

AN ORDINANCE

THE FRANCHISE AGREEMENT is made and entered into as of the **4th** day of **November**, 2003 by and between Mitchell County, North Carolina, (herein called "Company") organized under the laws of the State of North Carolina with its principal place of business in Burnsville, North Carolina.

WITNESSETH

WHEREAS, Company wishes to provide Cable Services in County and has requested a franchise agreement in order to do same, and

WHEREAS, County is authorized to grant one or more non-exclusive franchises for the provision of Cable Services service within

WHEREAS, County has reviewed Company's request and has considered the terms and conditions of County's current cable franchise agreement date October 9, 1990, and

WHEREAS, County has determined that granting of a franchise on the terms set forth herein is in the public interest and in the interest of County and its residents and will assist in meeting the cable related needs and in the interest of County and its residents and will assist in meeting the cable related needs and interests of the community.

NOW, THEREFORE, in consideration of the mutual covenants and promises herein contained, the parties hereto agree as follows:

1. DEFINITIONS

- 1.1 Addition Insured shall have the same meaning as "indemnities" In section 6.
- 1.2 Affiliate (and it variants) shall mean any entity controlling, controlled by or under common control with the entity in question.
- 1.3 Authorized Area shall mean the entire area of Mitchell County, NC and any annexations thereto.
- 1.4 Gross Receipts means all receipts received directly or indirectly by Grantee derived from the operation of the Cable System to provide Cable Services (as defined in 47 U.S.C. 522(6)). Gross Receipts, shall specifically include any receipts derived from the operation of the Cable System in unincorporated Mitchell County to provide Cable Services received by Grantee's affiliates, subsidiaries, parents, or any person or entity in which Grantee has financial interest, including any receipts which have the effect of avoiding the payment of compensation that would otherwise be payable as a percentage of Gross Receipts to the County for the Franchise granted herein. Gross Receipts shall include franchise fees collected from subscribers.

Gross receipts shall not include receipts received from the provision of Internet Service over the Cable system until such time as the FCC rules that such service shall be designated a "Cable Service and included in Gross Receipts for the purpose of calculating franchise fees. Further, Gross Receipts shall not include: (1) any taxes, fee or assessment collected by the Grantee from Subscribers on behalf of a government agency, including the FCC User Fee and copyright fees; (2) un-recovered bad debt or customer credit; and (3) any PEG or I-Net amounts recovered from Subscribers (4) antennae site and property rental.

On or before April 30th of each year of this agreement, Company shall provide County with a detailed summary of Gross Receipts (gross billings less bad debt and customer credits), by item and type, subject to inclusion in the calculation of franchise fees received during the preceding year, certified by an officer of the Company. The Franchise Fee shall be payable in accordance with the ordinance.

- 1.5 Cable Services shall mean only:
The on-way transmission to subscribers of (i) video programming or (ii) other Programming services, and Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.
- 1.6 Cable Television Business shall mean the provision by the Company of Cable Services solely by means of the Cable System.
- 1.7 Cable System or System shall mean a facility consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Services which is provided to multiple subscribers within the Authorized Area, but such term does not include (i) a facility that serves only to re-transmit the television signals of one or more television broadcast stations; (ii) a facility that serves subscribers without using public right of way; (iii) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Communications Act of 1934, as amended, except that such a facility shall be considered a Cable System (other than for purposes of Section 621© of such Act) to the extent such facility is used in the transmission of video programming directly to subscribers, unless the extent of such use is solely to provide interactive on-demand services; (iv) and open video system that complies with Section 653 of Title VI of the Communications Act of 1934, as amended, or (v) any facilities of any electric utility used solely for operating its electric utility system.
- 1.8 Company shall have the meaning set forth in the introduction to this Franchise Agreement.
- 1.9 Drop shall mean the cable or wire that connects the distribution portion of a Cable System to a customer's premises.
- 1.10 Effective Date shall have the meaning set forth in part 16.8.

- 1.11 Event of Default shall have the meaning defined in Part 14.
- 1.12 FCC shall mean Federal Communications Commission.
- 1.13 Franchise or Franchise Agreement shall mean this document.
- 1.14 Franchise Fee shall mean the fee set forth in Part 9.
- 1.15 County shall have the meaning set forth in the introduction to this Franchise Agreement.
- 1.16 Normal Business Hours shall have the meaning set forth in Part 6.
- 1.17 PEG Channels shall have the meaning set forth in Part 7.
- 1.18 Public Ways shall mean all dedicated public right-of-way, streets, highways, and alleys. "Public Ways" shall not include property of County which is not a dedicated public right-of-way, street, or highway, or alley.
- 1.19 System shall have the same meaning as Cable System.
- 1.20 Telecommunications Service shall mean the offering or telecommunications directly to the public, or to such calluses of users as to be effectively available directly to the public, regardless of the facilities used, where the term "telecommunications" means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received. "Telecommunications Services" shall not include Cable Services.
- 1.21 Uncured Event of Default shall have the meaning defined in Part 13.

2. GRANT OF RIGHTS

2.1 Permission Grated

2.1.1 Subject to all the terms and conditions contained in this franchise, the charter of County and applicable ordinances of County as from time to time in effect, County hereby grants Company permission to erect, Construct, install and maintain a Cable System to provide Cable Services in the Authorized Area, to transact a Cable Television Business in such area. Company agrees through the term of this Franchise Agreement (a) to erect, construct, install and maintain such a Cable System (b) to transact such a Cable Television Business in the Authorized Area.

2.2 Nonexclusive. This Franchise and all rights granted hereunder are nonexclusive appropriate. This Franchise does not establish any priority for the use of the Public right-of-way by

company or by and present or future franchisees or other permit holders. In the event of any dispute as to the priority of use of the public rights-of-way the first priority shall be the public generally, the second priority to County in the performance of its various functions, and thereafter, as between franchisees and other permit holders, as determined by County in the exercise of its powers, including the police power and to other powers reserved to and conferred on it by the state of North Carolina.

- 2.3 Compliance with Applicable Law. In Constructing, maintaining, and operating the Cable System, Company will act in a good and workmanlike manner, observing high standards of engineering and workmanship and using materials, which are of good and durable quality. Company shall comply in all respects with all applicable codes, including the Nation Electrical Safety Code (latest edition); National Electric Code; the requirements of other utilities whose poles and conduits it uses; and all applicable Federal, State, and local law.
- 2.4 Maintenance and Repair. Company shall keep and maintain a proper and adequate inventory of maintenance and repair parts for the Cable System and a workforce of skilled technicians for its repair and maintenance.
- 2.5 Easement Usage. To the extent allowed by applicable State and Federal law, this Franchise Agreement authorizes the construction of the Cable System over the Public Ways, and through easements, within the Authorized Area and which have been dedicated for compatible uses, subject to the requirements in the balance of this Section and this Franchise Agreement. In using all easements, Company shall comply with all Federal, State, and local laws and regulations governing the construction, installation, operation, and maintenance of a Cable System.
 - 2.5.1. The safety, functioning and appearance of the property and the convenience and the safety of other persons not be adversely affected by the installation or construction of facilities necessary for the Cable System;
 - 2.5.2 The cost of the installation, construction, operation, or removal of such facilities be borne by Company; and
 - 2.5.3 The owner of the property is fairly compensated by Company for any damages caused by the installation, construction, operation, and removal of such facilities by Company.
- 2.6 Other Permits. This Franchise does not relieve Company of the obligation to obtain permits, licenses and other approvals form the County necessary for the construction of the Cable System or provision of Cable Services or compliance with other codes; ordinances and permissions, such as compliance with right-of-way permits, building permits and the like.

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4. PUBLIC WAYS

- 4.1 No Burden on Public Ways. Company shall not erect, install, construct, repair, replace or maintain its Cable System in such a fashion as to unduly burden the present or future use of the Public Ways. If county and the Company determine that any portion of the Cable System is an undue burden, Company at its expense shall modify its System or take such other actions as County may determine are in the public interest to remove or alleviate the burden, and Company shall do so within the timeframe agreed upon by both Company and County.
- 4.2. Minimum Interference. The Cable System shall be erected and maintained by Company so as to cause the minimum interference with the use of the Public Ways and with the Rights or reasonable convenience of property owners who adjoin any of the Public Ways.
- 4.3 Restoration of Property, Company shall immediately restore at its sole cost and expense in a manner approved by County, any portion of the Public Ways that is in any way disturbed by the construction, operation, maintenance or removal of the Cable System to the condition in which existed prior to the disturbance, and shall at its sole cost and expense immediately restore and replace any other property, real or personal, disturbed, damaged or in any way injured by or on account of company or by its acts or omissions, to condition as such
- 4.4 Relocation of Facilities. Company shall protect, support, disconnect or remove from the Public Ways any portion of the Cable System when required to do so by County due to street or other public excavation, construction, repair, grading, regarding or traffic conditions; the installation of sewers, drains, water pipes, or publicly-owned facilities of any kind; or the vacation, construction or relocation of streets or any other type of structure or improvement of a public agency or any other type of improvement of a public agency or any other type of improvement necessary for the public health, safety or welfare.
- 4.5 Joint use. Company shall permit the joint use of its poles, conduits and facilities located in the Public Ways by utilities and by County or other governmental entities to the extent reasonably practicable and upon payment of a reasonable fee. The rate shall be an average of rates paid by the Company to utilities it rents such space from.
- 4.6 Private Property. Company shall be subject to all laws and regulations regarding private Property in the course of constructing, installing, operating or maintaining the Cable System in County. Company shall comply with all zoning and land use restrictions as may hereafter exist or may hereafter be amended.
- 4.7 Underground Facilities. Company's cable wires, and other equipment shall be placed underground wherever all other existing utilities are already placed underground. If County in the future requires that, in a specific area or areas of County, Utilities shall place their cables wires, or other equipment underground then Company also shall place its existing and its future cables, wires, or other equipment underground within a reasonable period of time, not to exceed twelve (12) months, of notification by County and without expense or liability therefore

to county. In those developing areas where underground facilities are required and meet the standard of Section 5.5, Company shall install the necessary cables, wires or other equipment at the same time and utilize the same trenches as other utility companies, such as telephone or electric utilities.

4.8 New Developments.

4.8.1 Franchisee shall make cable service available to dwelling units within the County where the dwelling unit is in an area which franchisee has completed construction or its facilities, where the minimum density is twenty-five (25) permanent dwelling units per cable mile or greater, and provided such dwelling units are located within one hundred fifty (150) feet of franchisee's distribution system. A dwelling unit in a new subdivision shall be considered a dwelling unit if a dwelling unit foundation has been erected and electric or telephone facilities have been installed to provision electric or telephone service to said dwelling unit.

4.8.2. Where potential subscribers reside in dwelling units which are more than one hundred fifty (150) feet or not meeting the density requirement of twenty-five (25) homes per mile or fraction thereof, franchisee may extend service to such potential subscribers if potential subscribers are willing to pay an additional on time charge to franchisee reflecting franchisee's increased cost in extending its distribution system.

4.9 Temporary Relocation. Upon Fifteen (15)-business days notice Company shall temporarily raise or lower its wires or other equipment upon the request of any person including without limitation, a person holding a building-moving permit issued to County, provided such person has prepaid a reasonable fee for the work. Company may charge a reasonable rate for this service not to exceed its actual direct costs.

4.10 Vacation. If a street or Public Way where Company has facilities is vacated, eliminated, discontinued or closed, Company shall be notified of same and all rights of Company under this Franchise Agreement to use same shall terminate and Company shall immediately remove the Cable System from such street or Public Ways unless Company obtains all necessary easements from the affected property owners to use the former street or Public Way or a court orders the property owners to use the former street or Public Ways or a court orders the provision of such easements. Where reasonably possible and to the extent consistent with the treatment of other utility facilities in the former street or Public Ways, Company shall bear the cost of any removal or relocation of the Public Way, Company shall bear the cost of any removal or relocation of the Cable System unless the vacation is primarily for the benefit of a private party, in which case the private party shall bear such costs. Company shall be provided sixty (60) days notice of any proposed vacation proceeding involving its facilities.

4.11 Discontinuance and Removal of the Cable System. Pursuant to Section 13, upon the revocation, termination, or expiration of this Franchise, unless an extension is granted, Company shall

immediately (subject to the notice provision of Section 16) discontinue the provision of the Cable Services and all rights of Company to use the Public Ways shall cease. Company, at the direction of County, shall remove its cable System, including all supporting structures, poles, transmission remove its cable System, including all supporting structures, poles transmission and distribution system and other appurtenances, fixtures or property from the Public Ways, in, over, under, along, or through which they are installed within six (6) months of the revocation, termination, or expiration of this Franchise. Company shall also restore any property, public or private, to the condition in which it existed prior to the installation, erection or construction of its Cable System, including any improvements made to such property subsequent to the construction of its Cable System. Restoration of property including but not limited to the Public Ways shall be in accordance with the directions and specifications of County, and all applicable laws, ordinance and regulations, at Company's sole expense. If such removal and restoration is not completed with six (6) months after the revocation, termination, or expiration of this Franchisee, all of Company's property remaining in the affected Public Ways shall, at the option of County, be deemed abandoned and shall, at the option of the County, become its property or County may obtain a court order compelling Company to remove same. In the event Company fails or refuses to remove its Cable System or to satisfactorily restore all areas to the condition in which they existed prior to the original construction of the Cable System, County, at its option, may perform such work and collect the costs thereof from Company. No surety on any performance bond or any letter of credit shall be discharged until County has certified to Company in writing that the Cable System has been dismantled, removed, and all other property restored, to the satisfaction of County.

- 4.12 Underground Street Crossing. Whenever Company must place the Cable System or other facilities beneath the traveled or paved portion of the streets or Public Ways unless otherwise approved in advance by County, Company shall do so by boring (directional or otherwise) and not by excavation of a trench in which to place cable conduit. Boring (directional or otherwise) shall be done wherever possible and economically feasible so that the excavations necessary for it are not in the pave portion or the right-of-way.
- 4.13 Tree Trimming. Company may trim trees upon and overhanging the Public Ways as to prevent branches of such trees from coming into contact with the Cable System. Company shall minimize the trimming of trees to trimming only those trees, which are essential to maintain previously informing County. All trimming of trees, except in an emergency, on public property shall have the prior approval of County and except in an emergency all trimming of trees on private property shall require the consent of the property owner.
- 4.14 Bond
 - 4.14.1 While the upgrade is in progress, Company shall provide County a performance bond in the amount of Five Thousand Dollars (\$5,000) from a Security Company meeting the standards of Section 8 in form reasonably acceptable to County as security for the faithful performance by

Company of the provisions of the Agreement, and compliance with all orders, permits and directions of any agency of County having jurisdiction over its acts or defaults under this Franchise, and the payment of Company of any claims, liens or taxes due County which arise by reason of the construction, operation, maintenance or repair of the Cable System or provision of cable Services.

- 4.14.2 The Condition of such bond should be that if Company fails to make timely payment to County or It's designee of any amount or sum due under this Franchise; or fails to make timely payment to County of any taxes due; or fails to repay County within ten (10) days of written notification that such repayment is due, any damages, costs or expenses which County shall be compelled to pay by reason of any act or default of Company in connection with this Franchise; or fails, after thirty (30) days notice of such failure from County, to comply with any provisions of this Franchise which County reasonably determines can be remedied by an expenditure of the money (including, without limitation, the assessment of liquidated damages), then County may demand and receive payment under such bond.
- 4.14.3 the rights reserved by County with respect to third section, are in addition to all other rights of County whether reserved by this Franchise or authorized by law, and no action, proceeding or exercise of a right with respect to such articles shall affect any other rights County may have.

5. **CABLE SERVICE**

- 5.1 Programming Services. Company shall include in the video programming it offers subscribers the following:
- 5.1.1 All local television stations including public education television stations subject to Federal Must Carry and Retransmission laws, rules and regulations, subject to an acceptable signal meeting FCC standards.
- 5.1.2 In the non-premium, non-pay TV service offered by Company, for each of the following broad categories of programming, whose daily programming (to the extent available) is in the category in question:
- 5.1.2.1 National and local weather programming
- 5.1.2.2 New programming
- 5.1.2.3 Public affairs programming
- 5.1.2.4 Sports programming
- 5.1.2.6 Programming oriented especially to minority residents if such minority constitutes at least 3% of the County's population.

5.1.2.7 Federal Government proceedings

5.1.2.8. PEG channels as defined under Section 7

5.2 Cable System Description. Company's cable System shall conform to the design requirements set forth on Exhibit A.

5.3 Service Provided. Cable Service shall at all times include at least seventy-three (73) activated channels of programming.

5.4 Access to Service. Company shall not deny service, deny access, or otherwise discriminate on the availability or rates, terms or conditions of Cable Services provided to actual or potential subscribers on the basis of race, color, creed, religion, ancestry, national origin, sex, disability, age, marital status with regard to public assistance, income level, or other demographics. Company shall comply at all times with all applicable Federal, state and local laws and regulations relating to nondiscrimination.

5.5 Service/Line Extension.

5.5.1 No line extension charge or comparable charge shall be imposed on any current or potential permanent subscriber for extensions of the Cable Television System whenever the Company receives requests for service by a potential subscriber and there are at least five (5) dwelling units within One Thousand Fifty Six (1,056) cable strand feet of Company's trunk or distribution cable, and Company shall extend its Cable System to such potential subscriber(s) at no cost to said potential subscriber(s). The preceding figures shall be pro-rated upward or downward for distances more or less than One Thousand Fifty Six (1,056) feet. The one Thousand Fifty Six (1,056) feet distance or any multiple or fraction thereof shall be measured in extension length of Company's trunk and feeder cable required for service which is located within the Public Ways or an existing available easement.

5.5.2 The preceding shall apply whether the Cable System would be located in Public Ways or in private way/easements, provided however there is no charge for such private ways/easements.

5.6 Drops. Company's standard installation charge shall include a one hundred fifty (150) foot drop from the Cable System, such that current or potential subscribers shall only be charged for a Drop to the extent the Drop serving them exceeds one hundred fifty (150) feet, measured from the tap on the distribution portion of the Cable System to the subscriber's premises.

5.6.1 Upon the termination of service, Company shall either entirely remove its Drop or secure the Drop according to industry standards.

- 5.7 Free Service. Company shall provide without any installation charge or monthly charge one free analog Cable system outlet in each public building or facility; in each building used by a state-accredited public, private, charter, and parochial K-12 school, and library and shall allow County and each such school, without additional charge, to extend such cable Service only to some or all rooms, classrooms and auditoriums (so long as FCC signal leakage standards are met and no programmer charges Company for such carriage). None of the preceding entities shall be charged any fee during the Term of this Franchise Agreement for any basic or expanded basic channels, excluding premium channels (such as HBO or Showtime) or pay per view channels. This section applies to buildings or facilities within 150 feet of Company's energized cable plant.
- 5.7.1 A list of public building and schools within the authorized Area meeting the preceding description as the Effective Date of this Franchise Agreement is set forth on Exhibit B.
- 5.7.3 In addition, within six (6) months of the execution of this agreement, Company without charge shall provide a cable service connection to all municipal building locations where cable is available, upon request of the County. The County may designate additional locations in the future and Company shall have a reasonable time to install such wiring and outlets. The facilities must be County owned or leased and meet normal cable density requirements.
- 5.7.4 Company shall not charge for the installation of service pursuant to this section except to the extent that its cost for the initial installation exceeds One Hundred Dollars (4100). None of the preceding locations shall be charged any fee during the Term of this Franchise Agreement for any analog channels or analog programming, excluding premium channels (such as HBO or Showtime) or pay per view channel.
- 5.7.5 Except as provided in this Franchise Agreement, Company shall not provide free or discounted service to elected or appointed officials of County or to County's employees, agents or officers. The term "free or discounted service" shall mean any service on terms and conditions other than those available to residents of County generally.
- 5.8 Continuity or Service/Outages. Throughout the Term Company shall operate the Cable System and provide Cable Service twenty-four (24) hours per day, seven (7) days per week. Company shall voluntarily interrupt the provision of Cable Service only with good cause and for the shortest time possible and, except in emergency situations (or as otherwise provided herein), only after periodic cable casting notice of significant service interruption, including at the same time of day as the anticipated interruption. Service may be interrupted between 12:00 midnight and 6:00 A.M. for routine testing, maintenance and repair, without notification, any night except Friday, Saturday, or Sunday, or the night preceding a holiday.
- 5.8.1 The County shall be notified in advance of (a) all significant scheduled outages involving the

Cable System, (b) all Significant Service Interruptions within Company's control, and (c) all significant interruptions in the delivery of PEG channel programming.

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

5.9.1 An Emergency alert System ("EAS") or successor to that system complying with all requirements imposed from time to time by the FCC including without limitation the requirement currently set forth in the FCC regulations that cable television systems transmit a visual EAS message on at least on channel and that cable systems also provide video interruption and audio EAS message on all channels with the video further stating which channel is carrying the visual message. Company shall transmit on the EAS system Federal, state and regional EAS messages.

5.10 System Reliability. Upon completion of system construction and excluding acts of God, Company shall meet or exceed a 97% standard for system reliability as measured on a six (6) month rolling average. Until completion of the system construction, Company shall meet or exceed 97.0% standard.

5.11 Company's agrees to commence providing two-way cable modem Internet service to Company's customers within sixty days (60) of the effective date of this agreement and shall make such service available to at least 95% of Company's customers within twenty-four (24) months of the effective date of this agreement or by December 31, 2004, whichever is later.

6. **CABLE CUSTOMER SERVICE**

6.1 Customer Service Standards. Company shall at all times comply with the more stringent of the provisions of the customer service and consumer protection provisions of the Cable Ordinance, this Franchise Agreement, and those from time to time adopted by the FCC. This requirement is in addition to the specific provisions of subsequent sections of Part 6.

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

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

6.4 Blocking. Upon request by a subscriber, and within a reasonable period of time, and in no event longer than thirty (30) days, Company shall entirely block such subscriber from receiving both

the audio and video portion of any channel with predominately adult oriented programming such as by (a) scrambling both the audio and visual portions of the signal , or (b) (is scrambling is insufficient to totally prevent reception or as requested by a subscriber) with devices such as a notch filter which prevent the frequencies containing a specific channel or channels from being transmitted into the subscriber's premises.

6.5 Notification.

6.5.1 Company shall provide written information on at least each of the following areas at the time of installation of service, at least annually to all subscribers, as required by the FCC.

6.5.2 Products and services offered.

6.5.3 Prices (rates) and options for Cable Services and conditions of subscription to Cable Service. Prices shall include those for programming, equipment rental, program guides, installation, disconnection, late fees and optional services, fees, and charges charged by Company.

6.5.4 Installation and service maintenance policies.

6.5.5. Instructions on how to use Cable Services, including procedures and options for pay per view and premium channels.

6.5.6 Channel positions of programming carried on the Cable System.

6.5.7 Billing and complaint procedures, including the address and phone number of the person or position at County responsible for cable matters.

6.5.8 The Company's address and phone number for the subscriber to initially contact Company with complaints and questions.

6.5.9 Applicable privacy requirements as set forth in this Franchise Agreement, the cable Ordinance, or other wise provided for by the law.

6.6 Notice of Changes: Subscribers and County shall be notified of any increases in rates, or changes in Cable services or channel positions as soon as possible through announcements on the Cable System or in writing. Notice must be given to subscribers and the County a minimum of thirty (30) days in advance of such changes if the change is within the control of Company and as soon as possible if not within the control of Company. In addition, Company shall notify subscribers and County thirty (30) days in advance of any significant changes in the other information required by the preceding section.

6.8 Converters: Company shall make available for rental or purchase by subscribers the converter

equipment necessary for subscribers (such as those with “non-cable ready” television sets) to receive the services offered by Company.

- 6.9 Telephone Service Standards.
 - 6.9.1 Company shall have a local or toll-free number available for use by subscribers toll-free twenty-four (24) hours per day, seven (7) day per week.
 - 6.9.2 Company’s numbers shall be listed, in the directory published by the local telephone company or companies.
 - 6.9.3 Company shall have trained company representatives available to respond to Subscriber telephone inquiries during Normal Business Hours.
 - 6.9.4 Under Normal Operating Conditions, telephone answer time by a customer representative, including wait time, shall not exceed thirty (30) seconds from when the connection is made. If the call needs to be transferred, transfer time shall not exceed thirty (30) seconds. These standards shall be met no less than ninety percent (90%) of the time under Normal Operating Conditions, measured on a quarterly basis. The operator will not be required to acquire equipment or on a quarterly basis. The operator will not be required to acquire equipment or perform surveys to measure compliance with the telephone answering standards above unless an historical record of complaints indicates a clear failure to comply.
 - 6.9.5 Under Normal Operating Conditions, the subscriber shall receive a busy signal less than three percent (3%) of this time, measured on a quarterly basis.
 - 6.9.6 Under Normal Operating Conditions, no more than tree percent (3%) of subscriber’s calls measured on a quarterly basis shall be abandoned.
- 6.10 Office/Home Delivery-Pick Up.
 - 6.10.1 Company shall maintain a “virtual office” consisting of a toll-free telephone number which all subscribers in County can access twenty-four (24) hours per day, seven (7) days per week to register complaints or ask questions concerning Cable Service, billing matters or the Cable System, and a bill payment office where subscribers can pay their bills. Calls other than service related problems will be handled on the next business day.
 - 6.10.2 Box Return Policy. In the event that Company is unable to schedule a home service call at a mutually agreeable time with a customer for the purposes of returning Company owned equipment, which is required to be returned, and a local office is not within a 50 mile radius of the Center of the franchise area, then Company shall either; 1) make arrangements to meet the customer at their place of business or 2) provide the customer with a self addressed,

prepaid courier box, insured at the appropriate level, which the customer can use to return Company owned equipment.

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

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

6.12.1 Service calls shall be available at minimum 9:00 AM to 5:00 PM Monday through Friday and on Saturday to meet the needs of residents of the County. Installations shall be available at minimum 9:00 AM to 5:00 PM or dusk whichever is earlier Monday through Friday and on Saturday as needed to meet the needs of residents of the County. Company shall at the subscriber's option either (1) schedule the subscriber to be the first call of the day or last call of the day on a first come first served bases. At the Franchisee's option, it may (2) the appointment for a date certain on a "call to meet" basis (for example, where the service technician finishes his/her prior task, the technician calls the subscriber and arranges to meet the subscriber shortly thereafter), or (3) establish an appointment window of no more than four (4) hours with the subscriber (or adult representative of the subscriber), or another appointment window mutually agreed upon between the subscriber and the Company.

6.12.2 A problem established as having been non-cable in origin.

6.14 Service Interruptions.

6.14.1 Under Normal Operating Conditions, Company shall meet the standard of Section 6.11 and 6.12.1 no less than ninety-five percent (95%) of the time measured on a quarterly basis. The operator will not be required to acquire equipment or perform surveys to measure compliance with these standards above unless an historical record of complaints indicates a clear failure to comply.

6.14.2 Excluding conditions beyond Company's control, Company shall begin working on a Service Interruption promptly and in no event later than twenty-four (24) hours after the interruption becomes known to Company.

6.14.3 "Service Interruption" means the loss of picture or sound on one or more cable channels, affecting one or more subscribers.

- 6.14.4 Excluding conditions beyond Company's control, Company shall begin working on subscriber complaints involving impairment or degradation of signal quality (other than a Service Interruption) promptly and in no event later than forty-eight (48) hours after the problem becomes known to Company.
- 6.14.5 Company shall be deemed to have begun work under the provisions of this section when a technician begins work on the problem in question.
- 6.15 Log of Complaints. Excepting major outages and same day repairs Company shall maintain a written log, or an equivalent stored in computer memory and capable of access and reproduction in printed form, of all cable-related subscriber complaints requiring a service call or further corrective action by Company. Such log shall at a minimum list the date and time of each such complaint, identifying the subscribers (to the extent allowed by law) and describing the nature of the complaints and when and what actions were taken by Company in response thereto. The log shall be kept at Company's office in or near County for a period of at least two (2) years and shall be available for inspection during regular business hours by County upon request, with seven (7) days notice.
- 6.16 Payment Options.
- 6.16.1 Company shall provide all individual, residential subscribers with the option of paying for Cable Service by (1) cash, (2) check, or at a company's options (3) an automatic payment plan, where the amount of the bill is automatically deducted from a checking account designated by the subscriber.
- 6.17 Bills shall be issued monthly to each subscriber with a balance due or change or service.
- 6.17.2 Bills shall be clear, concise and understandable. Bills shall be fully itemized, with itemizations including, but not limited to, basic and premium service charges and equipment charges. Bills shall also clearly delineate all activity during the billing period, including optional charges, rebates, credits and late charges specifically indicating the due date by which a customer must pay their bill in order to avoid a late payment.
- 6.17.3 In the case of a billing dispute, Company shall respond to any complaint from a subscriber within within fifteen (15) days.
- 6.18 Refunds and Credits: Refund checks for Cable Service shall be issued promptly, but no later than either:
- 6.18.1 The subscriber's next billing cycle following resolution of the request or thirty (30) days, whichever is earlier, or

- 6.18.2 Credits for Cable Service or the return of equipment shall be issued no later than the subscriber's next billing cycle following a determination that a credit is warranted.
- 6.19 Fire, Etc.-Free Replacement. If a subscriber's converter box or other cable-related Company owned customer premises equipment is destroyed by fire, flood, tornado, building collapse or otherwise such that the premises are not habitable, Company shall refund any deposit for such equipment and shall not charge the applicable insurance policies. Notwithstanding the above, the Company may charge a subscriber to the extent of any insurance payment(s) to the subscriber covering the cost of the damaged or destroyed Company equipment does not fully cover Company's replacement cost of such equipment.
- 6.20 Late Payments for Cable Service.
- 6.20.1 No late payment charges, however denominated, shall be added to a subscriber's bill less than twenty-one (21) calendar days after the mailing of the bill to the subscriber.
- 6.20.3 Late payment charges imposed by Company upon Company upon subscribers shall be fair and shall be reasonably related to Company's cost of administering delinquent accounts.
- 6.21 Disconnection.
- 6.21.1 Company shall only disconnect a subscriber for failure to pay if at least thirty (30) days have elapsed after the due date for payment of the subscriber's bill and Company has provided at least five (5) days notice separate from the monthly bill to the subscriber prior to disconnection, specifying the effective date after which Cable Services are subject to disconnection.
- 6.21.2 Company shall not disconnect a subscriber for failure to pay amounts that are legitimately in dispute during a billing dispute.
- 6.21.3 Company may disconnect a subscriber at any time if Company in good faith believes the subscriber has tampered with or abused Company's equipment, that there is a signal ingress or egress leakage problem (or other non-compliance with FCC rules or other standards which poses a risk to lives or property) on the subscriber's premises, or that the subscriber is or may be engaged in theft of Cable Services.
- 6.21.4 Company shall promptly disconnect within seven (7) business days any subscriber who so requests disconnection. No charge shall be imposed upon the subscriber for or related to disconnection of for any Cable Service delivered after the effective date of the disconnect request (unless there is a delay in returning Company equipment). If the subscriber fails to specify an effective date for disconnection, the effective date of disconnect shall be deemed to be the 7th business day following the date the disconnect request is received by Company. In the case of seasonal residents, Company may perform the actual disconnect at Company's

convenience.

- 6.22 Privacy and Monitoring. Company shall not tap or monitor, or arrange for the tapping or monitoring, or permit any other person to tap or monitor, any cable, line, signal, input device, or subscriber facility for any purpose, without the written authorization of the affected subscriber except to the extent allowed by applicable law or pursuant to a valid court order. Such authorization shall be revocable at any time by the subscriber without penalty by delivering a written notice of revocation to Company; provided, however, that Company may conduct Cable System-wide or individually addressed “sweeps” solely for the purpose of verifying Cable System integrity, checking for illegal taps or billing.
- 6.23 Subscriber Information. Company shall not record or retain any information not allowed by 47 USC 551. Company shall destroy all subscriber information of a personally identifiable nature after a reasonable period of time except as authorized not to do so by the affected subscriber. Company shall not sell or otherwise provide to other persons, without the specific written authorization of the subscriber involved, or otherwise make available to any person or entity, lists of some or all of the names or addresses of subscribers except as allowed by applicable law.
- 6.24 Complaints Referred by County. If County refers a Cable Service complaint from a subscriber to Company for resolution, then in five (5) business days of Company’s receipt of such referral it shall investigate (including attempting to contact the subscriber) and respond to County as to its resolution of same.
- 6.25 Reports. Pursuant to Section 15.4, upon request, Company shall provide reports to County quarterly as follows:
- 6.25.1 The reports shall be in form and substance acceptable to County, showing on a consistent basis, fairly applied the matters set forth below so as to measure Company’s compliance with the standards of the referenced sections and such other matters, as County shall from time to time specify. Such reports shall show Company’s performance excluding periods of abnormal operating conditions, and if Company contends any such conditions occurred during the period in question, it shall also describe the nature and extent of conditions and show Company’s performance both including and excluding the time periods Company contends such conditions were in effect.
- 6.25.2 The reports shall show the number of phone calls originating from within County. The reports may be for a larger area than County if Company can demonstrate that they are, in fact representative of the phone service provided to subscribers within County, such as where Company’s call center receives call from numerous areas with no ability to distinguish between calls from one area or County over another. The reports shall measure and report on Company’s compliance with all of Section 6 and its subparts, where quarterly or annual

compliance monitoring is a requirement. The operator will not be required to acquire equipment or perform surveys to measure compliance with these standards above unless an historical record of complaints indicates a clear failure to comply.

- 6.26 FCC Technical Standards. Company shall operate the Cable System in accordance with the applicable technical specifications, rules and standards set forth in Part 76, Subpart K and Part 78 of the Federal Communications Commission's rules, as such rules may be amended from time to time. The following shall apply to Company's implementation of and compliance with the rules and regulations relating to cable television technical standards for signal quality, currently set forth 47 CFR § 76.601 and following, and subsequent amendments thereto, and shall include the exemptions provided for rural systems in the FCC rules.
- 6.26.1 Company will, upon request, provide County with a report of testing for compliance with such standards annually or upon request (but no more than twice a year). Such report shall state, in pertinent part, that the person doing the testing has been provided a copy of and reviewed the rules and regulations of the FCC, the FCC order(s) adopting such rules and regulations, and all industry standards and other materials referenced herein; and that such testing when done fairly, in full compliance with the FCC rules and regulations show full compliance with such rules and regulations; or in the alternative setting forth in detail all areas on non-compliance, their actual or likely scope and causes, and Company's professional recommendation of the best corrective measures to immediately and permanently correct the non-compliance. This section shall only apply in situations where the Company has failed to correct any event pursuant to Section 13.
- 6.26.2 Company shall establish the following procedure for resolving complaints from subscribers about the quality of the television signal delivered to them: All complaints shall go initially to Company. All matters not resolved by Company shall at Company's or the subscribers option be referred to County for it to resolve.
- 6.27 Damages. Company acknowledges that noncompliance with the customer service standards identified above will harm subscribers and the amounts of actual damages will be difficult or impossible to ascertain. County may therefore assess damages will be difficult or impossible to ascertain. County may therefore assess the following liquidated damages against Company for noncompliance with customer service standards set forth in Section 6 and all of its subparts (All of which Company has agreed to meet on a quarterly basis). Noncompliance shall not include situations beyond the Company's control.
- 6.27.1 Failure to correct by Company within 30 days of written notice by County, first noncompliance of any standard- Two Hundred Fifty dollars (\$250).
- 6.27.2 Failure to correct by Company within 30 days of written notice by County, second noncompliance of the aforementioned standard within any calendar quarter-Five Hundred

Dollars (\$500).

6.27.3 Failure to correct by Company within 30 days of written notice by County, second noncompliance of the aforementioned standard within any calendar quarter- Five Hundred Dollars (\$500).

6.27.4 Nothing in Sections 6.27.1 through 6.22.3 shall limit the County from notifying Company of

6.27.5 the amount of fines assessed by the County pursuant to this section in any individual calendar quarter shall exceed no more than \$2,500.

6.28 Continuity of Service. Franchisee shall continue to make available Cable Service to residents and commercial businesses already lawfully receiving such services as of the commencement date of this Agreement, assuming such residents are current with Franchisee billings. This Section shall not apply if Company's penetration ratio is below fifteen (15%) percent.

7. ACCESS TO THE SYSTEM

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

7.1.1 One (1) noncommercial Public, Educational and Government (PEG) channel administered by County on which the programming shall be provided by County, County's designee, or such other units of State or local governments as County may from time to time appoint. If the County's channel(s) are un-programmed, Company may program said channels as provided for in Section 7.2. The PEG channel shall be shared by Mitchell County, the Town of Bakersville and the Town of Spruce Pine. It shall be the responsibility of the three named entities to coordinate the activities and programming of the PEG channel. Company shall maintain a return path and all equipment necessary for the three entities to transmit PEG Channels from a location to be determined, provided however that such location shall be passed by Company's active cable facilities. Said equipment is limited to transmit and receive equipment and does not include cameras, editing, playback equipment or any other equipment the three entities may need in order to create programming on the County's PEG channel. Company shall interconnect its network with the network of Charter Communications at a mutual point in order for the PEG channel to be available to the customers of both Charter Communications and Country Cablevision throughout Mitchell County.

7.1.2 PEG Funding. The County reserves its right to institute the following PEG funding, Provided that the County will hold a public hearing on the matter to receive input from the citizens of the

County prior to instituting any PEG funding. Upon an affirmative vote by the Mitchell County Board of Commissioners, Company shall pass through \$0.15 per customer per month for the duration of this agreement. Company further agrees that the equipment, services and all other support to be provided by the Franchisee pursuant to this agreement constitute capital costs, which are incurred by the Franchisee for educational or governmental facilities and equipment within the meaning of the Communications Act, state law, the Cable Television Ordinance or this Agreement. The Franchisee hereby waives, and shall not assert in any proceeding, any claim to the contrary.

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

8 INDEMNITY AND INSURANCE

Workers' Compensation

Statutory Limits

Commercial General Liability

\$1,000,000 per occurrence
Combined Single Liability
(C.S.L.)
\$2,000,000 General Aggregate

Auto Liability including coverage
on all owned, non-owned and
hired autos

\$1,000,000 per occurrence C.S.L.

Umbrella Liability

\$1,000,000 per occurrence C.S.L.

The County shall be added as an Additional Insured to the above Commercial General Liability and Auto Liability Insurance Coverage.

The Franchisee shall furnish the County with current Certificates of Insurance evidencing such coverage.

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

Qualified Carriers. All insurance shall be effected under valid and enforceable policies insured by insurance carriers licensed to do business in the State of North Carolina or by surplus line

carriers on the State Insurance Commissioner's approved list of companies qualified to do business in the State.

9 FEES AND PAYMENTS

9.1 Franchise Fee. Company shall pay County quarterly, throughout the term of this Franchise an amount equal to five percent (5%) of Company's Cable Gross Receipts for the purpose of administering this franchise and any other related ordinance and payments shall be made quarterly, and are due within forty-five (45) days after the end of each calendar quarter. The Company will be obligated to begin paying the new 5% franchise fee commencing 60 days after the final reading of the franchise agreement. If the FCC or Congress raises the maximum percentage of allowable franchise fees, County reserves the right to adopt the higher rate upon resolution. Any such new rate shall be deemed effective sixty (60) days following County resolution. Once per calendar year, County by resolution may elect to reduce such percentage to a smaller percentage, and by resolution in a subsequent calendar year may change or revoke such election. Such changes shall take effect sixty (60) days after passage of the resolution.

9.1.1 Each payment shall be accompanied by a written report to County, verified by an officer of Company containing a detailed breakdown of the various components of the total revenue reported, including the number of customers served by basic cable service. Each quarterly report shall also show the previous quarter report(s) on one summary page.

9.1.2 County may audit Company to verify the accuracy of Franchisee Fees paid County. Any additional amount due County shall be paid within thirty (30) days of County's submitting an invoice for such sum, and if such sum shall exceed three percent (3%) of the total Franchise Fee which the audit determines should have been paid for any previous calendar years, Company shall pay County's cost of auditing those calendar years as well. Any payments for previously unpaid franchise fees shall be subject to a penalty fee of Eight Percent (8%) annually (prorated) or the present cost to the County to borrow funds plus 2%, whichever is greater.

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

10 RATES AND REGULATION

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

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

11 **TERM**

- 11.1 Initial Term. The term of this Franchise shall be ten (10) years and shall expire on June 12, 2014.
- 11.2 Termination. This Franchise and all rights of Company there under shall automatically terminate on the expiration of the term of this Franchise, unless an extension is granted. County shall give Company on hundred and eighty (180) days notice prior to taking action to enforce such termination.
- 11.3 Renewal. Subject to Section 626 of the Cable Act (47 U.S.C. Section 546) and such terms and conditions as may be established by the Franchising Authority reserves the right to grant or deny renewal of the Franchise, which renewal shall not be unreasonably withheld.
- 11.4 Reopeners. County or Company at its option may reopen this Franchise as follows:
- 11.4.1 Within six months of the adoption of Federal or State legislation or FCC regulations, if such regulations affect County's ability to (a) regulate rates or (b) act to protect subscribers (such as on customer service matters, customer service standards or consumer protection matters). Such reopener shall be limited to the matters described in (a) and (b).

12 **TRANSFERS, OWNERSHIP AND CONTROL**

- 12.2 Consent Required. This Franchise and the Cable System shall not be sold, transferred (as defined below), assigned, or otherwise encumbered, without the prior consent of County, such consent not to be unreasonably withheld. Such shall not be required for a transfer in order to secure indebtedness such as a transfer in trust, by mortgage, by other hypothecation, or by assignment of any rights, title, or interest of Company in the Franchise or Cable System. The foregoing requirements shall not apply to any sale, assignment or transfer which is to a wholly owns or is the controlling majority owner controls the Grantee, Grantee shall notify the County thirty (30) days prior to any sale, assignment or transfer.
- 12.3 Transfer or Transferred. "Transfer" or "transferred" shall mean (a) any form of sale, conveyance, assignment, lease, sublease, merger, pledge, deed, grant, mortgage, transfer in trust, encumbrance or hypothecation, in whole or in part, whether voluntary or involuntary of any right, title or interest of company in or to in or to this Franchise or to the Cable System, (b) any change in actual working control (by whatever manner exercised) or in the effective control of Company, such as that described in 47 C.F.R. § 76.501 and following, including the notes (but excluding footnote 2f), as in effect on the date of this Franchise or (c) a change in limited partnership, limited liability corporation or similar interests representing thirty percent (30%) or more of an equity interest in Company, including the right to require voting control without substantial additional including the right to require voting control without substantial additional consideration (such as compared to consideration previously provided). Transfers shall not

include any transfer in trust, by mortgage, by other hypothecation or by assignment of any rights title or interest of the Company in the franchise or Cable System to secure indebtedness.

12.4 If Company seeks to obtain the consent of County to any transactions or matters otherwise prohibited by this Part 12, Company shall submit an application for such consent in the form required by the FCC (currently Form 394).

12.4.1 County shall not unreasonably withhold its consent to any proposed transfer, and may grant its consent outright, may grant such consent with conditions which it finds, are in the public's best interest.

13 **DEFAULTS**

13.1 Events of Default. The occurrence at any time during the term of the Franchise, of any on or more of the following events, shall constitute and Event of Default by Company under this Franchise.

13.1.1. Company's material breach or violation of any of the terms, covenants representations or warranties contained herein or Company's failure to perform any obligation contained herein.

13.1.2 Company's failure to pay of cause to be paid any Mitchell County Governmentally imposed taxes of any kind whatsoever, including but not limited to real estate taxes income taxes, and personal property taxes on or before the due date for same; provided, however, Company shall not be in default hereunder with respect to the non-payment of taxes which are being disputed in good faith in accordance with applicable law.

13.1.3 The entry of any judgment against Company in excess of fifty (5) percent of net worth which remains unpaid and is not stayed pending rehearing or appeal, for forty-five (45) or more days following entry thereof which may significantly impair Company's provision of Cable Service in County.

13.1.4 The dissolution or termination, as a matter of law, of Company or any general partner of Company.

13.1.5 If Company files a voluntary petition on bankruptcy; is adjudicated insolvent; obtains an order for relief under section 301 of the Bankruptcy Code (11 U.S.C. §301); files any petition or fails to context any petition filed against it seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief for itself under any laws relating to bankruptcy, insolvency or other relief for debtors; seeks or consents to or acquiesces in appointment of any trustee, receiver, master, custodian, or liquidator of Company, or any of Company's property and/or Franchise and/or any and all of the revenues, issues, earnings, profits or income thereof; makes an assignment for the benefit of creditors; or fails to pay

Company's debts generally as they become due.

13.2 **Uncured Events of Default.** County shall give Company written notice of any Event of Default and Company shall have the following reasonable time period to cure same; For an Event Default which can be cured by the immediate payment of money to County or a third party, Company shall cure such default within thirty (30) days of the date such sum of money was due and payable; for and Event of Default by Company which cannot be cured by the immediate payment of money to County or a third party, Company shall have sixty (60) days from written notice from County to Company of an occurrence of such Event of Default. Company shall have the right to request and extension of the 30 to 60 day time period if the Event of Default cannot be reasonably cured in the time period.

13.3 If any Event of Default is not cured within the time period allowed for curing the Event of Default, as provided herein, such Event of Default shall, without notice, become an Uncured Event of Default, which shall entitle County to exercise the remedies provided for in Section 14. Prior to the County enforcing the remedies provided for in afforded due process and the right to present evidence and testimony on its behalf, any decision made by the County shall be subject to appeal to a court of competent jurisdiction pursuant to applicable law or an agreed upon arbitration.

14 **REMEDIES**

14.1 **Remedies.** Upon the occurrence of any Uncured Event of Default as described in Part 13, County shall be entitled to exercise any and all of the following cumulative remedies:

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

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

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

14.2 **Remedies Not Exclusive.** The rights and remedies of County set forth in this Franchise shall be in addition to and not in limitation of, any other rights and remedies provided by law or in equity, County and Company understand and intent that such remedies shall be cumulative to the maximum extent permitted by law and the exercise by the County of any one or more of

such remedies shall not preclude the exercise by County, at the same or different times, of any other such remedies for the same Uncured Event of Default.

15 **PROVISION OF INFORMATION**

- 15.1 Fillings upon request, but no more than annually, Company shall provide County with copies of all documents, which Company sends to the FCC or to the State public service commission (or comparable State agency) and all records required by Company to be maintained under Section 76 of the FCC regulations (47 C.F.R. § 76) or successor sections, which relate to the Cable System.
- 15.2 Lawsuits. Upon request of County, Company shall provide County with copies of all pleadings in all lawsuits pertaining to the granting of this Franchise and the operation of the Cable System to which it is a party. Copies shall be provided within thirty (30) days of commencement of such request.
- 15.3 Books and Records. County may review such of Company's books and records during regular business hours and on a non-disruptive basis with seven (7) days notice, as are reasonably necessary to monitor compliance with the terms hereof. Such records shall not be limited to, records required to be kept by Company pursuant to the rules and regulations of the FCC, and financial information underlying the summary report pertaining to the franchise Fee. Notwithstanding anything to the contrary set forth herein, Company is not required to disclose recognition of Section 631 of the Cable Act, 47 U.S.C. § 551, regarding the protection of a subscriber privacy; nor shall Company be required to disclose its income tax returns or information underlying the preparation of any such returns. To the extent permitted by law, County agrees to treat on a confidential basis any information disclosed by Company to it under this Section. In so according confidential treatment, to the extent permitted by law, disclosure of Company's records by County shall be limited to only those of its employees, representatives and agents that have a need to know, and that are in a confidential relationship with County.
- 15.4 Required Reports and records: In addition, upon request, Company shall provide County with an updated set of system service area maps including any new construction performed during the preceding year.

16 **General**

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

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

If to County:
County manager
Mitchell County
PO Box 409
Bakersville, NC 28705

If to Company:
President
Country Cablevision
9449 State Highway 197 South
Burnsville, NC 28714

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

16.3 Conferences. The parties hereby agree to meet at reasonable times on reasonable notice to discuss any aspect of this Franchise Agreement, the provision of Cable Services or the Cable System during the term of this Franchise Agreement.

16.4 Governing Law. This Franchise Agreement shall be construed pursuant to the laws of the State of North Carolina and the United States of America.

16.5 Waiver of Compliance. No failure by either party to insist upon the strict performance of any covenant, agreement, term or condition of this Franchise Agreement, or to exercise any right to term or remedy consequent upon a breach thereof shall constitute a waiver of any such breach or such covenant, agreement, term or condition. No waiver of any breach shall affect or alter this Franchise Agreement, but each and every covenant, agreement term or condition of this Franchise Agreement shall continue in full force and effect with respect to any other then existing or subsequent breach thereof. Nothing in this Section shall preclude County and Company for mutually amending this agreement, provided that any mutually agreed upon amendment shall be in writing approved after the appropriate number of public hearings.

- 16.5.1 County may waive any obligation of Company under this Franchise Agreement, in whole or in part, at any time, provided however that any such waiver is in writing. This includes, but is not limited to, instances of a claim or showing by a Company that the costs associated with the provision being waived would increase the rates Company is legally allowed to charge subscribers, such as a claim that such costs are an “external cost” which allow Company to increase its rates under the FCC rules.
- 16.6 Independent Contractor Relationship. The relationship of Company to County is and shall continue to be an independent contractual relationship, and no liability or benefits, such as worker’s compensation, pension rights or liabilities, insurance rights or liabilities or other provisions or liabilities, arising out of or related to a contract for hire or employer/employee relationship, shall arise or accrue to either party or either party’s agents or employees as a result of the performance of this Franchise Agreement.
- 16.7 Severability. If any section, paragraph, or provision of this Franchise Agreement shall be held to be invalid or unenforceable for any reason, the invalidity or unenforceability of such section, paragraph, or provision shall not affect any of the remaining provisions of this Franchise Agreement.
- 16.8 Effective Date. This Franchise Agreement shall be effective as of _____, 2003 (“Effective Date”). Any prior franchise shall terminate as of midnight of the day immediately preceding the Effective Date of this Franchise Agreement.
- 16.9 FCC Rules. A copy of FCC Rule 76.309 as in effect on the date of this Franchise Agreement shall be made available to County upon request. A copy of FCC Rule 76.501 as in effect on the date of this Franchise Agreement shall be made available to County upon request.
- 16.10 Captions. All captions are for convenience of use and have no substantive effect, except for those captions in the Definitions Section of this franchise Agreement.
- 16.11 Conflicts. In the event of a conflict between this Franchise Agreement and the provision of any prior franchise or any franchise, permit, consent agreement or other agreement with Company, the provisions of this Franchise Agreement shall control.
- 16.12 Force majeure. In the event Company’s performance of any to the terms, conditions or obligations required by this Franchise Agreement is prevented by a cause or event, not within Company’s reasonable control, it shall be deemed excused for the period of such inability and not penalties or sanctions shall be imposed as a result thereof. Causes or events not within the control of Company shall include acts of God, strikes, sabotage, riots or civil disturbances, failure or loss of utilities, explosions, acts of public enemies and natural disasters.
- 16.13 Franchise Agreement Accepted. Company further acknowledges by acceptance of this Franchise

Agreement that it has carefully read the terms and conditions of this Franchise Agreement and any applicable cable ordinance of County and accepts the obligations imposed thereby regardless of whether such obligations are contained in the Franchise Agreement or such cable ordinance, or both. As of the Effective date, and without waiving any rights Company may have to challenge the lawfulness or enforceability of this Franchise Agreement or ordinances in the future, Company does not contend that any provisions of the Franchise Agreement is unlawful or unenforceable, nor is it aware of any ordinance which contends is lawful or unenforceable.

- 16.14 Waiver of Compliance. No failure by either party to insist upon the strict performance of any covenant, agreement, term or condition of this Franchise Agreement, or to exercise any right, term or remedy upon a breach thereof shall constitute a waiver of any such breach or such covenant, agreement, term or condition. No waiver of any breach shall affect or alter this Franchise Agreement, but each and every convenient, agreement, term or condition of this Franchise Agreement shall continue in full force and effect with respect to any other then existing or subsequent breach thereof.
- 16.15 Specific Rights Reserved by County. In addition to any other rights reserved to County This Franchise Agreement is subject to the right of the County;
- 16.15.1 To revoke the Franchise Agreement for misuse, non-use, or the failure to comply with the material provisions of any applicable cable ordinance of County, as such may be supplemented or amended from time to time, or any other material local, State or Federal laws or regulations, subject to the procedures set forth in Parts 12,13,and 14.
- 16.15.2 To require proper and adequate extensions of the Cable System and Cable Services and maintenance thereof at the highest practicable standard of efficiency.
- 16.15.3 To establish reasonable standards of Cable Service and quality of products, and to prevent unjust discrimination in Cable Service or rates.
- 16.15.4 To require continuous and uninterrupted service to the public in accordance with the terms of this Franchise Agreement throughout the entire period hereof.
- 16.15.5 To control and regulate the use of its streets, alleys, bridges, streets, Public Ways, and public places and other public property and the space above and beneath them.
- 16.15.6 Through its appropriately designated representatives, to inspect all construction or installation work performed subject to the provisions of this Franchise Agreement or any cable ordinance of County and to make such inspections as it shall find necessary to insure compliance with the terms of this Franchise Agreement, such cable ordinance, and other pertinent provisions of law.
- 16.15.7 At the expiration of the term for which this Franchise Agreement is granted, and absent a

renewal of it, or upon the revocation of the Franchise Agreement, to require the Company to remove at its own expense any and all aerial portions of the Cable System from the streets and Public Ways within County.

- 17 This ordinance and Franchise Agreement shall be signed and executed by a duly authorized representative of Country Cablevision and shall take effect upon third reading approval of County Council.

MITCHELL COUNTY BOARD OF COMMISSIONERS

By: Bill Slagle

Title: Chairman

COUNTRY CABLEVISION

By: Randall W. Miller

Its: President

First Reading: **October 6, 2003**

Second Reading: **November 4, 2003**

EXHIBIT A

CABLE SYSTEM DESCRIPTION

The Cable System shall meet the requirements set forth below.

System Functional Requirements: The Cable System shall pass frequencies of at least 550-megahertz (MHz) cable bandwidth

At a minimum the cable System shall use a hybrid fiber optic/coaxial trunk and coaxial feeder/distribution network architecture.

The cable System shall be addressable from its inception to support digital applications such as pay-per-view and other selection oriented services.

For both analog and digital multicast service the video signal delivered to the subscriber shall meet or exceed the FCC standards for signal quality set forth at 47 CFR §76.601, provided Company shall be permitted to apply all FCC rural exemptions.

Cable System Architecture: Company shall obtain most of its signals by fiber in digital format from its headend. The only signals to be obtained (and the inserted) locally are local signals, such as PEG Channels and local over the air television stations, where necessary.

Node sizing shall average no more than 1,500 homes served. From each node, coaxial cable shall be used to deliver all information streams to and from subscribers; optical cable shall be used to carry upstream and downstream communication from Company's headend to the node.

EXHIBIT B (Provided cable service is available within 150 feet of listed facility)

PUBLIC BUILDINGS

Annex Building
Administration Building
Old Courthouse
New Courthouse
Communications/EM
Sheriff's Department
Department of Transportation
Health Department
Senior Citizen Center
Department of Social Services
EMS Base
Bakersville Library
Spruce Pine Library
Mayland Community College
Altapass Convenience Center
Red Hill Convenience Center
Bakersville Convenience Center
Buladean Convenience Center

FIRE DEPARTMENTS

Bakersville Fire Department
Fork Mtn. Fire Department
Buladean Fire Department
Bradshaw Fire Department
Ledger Fire Department
Spruce Pine Fire Department
Parkway Fire Department

SCHOOLS

Buladean

Tipton Hill

Bowman Middle School

Gouge Elementary School

Mitchell High School

Harris Middle School

Deyton Elementary

Greenlee Elementary

