cable System (the term "services" for purposes of this section, would include, without limitation, the provision of dark fiber), for entertainment and other purposes, such as data transmission, local area networks, and voice transmission; and to the extent known, the services that are provided by third parties via the Cable System.

11.6 **Retention of Records; Relation to Privacy Rights.** Franchisee shall take all steps required, if any, to ensure that it is able to provide the City all information which must be provided to the City or that may be requested by the City under Applicable Law or this Franchise, including by providing appropriate Subscriber privacy notices. Nothing in this section shall be read to require Franchisee to violate 47 U.S.C. § 551 or other Applicable Law governing privacy. Franchisee shall be responsible for redacting any data that State or Federal law prevents it from providing to the City. Financial records necessary to establish compliance with this agreement shall be kept for at least seven (7) years, other records shall be kept for at least three (3) years except that service call logs may be retained for two (2) years, so long as the information contained therein is reflected in other documents.

11.7 **Confidentiality of Certain Information.** The City agrees to treat as confidential any books, records or maps that constitute proprietary or confidential information to the extent Franchisee makes the City aware of such confidentiality, and to the extent that the City is permitted to do so by Applicable Law. If the City believes it must release any such confidential books or records in the course of enforcing this Franchise, or for any other reason, it shall advise Franchisee in advance in writing so that Franchisee may take appropriate steps to protect its interests. To the extent permitted by State and federal law, if Franchisee takes appropriate steps to protect its interests in maintaining such information as confidential, Franchisee agrees that it shall deny access to any of Franchisee's books and records marked confidential, as set forth above, to any Person.

SECTION 12
Community Programming

12.1 **Preservation of Existing Benefits.** Franchisee shall continue to provide and maintain all existing equipment, facilities and other support for PEG use that it was providing prior to and upon the effective date of this Franchise, until and unless the City notifies Franchisee that such support is no longer necessary.

12.2 **Provision of Channel Capacity for PEG Use.**

12.2.1 Franchisee shall provide up to three Channels for PEG use upon request. The City is deemed to have requested any PEG Channel currently being provided in the City. PEG capacity used for video programming may not be used to transmit "commercial matter" as that term is defined and interpreted under Section 73 .670, Note 1, of the FCC rules, 47 C.F.R. §73.670. PEG Channel capacity may not be leased to third parties for delivery of commercial matter, or for delivery of video programming that a Subscriber is charged a separate fee to receive (over and above the fee that Franchisee charges for the service tier with which the signal is provided); but nothing in this sentence prevents the levy of a fee by the City to defray costs that the City may incur in connection with the PEG Channels, subject to Applicable Law. By way of example and not limitation, the parties do not intend to limit sponsorship announcements comparable to those that might be carried on a noncommercial broadcast station, or to prevent Schools from charging course fees, and then delivering the course via the PEG Channels; or to prevent solicitations of financial support for the provision of PEG Channels by the entities responsible for managing those channels.

12.3 **Timing for Provision of Channels.** With respect to the channel capacity required by Section 12.2:

12.3.1 Franchise shall continue to provide channels it is providing as of the effective date of this agreement.

12.3.2 In other cases, within one hundred eighty (180) days of receipt of a written request by the Franchising Authority, the Franchisee shall provide the Franchising Authority with the additional PEG Channels. Franchisee shall have the right to petition the Franchising Authority to recapture any unused portion of the channels. In deciding whether to grant such a petition, the Franchising Authority shall consider the comments and views of the Franchisee and all other interested persons or entities. Upon thirty (30) days written request and demonstration that the channel time recaptured by the Franchisee may be utilized by the Franchising Authority, the Franchisee shall make the channel time available.

12.4 **Management of Channels.** The City may manage the PEG channels in whole or in part, or designate entities to manage the PEG channels in whole or in part. The City may establish rules for use of PEG capacity, or delegate that authority to an entity responsible for managing a channel.

12.5 **Availability of channels.**

12.5.1 PEG channel capacity must be viewable by any Subscriber without the need for obtaining any equipment other than the equipment required for the other services to which the Subscriber subscribes; and, to the extent required by applicable law, shall be provided as part of Basic Service tier, or if there is no basic service tier, as part of the service provided to any Subscriber.

12.5.2 To the extent technically feasible, PEG programming choices shall be displayed on menus in a manner equivalent to the manner commercial programming choices are displayed. It is the responsibility of the entity managing a PEG channel to timely provide information that it wishes to have displayed on the menu.

12.5.3 All PEG channels provided by the Franchisee may be offered in any format using any transmission method.

12.6 **Franchisee's System Responsibilities.**

12.6.1 Franchisee shall be responsible for: providing and maintaining links ("PEG links") to and from any locations for purposes of: transporting PEG signals to locations responsible for playback or editing of PEG programming; transporting signals from those locations to Franchisee's headend/control facilities; converting the PEG signals as necessary; and placing the PEG signals, as appropriate, on proper channels, all without any noticeable PEG signal deterioration. Each location must be capable of monitoring signals Franchisee delivers to Subscribers. This section does not apply if Franchisee is not able to gain access to needed conduits or poles.

12.6.2 The City has designated the following locations for PEG links:

Capital High School

Culture Center at State Capitol

Clay Center

City Hall

Charleston Coliseum & Convention Center

Downtown Kanawha County Public Library Main Branch

City Service Center Building

12.6.3 With the exception of the City Service Center Building referred to above, Franchisee shall be responsible for the cost of providing the links upon request, however the City shall be responsible for the incremental cost of such link if it is more than one mile from Franchisee's fiber. The City may designate additional locations for PEG links, as long as it agrees to pay the incremental cost of extending the cable system to provide the link.

12.6.4 The links shall be configured as needed to allow any of the designated locations to function as a playback facility for one or more PEG channels, as the City may direct. If Franchisee makes changes to its System that necessitate modifications to PEG facilities and equipment, including but not limited to the links, Franchisee shall provide any additional equipment necessary to implement such modifications within 30 days of the date that the System changes are made, so that PEG facilities and equipment may be used and operated as intended.

12.6.5 Franchisee shall not be responsible for the quality of the PEG signal it receives.

12.6.6 Franchisee must provide the links upon request within one-hundred twenty (120) days.

12.7 **<u>Capital Support for PEG</u>**

12.7.1 In addition to satisfying its other obligations herein, upon one hundred eighty (180) days advance written request, Franchisee shall provide funding, which may be used only for capital costs associated with the channel capacity designated for PEG use and with the facilities and equipment for the use of such channel capacity in an amount up to twenty-five (25) cents per Subscriber per month. PEG use includes institutional network capital costs.

12.7.2 Prior to requesting Franchisee to provide the capital support for PEG channels, the City must conduct a public hearing to review the need for the support, and how the support will be used. Franchisee shall be provided an opportunity to present information as to the effect of the request upon Subscribers, and to introduce any surveys or other pertinent information regarding fees.

12.7.3 If Franchisee enters into a contract with an entity responsible for managing a PEG channel for operational support of PEG, the City may relieve Franchisee of all or part of its capital funding obligations under this Section.

12.7.4 Both parties agree that other than as provided in section 12.7.1 of this Agreement, capital support funds shall not be deducted from the franchise fee but may be passed through to all Basic Subscribers in the Franchise Area as a separate line item on Subscriber billing statements.

12.8 **<u>Channel Location.</u>**

12.8.1 Franchisee agrees to use reasonable efforts to locate PEG channels so that they are grouped with the majority of channels a Subscriber receives as part of the lowest level of service offered on the System.

12.8.2 Franchisee shall be permitted to change the channel position for any PEG channel upon at least sixty (60) days notice.

12.8.3 Franchisee shall pay reasonable expenses associated with a change in the PEG channel positions, up to $3,000 per change.

12.9 **Free Service to Certain Locations.**

12.9.1 Subject to federal law and FCC rules and regulations, Franchisee shall, without charge, provide the following to each School, municipal and county government building within the City upon request or automatically to any site to which it has a drop as of the date of this Agreement: (i) at least one activated drop and outlet (with signal levels to the ground block comparable to the signal levels provided to multiple dwelling units); (ii) Basic Service (iii) all PEG channels; and (iv) all terminal equipment necessary to receive the services described in this subsection. There will be no charge for the drop at any location *where* the location to be served is already connected to the cable system or where the location is 300 feet or less from the public right of way. Where a location is more than 300 feet from the public right of way, or where the location requires underground and/or inside-wiring beyond the demarcation point of the drop, the location must agree to pay the actual, additional labor and material cost of providing the drop beyond the first 300 feet, and for any such underground or inside wiring.

12.9.2 Each location may itself extend service from the drop to additional outlets. Franchisee shall not be responsible for signal leakage or the signal quality at any additional outlet or inside wiring that was not installed by Franchisee. Consistent with federal rules, Franchisee may terminate service to a location where there is a leakage problem until the leakage is repaired. Franchisee shall not be obligated to repair inside wiring or additional outlets not installed by Franchisee. If a location extends service to multiple drops, the location shall pay for any additional line amplifiers required to deliver the service.

12.9.3 Subject to federal law and FCC rules and regulations, for nonprofit colleges and universities, Franchisee will provide no more than one drop and free outlet of Cable Service. Such drops will not be provided and may not be extended to: (a) residential dwelling units; (b) areas in stadiums, auditoriums, or dining halls used by members of the general public. The same rules that apply to locations for drop cost under Section 12.9.1 apply to drops to colleges and universities under this section.

12.10 **No Charge for Use.** Except as otherwise provided herein, the facilities, equipment and channel capacity provided for PEG Use shall be available at no charge from Franchisee to users, to the City or to any Designated Access Entity.

12.11 **Costs Caused by Franchisee.** If Franchisee makes changes to its Cable System that necessitate modifications to PEG facilities and equipment (including but not limited to the upstream paths), Franchisee shall at the same time provide any additional facilities or equipment necessary to implement such modifications so that PEG facilities and equipment may be used and operated as intended in this Agreement. By way of example, and not limitation, should Franchisee cease delivery of all signals in an analog format to Subscribers, it shall provide the facilities and equipment necessary so that PEG signals can be delivered in a digital format.

12.12 **Limitations on Use.** The Cable Service provided pursuant to this Section shall not be used for commercial purposes.

SECTION 13
Performance Guarantees and Remedies

13.1 **Bond or Letter of Credit.**

13.1.1 Franchisee shall file with the City, and at all times thereafter, maintain in full force and effect during the continuance of this franchise, at Franchisee's sole expense, a corporate surety bond or letter of credit in a form acceptable to and approved by the City in the amount of $100,000.

13.1.2 The bond or letter of credit shall:

13.1.2.1 Secure the faithful performance of all work required by the Franchise, and;

13.1.2.2 Be sufficient to provide for restoration of the Public Rights-of-Way and other property that may be affected by the construction, given the scope and nature of the work proposed.

13.1.3 The bond or letter of credit shall provide that, in the event Franchisee fails to comply with its obligations under the Franchise or Applicable Law, there shall be recoverable, jointly and severally from the principal and surety of the bond, any damages or loss suffered by the City as a result, including the full amount of any compensation, indemnification, or cost of removal or abandonment of any property of Franchisee, or the cost of completing or repairing the Cable System construction, upgrade, or other work in the Public Rights-of-Way, plus a reasonable allowance for attorneys' fees, up to the full amount of the bond or letter of credit.

13.1.4 The performance bond or letter of credit shall provide that it shall be forfeited to the City under following conditions:

13.1.4.1 Franchisee abandons the Cable System; or

13.1.4.2 the Franchise is revoked for cause.

13.1.5 The performance bond shall be issued by a surety licensed to do business in West Virginia and shall contain the following endorsement: "This bond may not be canceled, or allowed to lapse, until sixty (60) days after receipt by the City, by certified mail, return receipt requested, of a written notice from the issuer of the bond of intent to cancel or not to renew."

13.2 **Material Term.** The required bond or letter of credit is a material term of this Franchise.

13.3 **Revocation or Termination of Franchise.** In addition to all other rights of the City under this Franchise, the City shall, subject to federal law, have the right to revoke or shorten the term of the Franchise for material violation of the terms of this Franchise and for any of the other reasons specified in West Virginia Code §24D-1-10.

13.3.1 **Notice of Violation.** If the City believes that Franchisee has not complied with the terms of the Franchise, the City shall first informally discuss the matter with Franchisee. If these discussions do not lead to resolution of the problem, the City shall notify Franchisee in writing of the exact nature of the alleged noncompliance (the "Violation Notice").

13.3.2 **<u>Franchisee's Right to Cure or Respond.</u>** The Franchisee shall have thirty (30) days from receipt of the Violation Notice to (i) respond to the City, contesting the assertion of noncompliance, or (ii) to cure such default, or (iii) if, by the nature of default, such default cannot be cured within the thirty (30) day period, initiate reasonable steps to remedy such default and notify the City of the steps being taken and the projected date that they will be completed.

13.3.3 **<u>Public Hearing.</u>** If Franchisee fails to respond to the Violation Notice received from the City, or if the default is not remedied within the cure period set forth above, the City shall schedule a public hearing if it intends to pursue action to seek correction of the violation or to take further action; including possible revocation. The City shall provide Franchisee at least thirty (30) days prior written notice of such hearing specifying the time and place of such hearing. Franchisee and other interested parties shall have an opportunity to submit data, views or argument orally or in writing for the record of the hearing. The public hearing shall be on the record and a written transcript shall be made available to Franchisee within ten (10) business days. The City shall determine if Franchisee has committed a violation and shall enter a written decision. Nothing in this Franchise prevents Franchisee from seeking review of the City's decision in a court of competent jurisdiction.

13.3.4 **<u>Enforcement.</u>** Subject to Applicable Law, in the event the City, after the hearing set forth in subsection 13.3.3 above, determines that Franchisee has materially violated any provision of the Franchise, the City may, in addition to the remedies set forth in Chapter Twenty-Four D of the West Virginia Code:

13.3.4.1 Revoke the franchise; or

13.3.4.2 Seek appropriate relief from a court or agency of competent jurisdiction under this franchise or Applicable Law.

13.4 **<u>Remedies Cumulative.</u>** All remedies under the West Virginia Cable Television Law and this Franchise are cumulative unless otherwise expressly stated. The exercise of one remedy shall not foreclose use of another, nor shall the exercise of a remedy or the payment of penalties relieve Franchisee of its obligations to comply with its Franchise. Remedies may be used singly or in combination; in addition, the City may exercise any rights it has at law or equity. Except that, the City is not entitled to recover damages for the same injury under two separate sections where doing so would result in a double recovery.

13.5 **<u>Relation to Insurance and Indemnity Requirements.</u>** Recovery by the City of any amounts under insurance, the bond, the letter of credit, or otherwise does not limit Franchisee's duty to indemnify the City in any way; nor shall such recovery relieve Franchisee of its obligations under the Franchise, limit the amounts owed to the City, or in any respect prevent the City from exercising any other right or remedy it may have.

SECTION 14
Miscellaneous Provisions

14.1 **<u>Force Majeure</u>.** Franchisee shall not be deemed in default with provisions of its Franchise where performance was rendered impossible by war or riots, civil disturbances, acts of terrorism, epidemics, floods or other natural catastrophes beyond Franchisee's control or the unforeseeable unavailability of labor or materials. The acts or omissions of Affiliates are not beyond Franchisee's control, and the knowledge of Affiliates shall be imputed to Franchisee. The Franchise shall not be revoked or Franchisee penalized for such noncompliance, provided that Franchisee takes immediate and diligent steps to bring itself back into compliance and to comply as soon as possible under the circumstances with its Franchise without unduly endangering the health, safety and integrity of Franchisee's employees or property, or the health, safety and integrity of the public, Public Rights-of-Way, public property, or private property.

14.2 Equal Protection.

14.2.1 In the event the City enters into, or has entered into, a franchise, permit, license, authorization, or other agreement of any kind with any Person other than Franchisee to enter into the City's streets and public ways for the purpose of constructing or operating a cable system or providing Cable Service or video service to any part of the Franchise Area, the material provisions thereof shall be reasonably comparable to those contained herein, in order that one operator not be granted an unfair competitive advantage over another, and to provide all parties equal protection under the law. For the avoidance of doubt, the Franchisee acknowledges that the City's Franchise Agreement with Community Antenna Service, Inc. that is being considered and entered into on or around the same date as the effective date of this Agreement is reasonably comparable to this Agreement.

14.2.2 If another provider of Cable Services, video services or other television services utilizing any system or technology requiring use of the Rights of Way in the Franchise Area, is lawfully authorized by any governmental entity or otherwise exempt from obtaining a franchise to provide such services, Franchising Authority hereby agrees that it will notify Franchisee prior to the effective date of the existence of such exemption or authorization, and, upon a request from Franchisee, as a matter of law, Franchisee's Franchise will be modified within thirty (30) days of the granting of such authorization or exemption for the purpose of establishing the same terms and conditions as such person(s) on a competitively neutral basis.

14.2.3 If, after the effective date of this Franchise, an entity constructs facilities in the rights of way in the City that it uses to deliver multi-channel video programming equivalent to cable service directly to subscribers, and such entity is not subject to requirements under Applicable Law or an authorization issued by the City, Franchisee shall be relieved of its build out obligations under Section 6 of this Agreement. This section may not be read to apply where the service is provided via an open video system or by a system that offers video carriage on a common carrier basis.

14.2.4 This section does not permit Franchisee to recover any money, facilities or equipment from the City, or permit Franchisee to refuse to provide facilities or equipment for which the City pay in whole or in part under this agreement.

14.2.5 If federal or state law permits an existing Franchisee to opt out of its Franchise, nothing in this section shall be read to prevent Franchisee from exercising its rights under federal or state law.

14.3 Action of Parties. In any action by the City or the Franchisee that is mandated or permitted under the terms hereof, such party shall act in a reasonable, expeditious and timely manner. Furthermore, in any instance where approval or consent is required under the terms hereof, such approval or consent shall not be unreasonably withheld.

14.4 Notices. All notices, reports or demands required to be given under this Franchise shall be in writing and shall be deemed to be given upon delivery if delivered personally to the person designated below, or on the fifth day following mailing if sent in accordance with the notice requirement of this Section and deposited in the United States mail in a sealed envelope, with registered or certified mail postage prepaid thereon, or on the next business day if sent by express mail or overnight air courier addressed to the party to which notice is being given, as follows:

If to the City:

City of Charleston
501 Virginia St. E
Charleston, WV 25301
Attn: Mayor

And a courtesy copy to:

City of Charleston
Post Office Box 2749
Charleston, WV 25330
Attn: City Attorney

If to Franchisee Suddenlink Communications:

Altice USA, Inc.
1 Court Square West
Long Island City, NY 11101
Attn: Vice President, Government Affairs

And a courtesy copy to:

Cebridge Acquisition, LLC d/b/a/ Suddenlink Communications
c/o Altice USA, Inc.
1 Court Square West
Long Island City, NY 11101
Attn: Legal Department

14.5 **Effective Date.** The Franchise granted herein will take effect and be in full force from such date of acceptance by Franchisee recorded on the signature page of this Agreement. This Franchise shall expire on ________________, 20_____, unless extended in accordance with the provisions of this Agreement or by the mutual agreement of the parties.

Considered and approved this _________day of _____________________, 2022.

CITY OF CHARLESTON, WEST VIRGINIA

Signature: ____

Name:____

Title:____

Accepted this this ______ day of ______________________________, 2022, subject to applicable federal, state, and local law.

CEBRIDGE ACQUISITION, LLC, DOING BUSINESS AS SUDDENLINK

COMMUNICATIONS

Signature: ________________________________

Name: ____________________________________

Title: _____________________________________