

**ORDINANCE NO. 2015-04**

**AN ORDINANCE CREATING A FIVE (5) YEAR, NON-EXCLUSIVE FRANCHISE FOR A CABLE TELEVISION SYSTEM WITHIN THE CONFINES OF THE CITY OF WILLIAMSTOWN, SAID FRANCHISE PROVIDING FOR: FULL FINANCIAL AND SHAREHOLDER DISCLOSURE; INDEMNIFICATION BY THE FRANCHISE GRANTEE AND ADEQUATE INSURANCE COVERAGE; A \$50,000.00 LETTER OF CREDIT TO ENSURE FRANCHISE COMPLIANCE; PAYMENT TO THE GOVERNMENT; REQUIREMENTS FOR PROVIDING DATA, TESTING THE SYSTEM, AND MEETING MINIMUM OPERATIONAL STANDARDS; CONDITIONS OF STREET OCCUPANCY; USE OF POLES; MINIMUM CONSTRUCTION STANDARDS; ACCESS TO COMMUNITY FACILITIES; EMERGENCY ALERT OVERRIDE; ANTENNA SWITCHES; TWO HOUR STAND-BY POWER; TESTING AND ANALYZING THE SYSTEM AND PROOF OF PERFORMANCE; ESTABLISHMENT OF STANDARDS FOR BILLING PRACTICES; ESTABLISHMENT OF A COMPLAINT PROCEDURE; REFUNDS TO SUBSCRIBERS FOR FAILURE OF SERVICE; ALLOWANCE FOR A 30-DAY DISCONNECTION PERIOD; COUNCIL APPROVAL REQUIRED FOR A TRANSFER OF CONTROL OR ASSIGNMENT OF THE FRANCHISE; STANDARDS AND PROCEDURES ESTABLISHED FOR FORFEITURE OF THE FRANCHISE AND VALUATION OF THE SYSTEM; FORECLOSURE AND RECEIVERSHIP PROVISIONS; RESERVING GOVERNMENT RIGHTS IN THE FRANCHISE; ASSURANCES OF NONDISCRIMINATION; PROTECTIONS OF SUBSCRIBER PRIVACY; GOVERNMENT ACCESS TO PROPERTY AND RECORDS; AND PROVIDING LIQUIDATED DAMAGES.**

**BE IT ORDAINED BY THE CITY OF WILLIAMSTOWN COUNCIL:**

That this Ordinance be and hereby is adopted as the “Cable Television Ordinance” for the City of Williamstown:

## TABLE OF CONTENTS

1. DEFINITIONS
2. FINANCIAL, CONTRACTUAL, SHAREHOLDER AND SYSTEM DISCLOSURE
3. BID PROCESS FOR RENEWALS & NEW APPLICANTS
4. APPLICATIONS FOR NEW FRANCHISES
5. GRANT OF NONEXCLUSIVE AUTHORITY
6. DURATION AND ACCEPTANCE OF FRANCHISE
7. COMPLIANCE WITH APPLICABLE LAWS AND ORDINANCE
8. LIABILITY AND INSURANCE
9. LETTER OF CREDIT
10. PAYMENT TO THE GOVERNMENT
11. LIQUIDATED DAMAGES
12. CONDITIONS OF ROAD OCCUPANCY
13. ERCECTION, REMOVAL AND COMMON USES OF POLES
14. CONSTRUCTION STANDARDS AND SPECIFICATIONS
15. EMERGENCY ALERT OVERRIDE AND CHANNEL
16. ANTENNAS AND ANTENNA SWITCHES
17. STANDBY POWER
18. PROOF OF PERFORMANCE TESTING
19. PROOF OF PERFORMANCE RECORDS
20. PERFORMANCE EVALUATION SESSIONS
21. OPERATIONAL STANDARDS
22. COMPLAINT PROCEDURE
23. BILLING PRACTICES
24. REFUNDS TO SUBSCRIBERS AND USERS
25. CABLE RATES
26. DISCONNECTION
27. PREFERENTIAL OR DISCRIMINATORY PRACTICES PROHIBITED

28. TRANSFER OF CONTROL/ASSIGNMENT
29. FORFEITURE OF FRANCHISE
30. FORECLOSURE
31. RECEIVERSHIP
32. GOVERNMENT RIGHTS IN FRANCHISE
33. REPORTS AND FILINGS
34. FRANCHISE RENEWAL
35. RIGHTS OF INDIVIDUALS
36. GOVERNMENT'S RIGHT OF INTERVENTION
37. FURTHER AGREEMENT AND WAIVER BY GRANTEE
38. LAW GOVERNS
39. SEVERABILITY
40. TIME IS OF THE ESSENCE
41. EFFECTIVE DATE

## Section 1. DEFINITIONS

- (a) “Applicant” means a person or party which is applying for a new franchise. Grantees submitting proposals for franchise renewals shall not be considered Applicants.
- (b) “Basic Cable Service” shall have the meaning in this Ordinance as it is defined in Section 602(3) of the Communications Act of 1934, as it may be amended.
- (c) “Cable Service” or “Cable Television Service” means the one-way transmission to Subscribers of (i) video programming, or (ii) other programming service; and Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.
- (d) “Cable System” or “Cable Television System” means a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designated to provide Cable Service which includes video programming and which is provided to multiple Subscribers within a community, but such term does not include (1) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (2) a facility that serves Subscribers without using any public right-of-way; (3) a facility of a common carrier which is subject, in whole or in part, to the provisions of title II of the Federal Communications Act, except that such facility shall be considered a Cable System (other than for purposes of 47 U.S.C. § 541(c)) to the extent such facility is used in the transmission of video programming directly to Subscribers, unless the extent of such use is solely to provide interactive on-demand services; (4) an open video system that complies with Section 653 of the Communications Act, 47 U.S.C. § 573; or (5) any facilities of any electric utility used solely for operating its electric utility systems.
- (e) “Council” means the Williamstown City Council.
- (f) “Communications Act” means the Communications Act of 1934, as amended from time to time (47 U. S.C. § 151 et seq.).
- (g) “Equipment and apparatus” means any manholes, underground conduits, poles, cables, boxes, wires, fixtures, conductors, or other facilities necessary, essential, used or useful to and operated by the Cable System.
- (h) “FCC” means the Federal Communications Commission, or its lawful successor.
- (i) “Franchise Fee” means for the purposes of this Ordinance any fee that may be imposed by the Government on Grantee as compensation for Grantee’s use of public rights-of-way and roads or that is defined by the FCC as a franchise fee under Section 622(g) of the Communications Act (47 U. S.C. § 542(g)). Use of this definition in this Ordinance is without prejudice to any rights Grantee or Government may have under the Communications Act as it may be amended.
- (j) “Government” means (unless otherwise specified) the City of Williamstown, as it now exists in its present territorial limits, or may hereafter be extended or reduced, and its

elected and appointed officials, employees, agents, boards, consultants, assigns, volunteers and successors in interest.

- (k) "Grantee" means a party to which a franchise under this Ordinance is granted by the Council, or its successors and assigns.
- (l) "Gross Revenue" means any and all compensation collected from Grantee's Subscribers within the City of Williamstown that is derived by the Grantee from the provision of Cable Service through Grantee's Cable System within the City of Williamstown. Gross Revenues include, but are not limited to, revenues from Subscriber rates for pay television, premium channels, video programming service tiers, advertising on video programming channels, Cable Service installations, Cable Service rebates, or commissions received from travel or home shopping services programming channels, commercial leased access of Cable Service channels, and all other Cable Services. Also, unless prohibited or preempted by either federal or state law, Gross Revenues shall mean any, and all, compensation collected from all ancillary Cable Services, including, but not limited to, advertising stuffers inserted into periodic billing statements or other notices. However, Gross Revenues does not mean any taxes or fees imposed and/or assessed by law or regulation on Subscribers (including state sales taxes) which a franchised cable operator is obligated to collect and pay in full to the applicable governmental authorities. Gross Revenues shall also exclude uncollected bad debt.
- (m) "Headend" means the control center of a Cable System, where incoming signals are received, amplified, converted, processed, and combined into a common cable, along with any origination cablecasting, for transmission to Subscribers.
- (n) "Normal Business Hours" means 8:00 A.M. to 5:00 P.M.
- (o) "Normal Operation Conditions" means those service conditions which are within the control of the Grantee. Those conditions which are not within the control of the Grantee include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, utility company work (including made-ready work) on poles, vehicular accidents which involve utility equipment, severing of Cable System distribution plant by third parties, labor strikes, vandalism, accidents and severe or unusual weather conditions. Those conditions which are ordinarily within the control of the Grantee include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and scheduled maintenance of the Cable System.
- (p) "Person" or "Party" is any person, firm, partnership, association, corporation, company, or organization of any kind.
- (q) "Road" shall mean the surface of and the space above and below any public road, street, highway, freeway, lane, path, public way or place, sidewalk, alley, court, boulevard, parkway, drive or easement now or hereafter held by the Government for the purpose of public travel and shall include other easements or rights-of-way as shall be now held or hereafter held by the Government which shall, within their proper use and meaning entitle the Government and its Grantee to the use thereof for the purposes of installing or

transmitting Cable System transmissions over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments, and other property as may be ordinarily necessary and pertinent to a Cable System.

- (r) “Shall” is mandatory, not merely directive.
- (s) “Subscriber” means a person who is legally receiving Cable Television Service from the Grantee.

## Section 2. FINANCIAL, CONTRACTUAL, SHAREHOLDER AND SYSTEM DISCLOSURE

- (a) No new franchise will be granted unless all requirements of this Ordinance regarding financial, contractual, shareholder and system disclosure have been met.
- (b) Applicants, including shareholders and parties with a controlling interest in the Applicant, shall provide access to all agreements and understandings, with any person, firm, group, association or corporation with respect to the ownership of this franchise and the proposed Cable System. This section shall include, but not be limited to, any agreements between local Applicants and national companies with respect to the ownership of this franchise.
- (c) Applicants, including shareholders and parties with a controlling interest in the Applicant, shall submit all requested information as provided by the terms of this Ordinance or the application documents, which are incorporated herein by reference. The requested information must be complete and verified as true by the Applicant.
- (d) Applicants, including shareholders and parties with a controlling interest in the Applicant, shall provide access to the numbers of shares of stock, and the holders thereof.
- (e) Applicants, including shareholders and parties with a controlling interest in the Applicant, shall disclose any information required by the application documents regarding other Cable Systems in which they hold an interest of any nature, including, but not limited to the following:
  - (1) locations of all other franchises and the dates of award for each location;
  - (2) estimated construction costs and estimated completion dates for each system where construction is incomplete as of the date of application;
  - (3) estimated number of miles of construction and number of miles completed in each system as of the date of this application;
  - (4) date for completion of construction as promised in the application for each system.
- (f) Applicants, including shareholders and parties with a controlling interest in the Applicant, shall disclose any information required by the application documents regarding pending applications for other Cable Systems, including but not limited to the following:

- (1) location of other franchise applications and date of application for each system;
- (2) estimated dates of franchise awards;
- (3) estimated number of miles of construction; and
- (4) estimated construction costs.

### Section 3. BIDS PROCESS FOR RENEWALS & NEW APPLICANTS

- (a) All bids received by the Government will become the sole property of the Government.
- (b) The Government reserves the right to reject any and all bids and waive all informalities and/or technicalities where the best interest of the Government may be served.
- (c) Bids must be sealed, and submitted at the time and place indicated in the request for proposals. Bids may be modified at any time prior to the opening of the bids, provided that any modifications must be duly executed in the manner that the bid must be executed. No bid shall be opened or inspected before the public opening.
- (d) Before submitting a bid, each Party must (a) examine the Ordinance thoroughly, (b) familiarize itself with local conditions that may in any manner affect performance under the franchise, (c) familiarize itself with federal, state and local laws, ordinances, rules and regulations affecting performance under the franchise, and (d) carefully correlate its observations with the requirements of the ordinance.
- (e) The Government may make such investigations as it deems necessary to determine the ability of each Party to perform under the franchise, and the Party shall furnish to the Government all such information and data for this purpose as the Government may request. The Government reserves the right to reject any bid if the evidence submitted by, or investigation of, such applicant fails to satisfy the Government that such Party is properly qualified to carry out the obligations of the franchise and to complete the work contemplated therein. Conditional bids will not be accepted.

### Section 4. APPLICATIONS FOR NEW FRANCHISES.

- (a) All applications received by the Government from the Applicants will become the sole property of the Government.

- (b) The Government reserves the right to reject any and all applications and waive informalities, and/or technicalities where the best interest of the Government may be served.
- (c) All questions regarding the meaning or intent of the Ordinance or application documents shall be submitted to the Government in writing. Replies will be issued by Addenda mailed or delivered to all parties recorded by the Government as having received the application documents. The Government reserves the right to make extensions of time for receiving applications as it deems necessary. Questions received less than fourteen (14) days prior to the date for the opening of applications will not be answered. Only replies to questions by written Addenda will be binding. All applications must contain an acknowledgment of receipt of all Addenda.
- (d) Applications must be submitted at the time and place indicated in the application documents. Applications may be modified at any time prior to the opening of the applications, provided that any modifications must be duly executed in the manner that the Applicant's application must be executed.
- (e) Before submitting its application, each Applicant must (i) examine the Ordinance and the application documents thoroughly, (ii) familiarize itself with local conditions that may in any manner affect performance under the franchise, and (iii) familiarize itself with federal, state and local laws, Ordinances, rules and regulations affecting performance under the franchise.
- (f) The Government may make such investigations as it deems necessary to determine the ability of the Applicant to perform under the franchise, and the Applicant shall furnish to the Government all such information and data for this purpose as the Government may request. The Government reserves the right to reject any application if the evidence submitted by, or investigation of, such Applicant fails to satisfy the Government that such Applicant is properly qualified to carry out the obligations of the franchise and to complete the work contemplated therein. Conditional applications will not be accepted.
- (g) The Applicant shall prepare a technical report that describes the details of the Cable System construction plans. The technical report shall include the following details and be submitted and approved by the Government before construction:
  - A. Justification of the site selected, including:
    - listing of television stations carried on the system
    - location of microwave terminals or Headend
    - location of local origination centers
    - location of antenna site
    - distance from antenna site to farthest area served by the system
    - height of tower
    - height of antenna site in relation to average terrain



- accessibility of antenna site all year round
- local construction restrictions on tower
- power availability for antenna site
- location of antenna arrays on the tower
- direction of desired signal sources
- analysis of potential sources of interference in the nearby environment.

B. System information, including:

- statement of adherence to construction standards
- drawings of the system
- description of local origination equipment
- identification of trunk and feeder cables.

Section 5. GRANT OF NONEXCLUSIVE AUTHORITY

- (a) Any franchise granted pursuant to this Ordinance shall confer to the Grantee the right and privilege to construct, erect, operate, and maintain in, upon, along, across, above, over, and under the roads now laid out or dedicated and all extensions thereof, and additions thereto within the territorial limits of the City of Williamstown, wires, cables, underground conduits, manholes, and other conductors, processors, equipment and fixtures necessary or useful for the maintenance and operation within the territorial limits of the City of Williamstown of a Cable System for the origination, interception and distribution of television signals.
- (b) The right to use and occupy said roads for the purposes herein set forth shall not be exclusive, and the Council reserves the right to grant a similar use of said roads to any party at any time during the period of the franchise.
- (c) Nothing in this Ordinance shall (i) abrogate the right of Grantee to perform any public works or public improvements of any description; (ii) be construed as a waiver of any codes or Ordinances of the Government or of the Government's right to require Grantee or any person utilizing the Cable System to secure the appropriate permits or authorizations for such use, or (iii) be construed as a waiver or release of the rights of the Government in and to the rights-of-way.

Section 6. DURATION AND ACCEPTANCE OF FRANCHISE

The franchise and the rights, privileges and authority hereby granted shall take effect and be in force from and after final passage thereof, as provided by law, and shall continue in force

and effect for an initial term of five (5) years, provided that within thirty (30) days after the date of the passage of the franchise the Grantee shall file with the City Clerk its unconditional acceptance of the franchise and promise to comply with and abide by all its provisions, terms and conditions. Such acceptance and promise shall be in writing duly executed and sworn to by, or on behalf of the Grantee, before a notary public or other office authorized by law to administer oaths.

#### Section 7. COMPLIANCE WITH APPLICABLE LAWS AND ORDINANCES

- (a) The Grantee shall, at all times during the life of the franchise, be subject to all lawful exercise of the police power by the Government and to such reasonable regulation as the Government shall hereafter provide.,
- (b) If federal regulations alter the required services, fees, costs, conditions or standards upon which the Cable System is to operate, the Government shall have the right to amend this Ordinance to make it consistent with the modified federal laws. Any such amendment shall be limited to the specific change in federal law.
- (c) In addition to the terms and conditions of this Ordinance, Grantee shall be subject to all of the provisions of the City of Williamstown Code of Ordinances, including, but not limited to Chapter 105 and the Zoning Ordinance, as well as any future amendments to such ordinances.

#### Section 8. LIABILITY AND INSURANCE

- (a) General. The Liability and Insurance provisions of this franchise define the responsibilities of the Grantee to the Government. As used in these Liability and Insurance provisions, the term “Government” shall be defined as follows: “Government” means the City of Williamstown and its elected and appointed officials, employees, agents, boards, consultants, assigns, volunteers and successors in interest.
- (b) Indemnity. Grantee agrees to indemnify, hold harmless, and defend the Government from any and all losses or claims of whatever kind that arise from or are alleged to have arisen, directly or indirectly, in whole or in part from the execution, performance or breach of this franchise by Grantee, its employees, agents, servants, owners, principals, lessees, contractors and subcontractors, excluding negligence and misconduct on the part of the Government. This indemnity agreement shall in no way be limited by any financial responsibility, insurance, or loss control requirements below and shall survive forever.

For purposes of this Indemnity provision:

- (1) The word “defend” includes, but is not limited to, investigating, handling, responding to, resisting, providing a defense for, and defending claims, at Grantee’s expense,

using an attorney approved in writing by the Government, which approval shall not be unreasonably withheld.

(2) The word “claims” includes, but is not limited to, claims, demands, liens, suits, notices of violation from governmental agencies and other causes of action of whatever kind.

(3) The word “losses” includes, but is not limited to: attorneys’ fees and expenses; costs of litigation; court or administrative agency costs; judgments; fines; penalties; interest, all environmental cleanup and redemption costs of whatever kind; and any liability arising from death, injury or damage of any kind to any person, including employees and agents of Grantee, its servants, owners, principals, licensees, vendees, lessees, contractors and subcontractors or the Government, and damage to or destruction of any property, including the property of the Government.

(c) Insurance Requirements. Grantee shall procure and maintain for the duration of the franchise the following insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance hereunder by the Grantee:

(1) Commercial General Liability Insurance with:

A. Limits of not less than \$5,000,000.00 for property damage.

B. \$5,000,000.00 for personal bodily injury or death to any one person.

C. \$5,000,000.00 for bodily injury or death aggregate per single accident or occurrence.

D. Products-Completed Operations coverage.

E. Personal and Advertising Injury coverage.

F. Explosion, collapse & underground coverage.

G. Grantee’s certificate of insurance will list as additional insureds, “the City of Williamstown, its elected and appointed officials, employees, and, to the extent they have an insurable interest, its agents, boards, consultants, assigns, volunteers and successors in interest.”

H. Additionally, such insurance shall contain endorsement that Grantee’s insurance coverage shall be primary insurance with respect to the Government. Any insurance or self-insurance maintained by the Government shall be in excess of the Grantee’s insurance and shall not contribute to it.

Endorsement that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested to the Government.

(2) Comprehensive Automobile Liability Insurance providing limits of not less than \$5,000,000.00.

- (3) Workers' Compensation Insurance as required by the Kentucky Revised Statutes and Employers Liability Coverage equal to \$1,000,000 with endorsement that insurer shall agree to waive all rights of subrogation against Government for losses arising from work performed by the Grantee for Government.
- (4) The Grantee shall abide by all local, state, and federal insurance regulations.
- (d) Acceptability of Insurers. Insurance is to be placed with insurers qualified to do business in the Commonwealth of Kentucky.
- (e) Evidence of Insurance. Prior to written acceptance of this Ordinance as required by Section 6, the Government is to be furnished Certificates of Insurance reflecting the above coverages, and Grantee agrees to provide the Government, the following:
  - (1) Signed renewal Certificates for expiring policies;
  - (2) New Certificates of Insurance if policies or carriers change during terms of this franchise, showing compliance with the above Insurance requirements; and
  - (3) Copies of Insurance policies upon request.
- (f) Right to Review, Audit and Inspect. Grantee understands and agrees that the Government may review, audit, and inspect any and all of Grantee's records and operations to insure compliance with these Insurance requirements.
- (g) Safety and Loss Control. Grantee agrees to adhere to and comply with all Federal, State and Local safety and environmental laws, regulations and Ordinances. The Grantee shall provide all safeguards, safety devices and protective equipment necessary to protect the life, health, safety and property of all persons on the job site, the public and the owner as required by applicable Federal, State and local law.
- (h) Definition of Default. Grantee understands and agrees that the failure to comply with any of these insurance, safety or loss control provisions within ten (10) business days after notice from the Government that the Grantee is not in compliance shall constitute a default under this Ordinance. The Government may elect, at its option, any single remedy or any combination of remedies, as available, including but not limited to, purchasing insurance and charging Grantee for any such insurance premiums purchased, or terminating the Grantee's franchise.

## Section 9. LETTER OF CREDIT

- (a) Within thirty (30) days after the grant and acceptance of this franchise, the Grantee shall arrange for, and shall deposit with the Government, a letter of credit from a local financial in the amount of fifty thousand dollars (\$50,000.00). The letter of credit shall be used to insure the faithful performance by the Grantee of all of the provisions in this Ordinance; and compliance with all orders, permits and directions of any agency, commission, board, department, division or office of the Government having jurisdiction over its acts or defaults under this Ordinance and the payment by the Grantee of any

claims, liquidated damages, liens and/or taxes due the Government which may arise by reason of the construction, operation or maintenance of the System.

- (b) The letter of credit shall be maintained at fifty thousand dollars (\$50,000.00) during the entire term of the franchise, even if amounts are withdrawn pursuant to subsections (a) or (c) of this section.
- (c) If the Grantee fails, after receipt of ten (10) days written notice, to pay to the Government any claims, liquidated damages, liens and/or taxes due the Government, or fails to repay the Government, with such ten (10) days, any damages, costs or expenses which the Government is compelled to pay by reason of any act or default of the Grantee in connection with the Grantee's franchise; or fails, after three (3) days written notice of such failures by the Grantee to comply with any provision of this Ordinance which the Government reasonably determines can be remedied by demand on the letter of credit, the Government may immediately request payment of the amount thereof, with interest and any liquidated damages, from the letter of credit. Upon such request for payment, the Government shall notify the Grantee of the amount and date thereof.
- (d) The rights reserved to the Government with respect to the letter of credit are in addition to all other rights of the Government, whether reserved by this franchise or authorized by law, and no action, proceeding or exercise of a right with respect to such letter of credit shall affect any other right the Government may have.
- (e) The letter of credit shall contain the following endorsement:

“It is hereby understood and agreed that this letter of credit may not be canceled or not renewed by the surety nor the intention to cancel or not to renew be stated by the surety until thirty (30) days after written notice to the Government of surety's intention to cancel or not to renew.”

#### Section 10. PAYMENT TO THE GOVERNMENT

- (a) Payments shall be made at the times and in conformance with the requirements of Kentucky Revised Statutes, Chapter 136, as revised by House Bill 272 (Tax Modernization) in the 2005 Regular Session of the Kentucky General Assembly (the “Kentucky Franchise Law”). Additionally, the Government may at any time impose any fees or taxes consistent with state or federal law, including, but not limited to property taxes, and occupational license fees but excluding and never including Franchise Fees except to the extent allowed by subsection (c), below.
- (b) The excise tax distribution from the state is not a payment in lieu of any tax, fee or other assessment except as specifically provided in this Ordinance, or as required by applicable law. By way of example, and not limitation, permit fees and business license taxes are not waived and remain applicable to the extent they are not Franchise Fees. Such

payments shall be made at the times and in conformance with the requirements of the Cable Ordinance.

- (c) Government may not collect Franchise Fees from Grantee except to the extent allowed by this subsection (c). If at any time Kentucky law is changed to allow the collection of Franchise Fees by the Grantee, (i) Grantee may collect said Franchise Fees for the reason that the Roads to be used by the Grantee in the operation of its system within the boundaries of the City Williamstown are valuable public properties, acquired and maintained by the Government at great expense to its taxpayers, and that the grant to the Grantee to use said Roads is a valuable property right without which the Grantee would be required to invest substantial capital in right-of-way costs and acquisitions, and (ii) the Franchise Fee shall be in an amount equal five percent (5%) of Grantee's Gross Revenue from all sources attributable to the operations of the Grantee within the territorial limits of the City of Williamstown.
- (d) Grantee agrees to timely pay all of the fees applicable to Grantee associated with Chapter 105 of the code of ordinances, including any future amendments.
- (e) Subject to Section 622 of the Communications Act and the Kentucky Franchise Law, the payment of the Franchise Fee shall be in addition to any other tax or payment owed to the Government by Grantee.
- (f) If any Franchise Fee is owed to the Government under subsection (c), above, it shall be payable quarterly to the Government and the Grantee shall file a complete and accurate report, signed by and certified as accurate by an officer of the Grantee, of all Gross Revenues received within the territorial limits of the City of Williamstown during the previous three month period, and said payment shall be made to the Government no later than thirty (30) days after the expiration of the quarter when due. The Gross Revenue report from operations of the Grantee within the franchise area shall include: a schedule of Gross Revenue by category by month; a schedule of the number of Subscribers by category of service by month; and a schedule of Gross Revenue upon which the Franchise Fee is based.
- (g) If any Franchise Fee is owed to the Government under subsection (c), above, upon reasonable notice, the Government shall have the right during Normal Business Hours to inspect the Grantee's income records at the Grantee's office, the right to audit and to re-compute any amounts determined to be payable under this Ordinance; provided, however, that such audit shall take place within twelve (12) months following the close of each of the Grantee's fiscal years. If, as a result of such audit or review, the Government determines that Grantee has underpaid its fees to the Government in any twelve (12) month period by ten percent (10%) or more, then, in addition to making full payment of the relevant obligation, Grantee shall reimburse the Government for all of the reasonable costs associated with the audit or review, including costs for attorneys,

accountants and other consultants. Any additional amount due to the Government as a result of an audit or review shall be paid within the thirty (30) days following written notice to the Grantee by the Government, which notice shall include a copy of the audit report and copies of all invoices for which the Government seeks reimbursement.

- (h) In the event that any franchise payment or recomputed amount is not made to the Government on or before the applicable dates heretofore specified, interest shall be charged from such date at the annual rate of 2% over prime interest rate.
- (i) The Government reserves the right to require the Grantee to collect any consumer or other tax or other fee that may be lawfully imposed by the Government, the Commonwealth of Kentucky, or the federal government on Cable Services.
- (i) No acceptance of any payment by the Government shall be construed as an accord and satisfaction that the amount paid is in fact the release of any claim that the Government may have for further or additional sums payable under this Ordinance.

#### Section 11. LIQUIDATED DAMAGES

- (a) For failure to comply with any of the provisions of this Ordinance, Grantee shall forfeit five hundred dollars (\$500.00) per day or part thereof that the violation continues.
- (b) Before the Government may assess any liquated damages under this section and before any sums are withdrawn from the letter of credit, the Government shall give the Grantee written notice and an opportunity to be heard in accordance with the following procedure:
  - (1) The Government shall notify the Grantee, in writing, of an alleged failure to comply with the provisions of this Ordinance as outlined in Section 11(a), which notice shall specify the alleged failure.
  - (2) The Grantee shall, within fifteen (15) days after receipt of the notice, either cure the alleged failure or, in a written response to the Council, either present facts and arguments in refutation or excuse of such alleged failure or state that the alleged failure will be cured and set forth the method and time schedule for accomplishing such cure.
  - (3) If the Grantee fails to cure and/or fails to notify the Government as provided in the preceding paragraph within fifteen days, the Council shall hold a public hearing to determine whether or not any violation has occurred. Notice of such public hearing shall be sent out not less than seven (7) nor more than twenty-one (21) days before the public hearing
  - (4) Following the public hearing and a majority vote of the Council finding that a failure to comply with a provision of the franchise has occurred, the Council may issue a written decision ordering liquidated damages in accordance with this section.

- (a) Except as provided in federal law, Grantee shall not be excused from complying with any of the terms and conditions of this Ordinance by any failure of the Government, upon any one or more occasions, to insist upon the Grantee's performance or to seek Grantee's compliance with any one or more of such terms or conditions. Payment of liquated damages shall not excuse nonperformance under this Ordinance.

Section 12. CONDITIONS OF ROAD OCCUPANCY

- (a) General Grant of Right. The Grantee acquiring this franchise shall have the right and privilege of constructing, erecting, operating and maintaining a Cable System, equipment and apparatus, upon, through, along, under and over the Roads within the territorial limits of the City of Williamstown; subject to the provisions hereof and to all powers (including police power) inherent in, conferred upon or reserved to said Government.
- (b) Conditions.
  - (1) When the Grantee enters upon any Road for the purpose of constructing, erecting, operating, maintaining and/or removing equipment and apparatus, it shall prosecute the work, at its own cost and expense, with due diligence and shall dig and close up all trenches and exposed places as rapidly as possible, and shall leave the Roads in the same condition as when it entered the same for said purpose or purposes. All such repairs shall be maintained by the company for one (1) year in as good condition as the remainder of said Road. In the event the Grantee fails, refuses or neglects to comply with the above provisions, the Government shall have the right, notwithstanding any other provision of this Ordinance, after notice in writing having first been given to the Grantee, or any officer or agent representing it, to do said work or make said repairs, and the cost and expense thereof shall be paid to the Government by the Grantee within ten (10) days from the date on which an itemized bill is presented to the Grantee.
  - (2) In the construction or reconstruction or maintenance or removal of any of said equipment and apparatus, the Grantee shall have due regard for the rights of the Government and others, and shall not interfere with, or in any way injure the property of the Government or others, under, on, or above the ground. Said Grantee shall comply with all the laws of the Commonwealth of Kentucky and Ordinances of the Government as to placing lights, barricades, flags, danger signals or warning signs and shall be liable for any and all damage that may arise by reason of Grantee's failure or neglect to comply with such Ordinances and laws. Work by the Grantee hereunder shall be done in a workmanlike manner and so as not to unnecessarily interfere with public use of any of said Roads.
- (c) Government Changes.
  - (1) Whenever the Government or any of its departments, agencies and/or agents, servants or employees shall grade, regrade, construct, reconstruct, widen or alter any Road or



shall construct, reconstruct, repair, maintain or alter any other municipal public works (including but not limited to storm sewers, sanitary sewers and street lights) therein, it shall be the duty of the Grantee, after receiving thirty (30) days notice by the Government, to change, remove, relay and relocate its equipment and apparatus, poles, wires, cables, conduits and other fixtures, in the Road at its own expense so as to conform to the established grade or line of such Road and so as not to interfere with such municipal public works so constructed, reconstructed or altered.

- (2) The Grantee shall be given access to all Road plans and specifications in possession of the Government.
- (d) The Grantee shall, at the request of any Person holding a moving permit issued by the Government, temporarily raise or lower its wires to permit the moving of buildings. The expense of such temporary removal or raising or lowering of wires shall be paid by the Person requesting the same, and the Grantee shall have the authority to require such payment in advance. The Grantee shall be given not less than ten (10) business days advance notice to arrange for such temporary wire changes.
- (e) The Grantee shall trim trees upon and overhanging public Roads so as to prevent the branches of such trees from coming in contact with the wires and cables of the Grantee. Any trimming, removal or other disturbance of trees shall conform to all Ordinances, requirements and directives of the Government.
- (f) In all areas within the territorial limits of the City of Williamstown, where the cables, wires, and other like facilities of public utilities are placed underground, the Grantee shall place its cables, wires, or other like facilities underground.
- (g) The Grantee shall provide plans and specifications for all construction within streets to the Government for its review at least 30 days prior to the start of construction. The approval of the Government is necessary before construction commences. This provision shall apply to each construction sequence if the construction is accomplished in phases.
- (h) In addition to the provisions contained in this section, Grantee shall comply with all local Ordinances pertaining to Road occupancy.

### Section 13. ERECTION, REMOVAL AND COMMON USES OF POLES

- (a) No poles or other wire-holding structures shall be erected by the Grantee without prior approval of the Government with regard to need, location, height, type, and any other pertinent aspect. However, no location of any pole or wireholding structure of the Grantee shall be a vested interest and such poles or structures shall be removed or modified by the Grantee at its own expense whenever the Government determines that the public health, welfare and/or safety would be enhanced thereby.

- (b) If Grantee locates its distribution facilities where poles or other wireholding structures already existing for use in serving the City of Williamstown are available for use by the Grantee, the Government shall require the Grantee to use such poles and structures if it determines that the public health, welfare and/or safety would be enhanced thereby.
- (c) Where the Government or a public utility serving the Government desires to make use of the poles or other wire-holding structures of the Grantee, but agreement thereof with the Grantee cannot be reached, the Council may require the Grantee to permit such use for reasonable and proper consideration consistent with applicable law, if the Council determines that the use would enhance the public health, welfare and/or safety and would not unduly interfere with Grantee's operations.

#### Section 14. CONSTRUCTION STANDARDS AND SPECIFICATIONS

- (a) The Grantee shall at all times comply with the following codes and standards to the extent that such codes and standards are consistent with local law: (i) National Electrical Code (published by National Bureau of Fire Underwriters)(however the Government reserves the right to require, by ordinance, observation of greater standards of safety than said Code) ; (ii) Standards of Good Engineering Practices for Cable Measurements on Cable Televisions Systems (published by National Cable Television Association); (iii) standards of the Occupational Safety and Health Administration; and (iv) Standards for Steel Antenna Towers and Antenna Supporting Structures (published by the Engineering Department of the Electronic Industry Associations). To the extent that such codes and standards are inconsistent with other provisions of this franchise or with local law, the latter will govern.
- (b) All new construction and new installation shall comply with the National Electrical Safety Code (published by the National Bureau of Standards).
- (c) Installation and physical dimensions of any tower constructed for use in the Cable System shall comply with all appropriate Federal Aviation Agency regulations.
- (f) Any antenna structure in the Cable System shall comply with Construction, Marketing and Lighting of Antenna Structures, 47 C.F.R. § 17.1 et. seq.
- (g) The Grantee shall at all times use ordinary care and shall install and maintain in use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries, or nuisances to the public.
- (h) The Grantee shall construct and operate the system and related facilities in accordance with all generally accepted related industry codes and standards that are applicable.

#### Section 15. EMERGENCY ALERT OVERRIDE AND CHANNEL

- (a) The Grantee shall incorporate into its cable television system, the capability which will permit the Government, in times, of emergency, to override, by remote access, the audio of all Channels simultaneously. The Grantee shall designate a channel which will be used for emergency broadcasts of both audio and video.
- (b) The availability of this service is provided for the benefit of the community and neither the Government nor the Grantee nor any of their agents, employees, or officers shall be liable in any manner for failure to use or for misuse of the override system.
- (c) The Grantee shall cooperate with the Government in the use and operation of the emergency alert override system.

#### Section 16. ANTENNAS AND ANTENNA SWITCHES

The Grantee shall not, as a condition to providing Cable Television Service, require any Subscriber, or potential Subscriber, to remove any existing antenna for the receipt of over-the-air television signals.

#### Section 17. STANDBY POWER

The Grantee shall install and maintain equipment capable of providing two (2) hours standby power for the Headends.

#### Section 18. PROOF OF PERFORMANCE TESTING

- (a) Tests and Measurements Generally. Tests and measurements to ensure compliance with technical standards shall be performed in a manner that is consistent with the provisions of 47 C.F.R. 76.609, et seq., and as amended from time to time.
- (b) Government's Rights.
  - (1) When there have been similar complaints made, or where there exists other evidence, which, in the judgment of the Government, casts doubt on the reliability of quality of cable service, the Government shall have the right and authority to compel the Grantee to produce copies of the reports of testing performed to comply with Section 18(a) above with respect to the performance of the Cable System of the Grantee or to test, analyze and report on the performance of the system. Such test or tests shall be made, and the reports of such test or tests shall be delivered to the Government no later than fourteen (14) days after the

Government formally notifies the Grantee in writing that such tests or reports are required.

- (2) The Government's right under this provision shall include, but not be limited to, requiring tests, analyses, and reports covering specific subjects and characteristics based on complaints or other evidence when and under such circumstances as the Government has reasonable grounds to believe that the complaints or other evidence require that tests be performed to protect the public against substandard Cable Service.
- (3) Said tests and analyses shall be supervised by a registered professional engineer, not on the permanent staff of the Grantee and selected jointly by the Government and the Grantee. The aforesaid person shall sign all records of special tests and forward to the Government such records with a report interpreting the results of the tests and recommending actions to be taken by the Government.

#### Section 19. PROOF OF PERFORMANCE RECORDS

(a)(1) The results of all tests and measurements required to be taken by the Grantee in Section 18 of this Ordinance shall be delivered to the Government within thirty (30) days after such tests or measurements are performed.

(a)(2) The Grantee shall prepare a technical report that describes details of the cable system construction plans as described in this section. The technical report shall include the following details and be submitted and approved by the Government before construction:

- A. Justification of the site selected, including:
  - i. listing of television and FM radio stations carried on the system
  - ii. location of microwave terminals
  - iii. location of local origination centers
  - iv. location of antenna site
  - v. distance from antenna site to farthest area served by the system
  - vi. height of tower
  - vii. height of antenna site in relation to average terrain
  - viii. accessibility of antenna site all year round
  - ix. local construction restrictions on tower
  - x. power availability for antenna site
  - xi. location of antenna arrays on the tower
  - xii. direction of desired signal sources
  - xiii. analysis of potential sources of interference in the nearby environment.
- B. System information, including:
  - i. statement of adherence to construction standards
  - ii. as-built drawings of the system

- iii.description of local origination equipment
- iv.signal level readings for all active channels at all amplifier locations, trunk input and output, and bridge output
- v.identification of trunk and feeder cables
- vi.calculations of system temperature capabilities.

(b) Any special tests or measurements required by the Government to be taken pursuant to Section 18 should be reported to the Government within fourteen (14) days after such tests or measurements are performed. Such report shall include the following information: the nature of the complaint which precipitated the special tests; what system component was tested, the equipment used and procedures employed in said testing; the results of such tests; and the method in which such complaints were resolved. Any other information pertinent to the special test shall be recorded.

(c) Should any of the following occur, the Grantee must notify the Government with particulars and secure approval of the Government:

1. addition to, deletion of, or change in received channel
2. addition to, deletion of, or change in distributed channel or in channel conversion
3. change in location of headend or antenna sites
4. addition to, or changes in location of centers for origination of programs, and the installation of bi-directional facilities or additional lines to make connection to the headend
5. interconnection with other cable systems.

## Section 20. PERFORMANCE EVALUATION SESSIONS

- (a) The Government may hold performance evaluation sessions after providing written notice to Grantee no less than thirty (30) days prior to such evaluation sessions. All such evaluation sessions shall be open to the public.
- (b) Special Evaluation Sessions. Special evaluation sessions may be held at any time during the term of the franchise at the request of the Government or the Grantee.
- (c) All evaluation sessions shall be open to the public and announced in a newspaper of general circulation in accordance with legal notice. Grantee shall notify its subscribers of all evaluation sessions by announcement on at least two (2) channels of its system between the hours of 7:00 and 9:00 P.M., for five (5) consecutive days preceding each session.
- (d) Topics which may be discussed at any scheduled or special evaluation session may include, but not be limited to: service; application of new technologies; system performance; services provided; programming offered; customer complaints; privacy;

amendments to this ordinance; and judicial and FCC rulings.

- (e) Members of the general public may add topics either by working through the negotiating parties or by presenting a petition. If such a petition bears the valid signatures of fifty (50) or more residents of the City of Williamstown, the proposed topic or topics shall be added to the list of topics to be discussed at the evaluation session.

#### Section 21. OPERATIONAL STANDARDS

- (a) The Grantee shall put, keep, and maintain all parts of the system in good condition throughout the entire franchise period.
- (b) The Grantee shall render efficient service, make repairs promptly, and interrupt service only for good cause and for the shortest time possible. Such interruptions, insofar as possible, shall be preceded by notice and shall occur during periods of minimum system use.
- (c) Grantee shall not allow its cable or other operations to interfere with television reception of persons not served by Grantee, nor shall the system interfere with, obstruct or hinder in any manner, the operation of the various utilities serving the residents within the confines of the City of Williamstown.
- (d) The Grantee shall continue, through the term of the franchise, to maintain the technical standards and quality of service set forth in this Ordinance.
- (e) The Grantee shall maintain the following broad categories of video programming: (1) television broadcast signals; (2) educational television broadcast signals; (3) noncommercial programming; (4) commercial and non-commercial local community programming (if available); (5) sports programming; (6) news and public affairs programming; (7) general entertainment programming; (8) weather programming; (9) programming of interest to minorities ; and (10) foreign language programming.
- (f) Prior to the initial grant or renewal of a franchise hereunder, the Grantee shall submit to the Government a schedule of the video and audio programming that is proposed to be offered on the Cable System and the channel assignment for each. Thereafter, Grantee may not add, substitute or delete any programming or change or reposition any channels without first affording the Government at least thirty (30) days prior written notice.

## Section 22. COMPLAINT PROCEDURE

- (a) Government Official Responsible. The Office of the Mayor is designated by the Government as having primary responsibility for the continuing administration of the franchise and implementation of complaint procedures.
- (b) Subscriber Notice of Complaint Procedures. The Grantee shall establish procedures for receiving, acting upon, and resolving Subscriber technical, customer service, Cable Service, and billing complaints. The Grantee shall furnish a notice of such procedures to each Subscriber at the time of initial subscription to the system.
- (c) Complaint Records. The Grantee shall maintain a written record or “log”, listing date and time of all customer technical, customer service, Cable Service, and billing complaints, describing the nature of the technical, customer service, Cable Service, and billing complaints and when and what action was taken by the Grantee in response thereto.
- (d) Repetition of Similar Complaints. When there have been similar complaints made, which, in the judgment of the Government cast doubt on the reliability or quality of Cable Service, the Government shall have the right and authority to compel the Grantee to test, analyze and report on the performance of the system pursuant to the special testing procedures enumerated in Section 18 of this Ordinance.
- (e) Upon request from any Subscriber, Grantee shall respond in writing regarding any resolution of Subscriber's complaint.

## Section 23. BILLING PRACTICES

- (a) Each subscriber bill shall itemize the package of services, additional outlets, pay-per-view services, additional services, and clearly state the charge for each.
- (b) Each bill shall clearly state (1) the due date for payment; (2) the amount of late payment fees; and (3) a telephone number for billing inquiries.
- (c) Upon initial installation, and at least once annually, and at such times as there is a change in the information, each subscriber shall receive written notice of (1) all equipment and services available and the rates/charges for each, including but not limited to the Basic Cable Service rate; (2) disconnection and service policies; (3) procedures for handling billing disputes; (4) billing and complaint procedures, including addresses and telephone numbers where Subscribers may make billing inquiries and/or complaints; (5) notice that complaints not satisfactorily handled by the Grantee may be referred to the Government (telephone number must be provided); (6) availability of parental lock-out devices; and (7) written instructions on how to use the cable service.

- (d) The Government and the subscribers are to be notified of rate changes or channel changes at least sixty (60) days in advance.
- (e) Affected Subscribers shall have thirty (30) days after a change in services or rates to downgrade their service without charge.
- (f) Grantee shall not charge Subscribers for any services they have not affirmatively requested.
- (g) Upon request from Subscriber, Grantee shall confirm in writing regarding any agreements or bill modifications made over the phone.

Section 24. REFUNDS TO SUBSCRIBERS AND USERS

- (a) If the Grantee fails to provide service to a Subscriber, the Grantee shall, after being afforded a reasonable opportunity to provide the service, refund all deposits or advance charges paid for the service in question by said Subscriber promptly. This provision does not alter the Grantee's responsibility to Subscribers under any separate contractual agreements the Grantee might have with Subscribers or relieve the Grantee of liability for fines under this Ordinance that may be assessed by the Government or damage that might result to the Government or any Subscriber because of the Grantee's failure to provide a service as promised.
- (b) If any Subscriber terminates, for personal reasons, any monthly service prior to the end of a prepaid period, a pro-rata portion of any prepaid Subscriber service fee, using the number of days as a basis, shall be refunded to the Subscriber by the Grantee.

Section 25. CABLE RATES AND RATE REGULATION

- (a) The Grantee shall maintain a copy of its current rate schedule on file with the Government.
- (b) The Grantee shall provide information regarding its Basic Cable Service rate on its website.



Section 26. DISCONNECTION

- (a) No disconnection shall occur for at least thirty (30) days after the due date of said monthly fee or charge. The thirty (30) day period shall include ten (10) days written notice to the delinquent Subscriber of the intent to disconnect.
- (b) After disconnection, upon payment in full of the delinquent fee or charge and the payment of a reconnection charge, the Grantee shall promptly reinstate the Subscriber's Cable Service.

Section 27. PREFERENTIAL OR DISCRIMINATORY PRACTICES PROHIBITED

The Grantee shall not, as to rates, charges, service, services facilities, rules, regulations, or in any other respect, make or grant any undue preference or advantage to any party, nor subject any party to any prejudice or disadvantage; provided, however, that this section shall not prohibit promotional activities of the Grantee or the provision of free service to employees of Grantee.

Section 28. TRANSFER OF CONTROL/ASSIGNMENT

- (a) No transfer of control or assignment shall take place, whether by forced or voluntary sale, lease, mortgage, assignment, encumbrance or any other form of disposition, without prior notice to and approval by the Council which shall not be unreasonably refused. The notice shall include full identifying particulars of the proposed transaction, and the council shall act by resolution. The Council shall have one hundred twenty (120) days within which to approve or disapprove a transfer of control or assignment, if no action is taken within such one hundred twenty (120) days; approval shall be deemed to have been given.
- (b) In making a determination on whether to grant an application for a transfer of control or an assignment, the Council may consider the financial, technical and other qualifications of the transferee (assignee) to operate the system; whether the incumbent cable operator is in compliance with this ordinance and, if not, the proposed transferee's (assignee's) commitment to cure such noncompliance; and whether operation by the transferee (assignee's) would adversely affect cable services to subscribers, or otherwise be contrary to the public interest.
- (c) The consent or approval of the Council to any assignment, lease, transfer, sub-lease, or mortgage of the Grantee shall not constitute a waiver or release of the rights of the Government in and to the streets.

- (d) For the purposes of this section the term "control" is not limited to majority stock ownership, but includes actual working control in whatever manner exercised.
- (e) A rebuttable presumption that a transfer of control has occurred shall arise upon the acquisition or accumulation by any person or group of persons of ten percent (10%) of the voting shares of the Grantee.
- (f) A mortgage or pledge of the cable system equipment of any part thereof or a leasing by a Grantee from another person of said cable system equipment or part thereof for financing purposes or otherwise shall be made only with prior approval of the Council and shall be subject and subordinate to the rights of the Government under this Ordinance or applicable law.

Section 29. FORFEITURE OF FRANCHISE

- (a) In addition to all other rights and powers pertaining to the Government by virtue of the franchise or otherwise, the Government, by and through its Council, reserves the right to terminate and cancel the franchise and all rights and privileges of the Grantee hereunder in the event that the Grantee:
  - (1) Violates any material provision of the franchise or any material rule, order, or determination of the Government made pursuant to the franchise, except where such violation is without fault or through excusable neglect;
  - (2) Attempts to evade any material provision of the franchise or practices any fraud or deceit upon the Government;
  - (3) Knowingly makes a material misrepresentation of any fact in the proposal for renewal, or negotiation of the franchise; or
  - (4) Fails to restore Cable Service following ninety-six (96) or more consecutive hours of interrupted service, except when approval of such interruption is obtained from the Government.
- (b) Forfeiture Procedure.
  - (1) The Government may make a written demand that the Grantee do or comply with any such provision, rule, order or determination. If the violation by the Grantee continues for a period of thirty (30) days following such written demand without written proof that the corrective action has been taken or is being actively and expeditiously pursued, the Government may place its request for termination of the franchise upon the next regular Council meeting agenda. The Government shall cause to be served upon Grantee, at least ten (10) days prior to the date of such Council meeting, a written notice of intent to request such termination and the time and place of the meeting, legal notice

of which shall be published in a newspaper of general jurisdiction within the confines of the City of Williamstown.

- (2) The Council shall consider the request of the Government and shall hear any person interested therein, and shall determine in its discretion, whether or not any violation by the Grantee was with just cause.
- (3) If such violation by the Grantee is found to have been with just cause, the Council shall direct the Grantee to comply therewith within such time and manner and upon such terms and conditions as are just and reasonable.
- (4) If the Council determines such violation by the Grantee was without just cause, then the Council may, by resolution, declare that the franchise of the Grantee shall be terminated and forfeited unless there is compliance by the Grantee within such period as the Council may fix.

(c) In the event of said revocation, the Grantee shall have two years from the date on which it ceases operations to remove, at its own expense, all portions of its cable television system from all streets within the confines of the City of Williamstown, and shall restore said streets to a condition reasonably satisfactory to the Government within such period of time.

#### Section 30. FORECLOSURE

Upon the foreclosure or other judicial sale of all or a substantial part of the system, or upon the termination of any lease covering all or a substantial part of the system, the Grantee shall immediately notify the Government of such fact, and such notification shall be treated as a notification that a change in control of the Grantee has taken place, and the provisions of Section 28 of the ordinance, governing the consent of the Council to such change in control of the Grantee, shall apply.

#### Section 31. RECEIVERSHIP

The Council shall have the right to cancel this franchise one hundred and twenty (120) days after the appointment of a receiver, or trustee, to take over and conduct the business of the Grantee, whether in receivership, reorganization, bankruptcy, or other action or proceeding, unless such receivership or trusteeship shall have been vacated prior to the expiration of said one hundred and twenty (120) days, or unless:

- (1) Within one hundred and twenty (120) days after his election or appointment, such receiver or trustee shall have fully complied with all the provisions of this ordinance and remedied all defaults thereunder; and
- (2) Such receiver or trustee, within said one hundred and twenty (120) days shall have executed an agreement, duly approved by the court having jurisdiction in the premises, whereby such receiver or trustee assumes and agrees to be bound by each

and every provision of this ordinance and the franchise granted to the Grantee.

Section 32. GOVERNMENT RIGHTS IN FRANCHISE

- (a) In the event that the Council terminates this franchise pursuant to appropriate provisions of this ordinance, the Government shall have the right to purchase the cable system at a price not to exceed its then fair market value. In determining the fair market value of the system, the original cost of all tangible and intangible property, as well as the salvage value, the book value, the replacement cost, cash flow, and other factors may be considered. Under no circumstances shall any valuation be made for "goodwill" or any right or privilege granted by the franchise.
- (b) The Council reserves the right to review the purchase price of any transfer or assignment of the system, and any assignee to this franchise expressly agrees that any negotiated sale value which the Council deems unreasonable will not be considered in the rate base for any subsequent request for rate increases. Reasonableness of purchase price will be determined in accordance with criteria listed in subsection (a).
- (c) Continuity of Service Mandatory. It shall be the right of all subscribers to receive all available services insofar as their financial and other obligations to the Grantee are honored. In the event that the Grantee elects to overbuild, rebuild, modify or sell the system, or the Council terminates this franchise, or the Council elects to purchase the system, the Grantee shall do everything in its power to ensure that all Subscribers receive continuous, uninterrupted service regardless of circumstances. In the event of purchase by the Government or a change of Grantee, the current Grantee shall cooperate with the Government to operate the system for a temporary period in maintaining continuity of service to all Subscribers.
- (d) The right is hereby reserved to the Government to adopt, in addition to the provisions contained herein and in existing applicable ordinances, such additional regulations as it shall find necessary in exercise of the police power; provided that such regulations, by ordinance or otherwise, shall be reasonable and not in conflict with the rights herein granted.
- (e) The Government shall have the right to inspect the books, records, maps, plans, income tax returns, and other like materials of the Grantee for any year of the franchise at any time during normal business hours.
- (f) The Government shall have the right, during the life of the franchise, to install and maintain free of charge upon the poles of the Grantee any wire and pole fixtures, on the condition that such wire and pole fixtures do not unreasonably interfere with the

cable television operations of the Grantee.

- (g) The Government shall have the right to make such inspections it shall find necessary to insure compliance with the terms of the franchise and other pertinent provisions of law.
- (h) At the expiration of the term for which the franchise is granted, or upon its termination and cancellation, as provided for herein, the Government shall have the right to require the Grantee to remove at its own expense all portions of the cable television system from all streets within the confines of the City of Williamstown.
- (i) In the event the Grantee fails to operate the cable television system for five (5) consecutive days without prior approval of the Government, except for strikes, acts of God, or other circumstances beyond the control of the Grantee, the Government, its agent or contractor, shall have the right to operate the Cable Television System until such time that the Grantee again operates the system or until a new operator is selected, in the event of revocation. If the Government is required to fulfill this obligation for the Grantee, the Grantee shall reimburse the Government for all costs or damages that are the result of the Grantee's failure to perform.

### Section 33. REPORTS AND FILINGS

- (a) Copies of all petitions, applications, and communications submitted by the Grantee to the Federal Communications Commission, Securities and Exchange Commission, or any other federal or state regulatory commission or agency having jurisdiction respect to any matters affecting cable television operations authorized pursuant to the franchise, shall be submitted to the Government upon thirty (30) days written request.
- (b) Grantee shall submit a report to the Government , within 90 days after the close of each quarter of its fiscal year, which contains for the previous quarter:
  - (1) The customer complaint log required in Section 22(c), which identifies complaints and the resolution of those complaints;
  - (2) The number of additional subscribers to the system;
  - (3) Changes that have occurred in the programming offered by the system;
  - (4) A compliance report certifying that the system complies with federal signal leakage tests and all other federally mandated tests. If said tests reveal noncompliance, the nature of noncompliance shall be specified.
  - (5) Construction information indicating the number of homes passed and the number of cable plant miles constructed;

- (6) Information indicating the number of calls received, number of calls abandoned, and number of calls receiving a busy signal;
  - (7) installation information indicating: the number of total standard installations performed; the number of standard installations performed within seven days; number of service interruptions responded to within 24 hours; number of other service problems reported; number of other service problems responded to within 36 hours (4) information indicating the number of Subscribers for each type of Cable Service offered,
  - (8) A current copy of the Subscriber service agreement; a current list of all rates, charges, and available services, and a current channel list; and
  - (9) A summary of the quarter's activities in the development of the system, including, but not limited to, services begun or dropped, the previous year's constructions activities, and a summary of any policy changes taking effect during the year;
- (c) If requested by the Government in writing, Grantee shall make provide to the Government within ten (10) days of said request the following :
- (1) A copy of updated maps depicting the location of all trunks. Strand maps shall be furnished. As-build maps may be viewed at Grantee's office without copying or note-taking. Proprietary maps, shall be afforded confidentiality protection pursuant to state law; a listing of Grantee's closings or holidays for the year;
  - (2) A list of all persons owning or controlling five percent (5%) or more of the stock, partnership shares or assets of the Grantee and a list of any parent corporation, parent entity, or holding company that owns the Grantee or by ownership of other entities controls the Grantee; and
  - (3) if the Grantee is a corporation, a list of officers and members of the board, a copy of the Grantee's report to its shareholders (if it prepared such a report), a list of the board members of any parent corporation; and where a parent corporation's stock is publicly traded, that corporation's annual report.

(d) If at any time the Grantee is subject to a Franchise Fee, within three (3) months of the close of its fiscal year, the Grantee shall submit an annual report to the Office of the Mayor that includes the following information:

A gross revenue report on all gross revenue from operations of the Grantee within the franchised area, prepared by a qualified financial officer in accordance with the provisions of the Codification of Statements on Auditing Standards promulgated by the American Institute of Certified Public Accountants, and including: a schedule of gross revenue by category by month; a schedule of the number of subscribers by category of service by

month; a schedule of gross revenue by revenue category by month upon which the quarterly license fee is computed and a list of the payments to the Government for the license term; a schedule of the number of subscribers by month by category or service provided; a statement of its properties devoted to cable television operations by categorizing, giving its investments in such properties on the basis of original cost, less applicable depreciation, and a balance sheet, and such other information described in Section 35(b) 1-12 as may be requested.

(d) All reports shall be certified as correct by an officer of Grantee and there shall be submitted along with them such other information as the Government may reasonably request with respect to the Grantee's properties and expenses related to its cable television operations within the confines of the City of Williamstown.

#### Section 34. FRANCHISE RENEWAL

The franchise granted under this Ordinance may be renewed under the authority of 47 U.S.C. § 546 as it may be amended.

#### Section 35. RIGHTS OF INDIVIDUALS

- (a) Grantee shall not deny service, deny access, or otherwise discriminate against Subscribers on the basis of race, color, religion, national origin, or sex. Grantee shall comply at all times with all other applicable federal, state and local laws, and all executive and administrative orders relating to nondiscrimination. Grantee shall not deny service, deny access, or otherwise discriminate against persons owning or renting apartment units.
- (b) The Grantee shall comply with all applicable nondiscrimination and affirmative action requirements of any laws, regulations and executive directives of the United States, the Commonwealth of Kentucky, and the Government.
- (c) The Grantee shall not discriminate in its employment practices against any employee or Applicant for employment because of race, color, religion, national origin, ancestry, sex, age or physical handicap. The Grantee shall take affirmative action to ensure that employees are treated, during employment, without regard to their age, sex, race, color, national origin, ancestry, or physical handicap. This condition includes, but is not limited to the following: recruitment advertising, employment interviews, employment rates of pay, upgrading, transfer, demotion, layoff, and termination.
- (d) The Grantee shall submit to the Government, upon request, a copy of the Grantee's EEO submissions required to be filed with the FCC.
- (e) Grantee shall comply with all privacy laws of the state or federal government. Grantee shall strictly observe the privacy and property rights of Subscribers. The Subscriber's

rights of privacy shall be protected at all times by the Grantee in accordance with applicable law.

Section 36. GOVERNMENT'S RIGHT OF INTERVENTION

The Grantee agrees not to oppose intervention by the Government in any suit or proceeding arising out of the Grantee's performance hereunder.

Section 37. FURTHER AGREEMENT AND WAIVER BY GRANTEE

- (a) The Grantee agrees to abide by all provisions of the franchise, and further agrees that it will not at any future time set up as against the Government to claim that the provisions of the franchise as currently written are unreasonable, arbitrary, or void.
- (b) Grantee shall have no recourse whatsoever against the Government for any loss, cost, expense or damage arising out of the provisions or requirements of this Ordinance or because of the lawful and reasonable enforcement thereof by the Government or the failure of the Government to have the authority to grant all or part of the franchise.
- (c) Grantee, by acceptance of this franchise, acknowledges that it has not been induced to enter into this franchise by any understanding or promise or other statement, whether verbal or written, by or on behalf of the Government or by any third person concerning any terms and conditions not expressed in this Ordinance.
- (d) Grantee, in conducting the operation or work to be performed pursuant to this Ordinance is not an agent of the Government.
- (e) The Government, through its Council, Mayor, or other employee designated in writing by the Mayor, may, at all reasonable times, have access to all or any of the property owned or used in part or in whole by the Grantee in its operating and maintaining the cable television system under this franchise. In like manner, the Council or its above-mentioned officers, agents or employees, may at all reasonable times enter in or upon said property to inspect or examine it, and may inspect, examine or verify all or any of the accounts, books, records, contracts, documents or papers of the Grantee reasonably necessary to the administration of this franchise.

Section 38. LAW GOVERNS

In any controversy or dispute under this Ordinance, federal law and the law of the Commonwealth of Kentucky, if not conflicting, shall apply.



Section 39. SEVERABILITY

If any section, sentence, clause or phrase of this Ordinance is held unconstitutional or otherwise invalid, such infirmity shall not affect the validity of the remainder of the Ordinance.

Section 40. TIME IS OF THE ESSENCE

Whenever this Ordinance sets forth any time for any act to be performed by or on the behalf of the Grantee, such time shall be deemed of the essence and the Grantee's failure to perform within the allotted time shall, in all cases, be sufficient grounds for the Government to invoke the remedies available under the terms and conditions of this Ordinance.

Section 41. EFFECTIVE DATE

This Ordinance shall become effective on the date of its passage.

---

Rick Skinner, Mayor  
City of Williamstown, Kentucky

ATTEST:

---

Vivian Link, City Clerk/Treasurer

2015-04

1 <sup>st</sup> Reading	<u>03/17/15</u>
2 <sup>nd</sup> Reading	<u>04/06/15</u>
Publication	<u>04/23/15</u>