

**FRANCHISE AGREEMENT**  
**BETWEEN**  
**THE TOWN OF SHAPLEIGH, MAINE**  
**AND**  
**METROCAST CABLEVISION OF NEW HAMPSHIRE, LLC**

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**FRANCHISE AGREEMENT  
BETWEEN THE TOWN OF SHAPLEIGH, MAINE  
AND  
METROCAST CABLEVISION OF NEW HAMPSHIRE, LLC**

**WHEREAS**, MetroCast Cablevision of New Hampshire, LLC (hereinafter "**MetroCast**" or "**Franchisee**") is the duly authorized current holder of a cable television franchise authorizing the construction and operation of a cable communications system in the Town of Shapleigh, Maine (hereinafter "**Town**"), said franchise having originally commenced on January 11, 2005 (the "**2005 Franchise**"); and

**WHEREAS**, MetroCast filed a timely request for a renewal of its 2005 Franchise by letter dated February 17, 2012 in conformity with Applicable Law (as defined below); and

**WHEREAS**, there has been an opportunity for public comment on MetroCast's franchise renewal proposal, as required by Section 626 of the Communications Act (as defined below); and

**WHEREAS**, MetroCast historically has upgraded and expanded its facilities and services voluntarily as subscriber demand for new services and technologies has developed during the term of the 2005 Franchise, including the upgrade of the hybrid fiber optic and coaxial cable network to 860 MHz through which a variety of video and communications services are being provided to the Town's residents and commercial businesses; and

**WHEREAS**, the Town Board of Selectmen has determined that the communications services and programming provided by MetroCast contribute significantly to the communications needs and interests of the Town and its residents and institutions; and

**WHEREAS**, the Town Board of Selectmen, as the Franchising Authority, finds that it is in the public interest to renew the 2005 Franchise in light of MetroCast's past performance, compliance with the terms of the 2005 Franchise, and based on the Town Board of Selectmen's finding that the terms contained in MetroCast's request for renewal of the 2005 Franchise reasonably meet the future cable television related needs of the Town.

**NOW THEREFORE**, after due and full consideration of MetroCast's franchise renewal proposal and the mutual promises contained herein, the Town Board of Selectmen and MetroCast intending to be legally bound hereby agree as follows:

**ARTICLE 1  
DEFINITIONS**

**SECTION 1.1 – DEFINITIONS**

The following terms used in this Franchise shall have the following meanings; however, any term not included in the following definitions, which is otherwise defined in FCC rules and/or regulations, or by federal or state law as of the effective date of this Franchise, shall be incorporated herein by reference:

(a) **Access Channel.** A channel which Franchisee makes available to the Town for the purpose of transmitting Access Programming.

(b) **Access Programming.** (i) "Governmental": Non-Commercial Programming produced by Town departments or agencies and other Non-Commercial Programming offered by them or a duly authorized designee which is not ordinarily offered by operators of Cable Television Systems; (ii) "Educational": Non-Commercial Programming produced by the Town's public schools, or other educational organizations as designated by the Franchising Authority, and other non-commercial educational programming offered by them which is not ordinarily offered by operators of Cable Television Systems; and (iii) "Public": Non-Commercial Programming produced by the residents of the Town, or produced by an access corporation or non-profit corporation operating within the Town, and other programming not ordinarily offered by operators of cable systems.

(c) **Affiliate or Affiliated Person.** Any Person who or which directly or indirectly controls or owns an interest in Franchisee; any Person which Franchisee directly or indirectly controls and in which Franchisee owns an interest; and any Person directly or indirectly subject to control and owned in whole or in part by a Person who or which directly or indirectly controls and owns an interest in Franchisee.

(d) **Applicable Law or applicable law.** Shall have the meaning given in Section 8.10 of this Agreement.

(e) **Basic Service.** The category of Cable Service that includes at a minimum the retransmission of local television broadcast signals, Access Channels and any other signals and

programming services required to be included on such tier by the Communications Act and FCC regulations, if any.

**(f) Broadcast.** Over-the-air transmission by a radio or television station.

**(g) Cable Service or cable service.** The one-way transmission to Subscribers of video programming, or other programming service, and Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service. For the purposes of this definition, "video programming" is programming provided by, or generally considered comparable to programming provided by, a television broadcast station, and "other programming service" is information that a cable operator makes available to all Subscribers generally.

**(h) Cable Television System, Cable System or cable system.** A facility consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes video programming and which is provided to multiple Subscribers within a community, but such term does not include:

- (i) A facility that serves only to retransmit the television signals of one or more television broadcast stations;
- (ii) A facility that services Subscribers without using any 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 facility shall be considered a cable system 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) An open video system that complies with 47 U.S.C. § 573; or
- (v) Any facilities of any electric utility used solely for operating its electric utility systems.

**(i) Channel or channel.** Sufficient frequency capacity to carry one standard video signal. See 47 U.S.C. §522(4).

**(j) Communications Act.** The Communications Act of 1934, as amended, including the Cable Communications Policy Act of 1984, the Cable Consumer Protection and Competition Act of 1992, and the Telecommunications Act of 1996, codified at 47 U.S.C. §151 et seq. and as may be further amended.

**(k) Drop.** The coaxial or fiber optic cable that connects a home or municipal building to the Cable System.



11/20/15 (DLS)

- (l) **Effective Date or effective date.** ~~{to be completed}~~.
- (m) **Expanded Basic Service.** The category of Cable Service that is the second most highly penetrated tier of service after Basic Cable.
- (n) **FCC.** Federal Communications Commission, or successor governmental entity thereto.
- (o) **Feeder Cable or feeder cable.** The cable, connected to the trunk cable, from which Cable Service is distributed to multiple Subscribers, as distinguished from trunk cable (which distributes Cable Service throughout the franchise area).
- (p) **Franchise, Franchise Agreement or Agreement.** The Franchise granted herein.
- (q) **Franchising Authority or Franchise Authority.** The Town, or its lawful designee, in accordance with Applicable Law.
- (r) **Franchise Fee.** The payments to be made to the Franchise Authority or other governmental entity under Section 2.5 of this Agreement as consideration for the Franchise granted herein. The Franchise Fee requirements and payments shall comply with the requirements set forth in Section 622 of the Communications Act, 47 U.S.C. §542.
- (s) **Gross Revenues.** All revenue collected by Franchisee from Subscribers for the provisioning of Cable Service in the Town. Gross Revenues shall not include: (1) taxes or fees imposed by law or regulation on Subscribers or other Persons or other fees which are passed through or which Franchisee is obligated to collect; (2) advertising revenue paid to Franchisee; (3) equipment rental fees; (4) bad debt expense; (5) late fees; (6) Franchise Fee; and (7) fees from non-Cable Services.
- (t) **Leased Channel or Leased Access.** Any Channel that Franchisee makes available pursuant to Section 612 of the Communications Act, 47 U.S.C. §532.
- (u) **Non-Commercial Programming.** Programming not produced for profit and not containing advertising on behalf of for-profit entities. However, underwriting and acknowledgement of contributions consistent with the enhanced underwriting guidelines of the FCC for educational broadcasting are allowed on Non-Commercial Programming as described in Exhibit A.
- (v) **Outlet or outlet.** An interior receptacle that connects a Subscriber's television set to the Cable System.

**(w) Person or person.** Any corporation, partnership, limited partnership, association, trust, organization, other business or governmental entity, individual or group of individuals acting in concert.

**(x) Private Roads or private roads.** Private rights of way or non-public roadways not classified as highways by Applicable Law.

**(y) Programming or programming.** Any video, audio, text, data or other signal carried over the Cable System.

**(z) Public Way or public way.** The surface of, and the space above and below, any public street, highway, freeway, lane, bridge, land path, alley, court, or other public right of way, including, but not limited to public utility easements, dedicated utility strips or rights of way dedicated for compatible uses and any temporary or permanent fixtures or improvements located thereon now or thereafter held by the Franchising Authority within Franchisee's service area for the purpose of public travel, or for compatible uses, and shall include other easements or rights of way and shall, within their proper use and meaning, entitle the Franchising Authority and Franchisee to the use thereof for the purpose of the installing, transmitting, operating and maintaining of Franchisee's Cable Services or other services over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments and other property as may be ordinarily necessary and pertinent to the Cable System.

**(aa) Service Interruption.** The loss of any Signal, video picture or sound on one or more Channels carried over the Cable System for distribution to a Subscriber.

**(bb) Signal or signal.** Any transmission of electromagnetic or optical energy which carries information from one location to one or more other locations.

**(cc) Standard Service Package.** A combination of Franchisee's Basic Service and Expanded Basic Service tiers, as provided by Franchisee as of the Effective Date, and including any individual broadcast Channels or cable networks added to or removed from these tiers after such date in Franchisee's sole discretion or as is otherwise required by Applicable Law.

**(dd) Street or street.** The surface of and the space above and below any public street, road, highway, freeway, lane, path, Public Way, alley, court, sidewalk, boulevard, parkway, drive or any easement or right-of-way now or hereafter held by Town, and dedicated for use by the Town, use by the general public, or use compatible with the Cable System operations.

**(ee) Subscriber or subscriber.** Any Person lawfully subscribing to and receiving Cable Services from Franchisee.

(ff) **Transfer.** The disposal by Franchisees, directly or indirectly, by gift, assignment, sale, merger, consolidation or otherwise of the ownership and control of the Cable System or the Franchise granted herein to a Person or a group of Persons acting in concert, as described in Section 2.6.

(gg) **Upstream Transmissions.** Signals traveling from Subscribers or other originating points on the Cable System to a headend or hubsite.

## **ARTICLE 2 GRANT OF FRANCHISE**

### **SECTION 2.1 – GRANT OF FRANCHISE**

(a) Pursuant to the authority of the Communications Act and the laws of Maine, as amended from time to time, the Town's Board of Selectmen, in its capacity as the Franchising Authority, hereby grants a non-exclusive Franchise to MetroCast authorizing and permitting said Franchisee to construct, upgrade, operate and maintain a Cable System to provide Programming within the municipal limits of the Town.

(b) The Franchise is subject to the requirements of Applicable Law, including the Communications Act, in force and effect during the term of the Franchise. To the extent permitted by Applicable Law, the Franchising Authority specifically reserves all authority granted it under applicable Maine law to manage, regulate and control the public right-of-way, as such authority relates to the provisions of telecommunications services. To the extent permitted by Applicable Law, Franchisee may use the Cable System to deliver non-Cable Services.

(c) Subject to the terms and conditions herein, the Franchising Authority hereby grants to Franchisee the right to construct, operate and maintain the Cable System, which may include poles, wires, optical fibers, amplifiers and other property and equipment as are necessary in, under, over, along, across and upon the Public Ways and other public places and property under the jurisdiction of the Town, including other property over which the Town has a sufficient compatible easement or right-of-way, for the purpose of reception, transmission, amplification, origination, distribution or redistribution of Programming in accordance with Applicable Law.

(d) If Applicable Law provides authority for the Franchising Authority to assess real and/or personal taxes on Franchisee, the Franchising Authority shall be authorized to impose

such taxes and Franchisee shall be obligated to pay such properly assessed taxes. However, Franchisee reserves all rights to appeal any assessment of personal or real property taxes. This is a material term of the Franchise and failure to pay duly assessed personal and real property taxes when due shall be cause for Franchising Authority to provide a written notice to Franchisee to show cause by a date certain specified in the notice as to why this Franchise should not be revoked pursuant to Section 7.5 of the Franchise.

(e) Nothing in this Franchise shall be deemed a waiver or relinquishment of any rights, defenses or claims that Franchisee may have with respect to the application of any law referenced in this Section 2.1 to Franchisee's services or the operation of its Cable System. Franchisee shall have the right to pass through to subscribers and to itemize separately on subscribers' monthly bills any tax imposed on Franchisee by the Franchising Authority, if Franchisee itemizes separately other taxes or regulatory fees on Subscribers' monthly bills. If there is any tax assessment and corresponding obligation to pay taxes then Franchisee shall be entitled to a refund or credit equal to the amount of the tax paid. Such credit shall be applied to any Franchise Fee due pursuant to Section 2.5 of this Agreement.

#### **SECTION 2.2 – NON-EXCLUSIVITY**

The right to use and occupy the Streets, Public Ways and public places shall not be exclusive, and the Town reserves the right to grant similar or other uses of the said Streets, Public Ways and public places to any Persons for a similar Cable System or otherwise at any time during the term of the Franchise. Franchisee hereby acknowledges the Town's right to make such grants and permit such uses, subject to the requirements of Applicable Law and Section 2.8(a) of this Agreement.

#### **SECTION 2.3 – DURATION OF FRANCHISE**

The term of this non-exclusive Franchise shall be for a period of ~~ten (10)~~ <sup>FIVE (5)</sup> years commencing on the Effective Date. *11/20/15* <sup>(DJ)</sup> <sub>(L)</sub>

#### **SECTION 2.4 – RENEWAL OF FRANCHISE**

The renewal of this Franchise shall be governed by the requirements of Applicable Law.

## **SECTION 2.5 – FRANCHISE FEE**

(a) Franchisee shall pay to the Town as a Franchise Fee a sum equal to zero percent (0%) of Franchisee's Gross Revenues derived during each year of the Franchise. Said payment shall be made annually within sixty (60) days after the end of Franchisee's fiscal year. Should Franchisee change its fiscal year, it shall notify the Town in writing of such change ninety (90) days prior to the effective date of such change and the payment schedule stated above shall be adjusted accordingly. Each payment shall be accompanied by a statement certifying the factual basis for payment, including a break-down by category and source of Franchisee's Gross Revenues upon which such payment is based. The Franchising Authority may designate in writing one or more particular Town account(s) or fund(s), including any non-capital reserve fund duly established, to which Franchisee shall direct Franchise Fees due hereunder.

## **SECTION 2.6 – TRANSFER OR ASSIGNMENT**

(a) This Franchise or any part of this Franchise, or control thereof, shall not be transferred or assigned to any Person who is not an Affiliate without the prior written consent of the Franchising Authority, which consent shall not be arbitrarily or unreasonably withheld, conditioned or delayed and shall be governed by applicable provisions of the Communications Act. Notice of any transfer or assignment shall be made in writing by Franchisee to the Franchising Authority.

(b) For purposes of this section, any sale, assignment or any other disposition of a majority ownership interest of the parent company of Franchisee to any unaffiliated Person or group of Persons acting in concert, in one transaction or a series of related transactions, shall be deemed to be a transfer within the meaning of this section.

(c) If there shall be filed against Franchisee in any Court, pursuant to any statute either of the United States or of any State, a Petition at Bankruptcy or insolvency or for reorganization or for the appointment of a receiver or trustee of all or a portion of Franchisee's property, and if, within sixty (60) days thereof, Franchisee fails to secure a discharge thereof, or Franchisee shall voluntarily file any such petition or make an assignment for the benefit of creditors, Franchisee shall notify the Town of such fact within five (5) days of its occurrence. Any subsequent sale of the Cable System, or any part thereof, or cable property or facilities, or the Franchise shall be treated as a transfer or assignment and the provisions of this section

requiring approval of the Town shall apply, provided, however, that the Town shall not unreasonably delay, condition or withhold the grant of approval. The term "bankruptcy" as used herein shall include an assignment for the benefit of creditors.

(d) In reviewing any request to transfer or assign control or ownership of the Franchise, the Town shall analyze such factors as whether the proposed assignee has the appropriate technical, legal, managerial and financial capacity to operate the Cable System.

(e) Unless the parties otherwise agree, in consenting to any transfer, the Town does not waive its right to pursue Franchisee for violation of the provisions of this Agreement and Franchisee does not waive its rights or any defense it may have to the Town's claims. All terms of this Agreement shall be binding on transferees except as otherwise agreed to. The Town, as part of its review process, may impose reasonable conditions on the transferee before granting consent. Such conditions shall be calculated to insure performance of this Franchise. Such conditions may include, but are not limited to, the requirements that all terms of the current franchise be upheld by the transferee or that the Franchising Authority is entitled to compensation of the net present value of any Franchise terms not met by the transferee.

#### **SECTION 2.7 – EFFECT OF UNAUTHORIZED ACTION**

The unauthorized assignment of the Franchise or transfer of control of Franchisee in violation of Section 2.6 shall be null and void and shall be deemed a material breach of this Franchise, and the provisions of Sections 7.4 and 7.5 shall apply.

#### **SECTION 2.8 – EQUAL PROTECTION PROVISION**

(a) The Town shall not grant any additional franchises to provide Cable Service within its jurisdiction on terms or conditions more favorable or less burdensome than those in any existing franchise within the Town.

(b) If Franchisee believes that it is at a competitive disadvantage as a result of a competing multichannel video programming provider that is not required to be licensed by the Franchising Authority, Franchisee and the Franchising Authority agree that Section 625 of the Communications Act (47 U.S.C. § 545) will be applicable.

(c) Any such additional franchise(s) shall be granted on the condition that such franchisee(s) shall indemnify and hold harmless the Town and Franchisee from and against all costs and expenses incurred in strengthening poles, rearranging attachments, placing underground facilities and all other costs (including those of the Town and Franchisee) incident to inspections, make-ready and construction of an additional cable system within the Town.

(d) If the Federal Government or the State of Maine issues a franchise or other authorization permitting another Person to construct, operate and maintain a Cable System in the Town and such Person begins construction of a competing Cable System in the Town, then MetroCast, in its sole discretion, may terminate this Agreement on ninety (90) days' prior written notice to the Town and opt to provide Cable Service to the Town pursuant to such Federal or State franchising process. If the Town is prevented by operation of law from implementing the requirements of this Section 2.8 and such Person begins construction of a competing Cable System in the Town, then MetroCast, in its sole discretion, may terminate this Agreement on ninety (90) days' prior written notice to the Town and opt to provide Cable Service to the Town pursuant to the franchise or other authorization granted to any competitor pursuant to such Federal, State or local franchising process.

## **SECTION 2.9 – POLE AND CONDUIT ATTACHMENT RIGHTS**

(a) Permission is hereby granted to Franchisee to attach or otherwise affix cables, wires, optical fiber cables and related equipment comprising the Cable System to the existing poles and conduits on public streets and ways, provided Franchisee secures permission and consent of the public utility companies to affix its cables and/or wires to their pole and conduit facilities and provided further that the Town shall determine the location of all such poles or conduit consistent with Applicable Law. All such attachments shall comply with the requirements of Applicable Law. Franchisee may erect its own poles and install its own conduit, with approval of the location of such installation by the Town, pursuant to Applicable Law, which approval shall not be unreasonably withheld or conditioned. The Town grants Franchisee equal standing with the power and telephone utilities in the matter of placement of facilities on Public Ways subject to the ultimate authority of the Town to determine the location of all installations.

(b) In all areas of Town where public utilities are aerially placed, if subsequently during the term of the Franchise such utility lines required by local ordinance or state law to be relocated aerially or underground, Franchisee shall similarly relocate its Cable System. Any costs of relocating utility poles, trenching for the placement of underground conduits and relocation or modification of related facilities shall be proportionally shared by all affected companies, including reimbursement of such costs, as provided by Applicable Law.

## **SECTION 2.10 – POLICE AND REGULATORY POWERS**

Franchisee's rights are subject to the powers of the Town to adopt and enforce general ordinances necessary for the safety and welfare of the public, provided that such ordinances are of general applicability and not specific to the Cable System, Franchisee, or this Franchise, including ordinances and regulations pertaining to management, control and regulation of public rights-of-way but only to the extent authorized or allowed by State law and federal law. Any conflict between the terms of this Franchise and any present or future exercise of the Franchising Authority's police and regulatory powers shall be resolved by a court or governmental agency with appropriate jurisdiction. Nothing in this Section 2.10 shall be deemed a waiver of any rights or defenses that Franchisee may have under Applicable Law.

## **ARTICLE 3 SYSTEM SPECIFICATIONS AND CONSTRUCTION**

### **SECTION 3.1 – SERVICE AREA; LINE EXTENSIONS**

(a) **Present Service Area.** As of the Effective Date of this Franchise Agreement, MetroCast provides Cable Service in the present service area as indicated on the map highlighted in green on Exhibit B. Cable Service shall be provided to every existing dwelling unit requesting Cable Service and located on Streets and Public Ways as marked in green on Exhibit B, provided Franchisee is able to obtain from property owners any necessary easements at no cost and/or any applicable permits.

#### **(b) Line Extension Requirements.**

(1) Whenever Franchisee shall receive a request for service from at least twenty (20) year-round subscribers per mile contiguous to the existing Cable System, which have agreed to pay in advance for service for twelve (12) consecutive months, it shall extend its Cable



System to such Subscribers at no cost to said Subscribers for system extension, other than the usual connection fees for all Subscribers, provided that such extension is technically feasible and will not adversely affect the operation, financial condition, or market development of the Cable System.

(2) No Subscriber shall be refused service arbitrarily, however, for special circumstances (such as a Subscriber's request to locate the cable drop underground, or the need for under highway crossings, or the existence of more than two hundred (200) feet of distance from distribution cable to connection of service to Subscribers, or a density of less than twenty (20) year-round subscribers per mile). Cable Service may be made available on the basis of a capital contribution in aid of construction, including cost of material, labor, and easements.

(3) For the purpose of determining the amount of capital contribution in aid of construction to be borne by Franchisee and Subscribers in the area in which Cable Service may be extended that does not meet the minimum requirements defined above, Franchisee will be entitled to recover from the Subscriber requesting service extensions the direct, total cost of that portion of the extension that exceeds the two hundred (200) feet, not including the length of the service drops. Potential subscribers will bear the remainder of the construction and other costs on a pro rata basis. Franchisee may require that the payment of the capital contribution in aid of construction borne by such potential subscribers be paid in advance.

(4) Neither Franchisee nor any of its employees, agents, representatives, contractors, subcontractors, or consultants, nor any other Person, shall discriminate or permit discrimination between or among any Persons in the availability of Cable Services provided in connection with the Cable System in the Franchise Area. It shall be the right of all Persons to receive all available Cable Service provided on the Cable System so long as such Person's financial or other obligations to Franchisee are satisfied.

(5) Notwithstanding anything to the contrary contained herein, the Town shall have the right to request that Franchisee extend its Cable System to subscribers under circumstances where the density requirements of this Section 3.1(b) are not met if the Town agrees to pay the cost of construction, including cost of material, labor and easements, to extend the Cable System, in advance, which may, if applicable, be done through the use of a credit against Franchise Fees owed to the Town by Franchisee for the applicable calendar year.

### **SECTION 3.2 – SUBSCRIBER CONNECTION**

(a) Franchisee shall, within fifteen (15) days of written request by the occupant of a dwelling, connect the Cable System to a dwelling at standard installation charges if the dwelling is within two hundred (200) aerial feet of the nearest Feeder Cable, if no special trenching or boring, easements or completion of any required utility make-ready are required, and only if the dwelling is properly internally wired to meet Franchisee's specifications to prevent signal leakage.

(b) Residences located over two hundred (200) aerial feet from Feeder Cable or requiring special trenching or boring shall be considered non-standard installations and charged an additional one-time installation fee equal to the actual costs for materials and labor required to complete installation of service, except that the distance for the cable Drop from the end of the extended Feeder Cable to the residence, if less than two hundred (200) aerial feet, shall be considered a standard installation.

(c) Franchisee shall complete construction of any such Subscriber connections within ninety (90) days of either a written request by the owner of the dwelling or within ninety (90) days of the date any necessary easements are obtained, whichever occurs later, taking into account and subject to weather, force majeure, completion of any required make-ready work, availability of construction crews and materials. If requested by the Franchising Authority, Franchisee shall provide a written report to the Town explaining its failure to meet the time frame stated herein.

### **SECTION 3.3 – CABLE SYSTEM**

(a) The Cable System shall be designed and constructed so that television station broadcast signals received by Franchisee in stereo can be received in stereo by Subscribers without the necessity of subscribing to any other Cable System service, provided Subscribers have video and audio equipment capable of receiving stereo signals.

(b) Subject to the applicable requirements of FCC regulations, currently 47 C.F.R. part 76, at Sections 76.1602, 76.1603 and 76.1619, Franchisee shall provide the Franchising Authority and Subscribers with any notice required by Applicable Law before making deletions, additions

or relocations of programming or stations or any other change to its video program channel lineup offerings.

#### **SECTION 3.4 – FUTURE TECHNOLOGY**

No more frequently than one (1) time during each year during the term of the Franchise Agreement starting in the third (3<sup>rd</sup>) year of this Agreement, if requested in writing by the Franchising Authority, Franchisee shall review with the Franchising Authority changes in relevant cable television technology that might benefit Town Subscribers. Relevant cable technology is that technology necessary to give the Cable System the capability of providing Cable Services substantially equal to those services available to at least fifty percent (50%) of all Subscribers in the following municipalities: Sanford, Maine, and Rochester, Laconia, Franklin and Barrington, New Hampshire. Such technology shall include but not be limited to customer premises equipment, cable ready television sets, high definition television, digital compressions, remote control devices, scrambling technology, additional interactive capability, and digital video recording technologies.

#### **SECTION 3.5 – PARENTAL CONTROL CAPABILITY**

Franchisee shall make available to any Subscriber at their request, consistent with Applicable Law, a parental control device or appropriate technology which will permit a Subscriber, at their option, to control the reception or to eliminate comprehensive reception of any Channels on the Cable System.

#### **SECTION 3.6 – PEG ACCESS CHANNEL**

(a) Within one hundred twenty (120) days after Franchisee's receipt of written notice from the Franchising Authority, Franchisee shall provide one Channel for Access Programming in the Town and one origination point for connection to the cable network for insertion of Access Programming on the network. Franchisee shall provide and maintain all necessary processing equipment at its headend in order to switch Upstream Transmissions from a single location designated by the Town to the designated Access Channel. Franchisee shall provide digital or analog Basic Service channel capacity for such Access Channel.

(b) Use of channel capacity for public, educational and governmental ("PEG") access, to the extent applicable, shall be provided in accordance with federal law, 47 U.S.C. §

531, and as further set forth below. Except as required by Applicable Law, Franchisee shall not exercise editorial control over the content of any Access Channel. Franchisee shall provide to the Town upon request technical advice on equipment the Town or school district may consider for Access Channel production and transmission of programming.

(c) Franchisee shall not move or otherwise relocate the Channel position of any Access Channel once established, without thirty (30) days' prior written notice to the Franchising Authority. Franchisee shall use its commercially reasonable efforts, in good faith, to minimize any such Channel relocation.

(d) The Franchising Authority shall be responsible for the picture quality of all Access Programming at the demarcation point, which shall be at the output of the transceiver. To provide for adequate picture quality, the Franchise Authority's video signal shall meet current federal standards and/or the minimum operating input parameters of the transceiver. Franchisee shall monitor the Access Channel to ensure that it is maintained at standards commensurate with those that apply to the Cable System's commercial channels pursuant to FCC technical standards. Franchisee shall provide all routine maintenance for the transceivers used for the Access Channel. The Town shall be responsible for any replacement and/or upgrades of any transceivers used for Access Programming as necessary to keep them compatible with any future equipment the Franchising Authority may acquire.

### **SECTION 3.7 – EMERGENCY OVERRIDE**

The Cable System shall incorporate audio override capabilities for use in the event of an emergency consistent with FCC and State regulations. The emergency override capability may be operated from a standard touch-tone telephone and/or a computer only by officials authorized by the Franchising Authority. Activation of this emergency override capability shall give authorized official(s) control of all Channels allowed by law for a limited period of time for the purpose of transmitting instructions to viewers. The Franchising Authority shall provide Franchisee with the name(s) of each individual authorized to activate the emergency override capability prior to granting such authorization. Authorization shall be limited to two (2) individuals.

### **SECTION 3.8 – DELIVERY OF SIGNALS**

Franchisee shall abide by the applicable provisions of the Consumer Electronics Equipment Compatibility provision Section 624A of the Communications Act (47 U.S.C. §544(a)).

### **SECTION 3.9 – LEASED ACCESS CHANNELS**

Franchisee shall make Channel capacity available as required by Section 612 of the Communications Act (47 U.S.C. §532) for leased access use to a person, group, organization or entity upon reaching an appropriate agreement.

### **SECTION 3.10 – GOVERNMENTAL CABLE DROPS TO RESIDENTIAL NETWORK**

(a) Franchisee shall provide, as directed by the Town, (i) one (1) cable service Drop connected to the Cable System, (ii) one (1) outlet, and (iii) Standard Service Package to all municipal and school buildings which are listed in Exhibit C and within two hundred (200) feet of Feeder Cable. Franchisee shall also donate coaxial cable for each classroom of the public schools in the Town existing as of the date of this Franchise Agreement. The obligation of Franchisee to donate coaxial cable for such Drops and outlets and to provide such service shall pertain throughout the life of this Franchise and shall apply specifically to municipal and school buildings constructed or located within the service area as defined by Section 3.1 subsequent to the commencement of this Franchise. This coaxial cable shall be provided at no cost to the Town. The Franchising Authority or its designee shall consult with the appropriate individuals to determine the appropriate location of each Drop and Outlet prior to the installation of the free service.

## **ARTICLE 4 TECHNOLOGICAL AND SAFETY STANDARDS**

### **SECTION 4.1 – SYSTEM MAINTENANCE**

(a) In installing, operating and maintaining equipment, cable and wires, Franchisee shall use commercially reasonable efforts to avoid damage and injury to trees, structures and improvements in and along the routes authorized by the Franchising Authority except as may be

approved by the Franchising Authority if required for the proper installation, operation and maintenance of such equipment, cable and wires.

(b) The construction, maintenance and operation of the Cable System for which this Franchise is granted shall be done in conformance with OSHA, the National Electrical Safety Code, rules and regulations of the FCC and applicable State and local laws and ordinances.

(c) The signal of any television station carried on the Cable System shall be carried without material degradation in quality at all Subscriber locations within the limits imposed by the technical specifications of the Cable System and as set forth by the FCC. The Cable System shall be operated and maintained so as to comply with the technical standards set forth in the FCC's rules and regulations as they apply to Cable Systems. Upon written request by the Franchising Authority or its designee, Franchisee shall provide proof of compliance with FCC signal requirements.

(d) Operating and maintenance personnel shall be thoroughly trained in the use of all safety equipment and the safe operation of vehicles and equipment. All areas of the Cable System shall be routinely inspected and maintained so that conditions that could develop into safety hazards for the public and/or operating and maintenance personnel can be corrected before they become a hazard. Franchisee shall install and maintain its wire, cable, fixtures, and other equipment in such a manner as shall not interfere with any installations of the Town.

(e) All structures and all lines, equipment and connections in, over, under, and upon Streets, sidewalks, alleys, and Private Roads and places of the Town, wherever situated or located, shall at all times be kept and maintained in a safe and suitable condition and in good order and repair.

(f) The Town reserves the right to reasonably inspect all construction and installation work for compliance with applicable laws, codes, ordinances and regulations and with provisions of the Franchise through its code enforcement office. All inspections shall be at the expense of the Town.

(g) All lines, cables and distribution structures and equipment, including poles and towers, erected by Franchisee within the Town shall be located so as not to obstruct or interfere

with the proper use of Streets, and to cause minimum interference with the rights of property owners who abut any of such Streets, and not to interfere with the existing public utility installation. Except as otherwise permitted by Applicable Law, Franchisee shall have no vested right in a location except as granted herein by the Franchise, and such construction shall be removed by Franchisee at its own cost and expense whenever the same restricts or obstructs or interferes with the operation or location of said Streets, provided, however, that this standard shall apply to all persons and entities owning lines, cables, distribution structures, and equipment, and provided further that Franchisee shall not be required to remove any such construction solely to accommodate needs of competing Cable Systems.

(b) Upon written notice from the Town, Franchisee shall remedy a general deficiency with respect to the technical standards described herein within fourteen (14) days of receipt of notice and a safety deficiency within forty-eight (48) hours of receipt of notice and shall notify the Town when the deficiency has been corrected.

#### **SECTION 4.2 – REPAIRS AND RESTORATION**

(a) Franchisee shall promulgate and adhere to a preventive maintenance policy at or above the performance standards set by the FCC. Whenever it is necessary to interrupt service for the purpose of making repairs, adjustments, installation or other maintenance activities, Franchisee shall do so at such time as will cause the least inconvenience to Subscribers.

(b) Whenever Franchisee takes up or disturbs any pavement, sidewalk or other improvement of any public Street or Private Road or places, the same shall be replaced and the surface restored in as good condition as before entry as soon as practicable. In no event shall such restoration be made later than ten (10) business days, weather permitting or due to events beyond the reasonable control of Franchisee, after Franchisee's receipt of written notification from the property owner so damaged unless otherwise agreed by Franchisee and the property owner. Upon failure of Franchisee to comply within the time specified (unless the Franchising Authority sets an extended time period for such restoration and repairs) or if such damage presents an emergency situation presenting a threat to public safety, the Franchising Authority may cause proper restoration and repairs to be made and the expense of such work shall be paid by Franchisee upon demand by the Franchising Authority.

(c) In addition, upon the failure, refusal or neglect of Franchisee to cause any work or other act required by law or by this Franchise to be properly completed in, on, over or under any Street within any time prescribed, the Town may cause such work or other act to be performed or completed in whole or in part, and upon so doing shall submit to Franchisee an itemized statement of prevailing rates and the cost thereof. Franchisee shall, within thirty (30) days after receipt of such statement, pay to the Town the entire amount thereof.

(d) Franchisee shall be subject to all laws of general applicability regarding private property in the course of constructing, installing, operating and maintaining the Cable System in the Town. Franchisee shall, at its sole cost and expense, promptly repair or replace all private property, real and personal, damaged or destroyed as a result of the construction, installation, operation or maintenance of the Cable System.

#### **SECTION 4.3 – CABLE LOCATIONS**

(a) In all areas of the Town where the cable or wire facilities of the public utilities are installed underground, Franchisee shall install its Cable System underground. Vaults and pedestals shall be suitably restored to a similar condition prior to underground work.

(b) The rights and privileges granted hereby shall not be in preference or hindrance to the right of the Town, or other governmental agency, improvement district or other authority having jurisdiction, to perform or carry on any public works or public improvements, and should the Cable System in any way interfere with the construction, maintenance or repair of such public works or improvements, Franchisee shall, at its own expense, protect or relocate its Cable System or portion thereof, as directed by the Town or other authority having jurisdiction; provided, however, if the Town reimburses other third parties for their expenses and costs incurred in protecting or relocating facilities, then Franchisee shall be entitled to recover its expenses and costs; and provided further that nothing herein shall be deemed or construed as a waiver or relinquishment by Franchisee of any right to reimbursement of costs and expenses under Applicable Law.

#### **SECTION 4.4 – TREE TRIMMING**

Franchisee shall have the authority to trim trees upon and overhanging Streets, alleys, sidewalks and Public Ways and places of the Town so as to prevent the branches of such trees



from coming in contact with the wires, cables and equipment of Franchisee, in accordance with applicable State law and any Town ordinances and regulations. Notwithstanding the foregoing, the authority granted herein to trim trees is subject to state law.

#### **SECTION 4.5 – STRAND MAPS**

Within sixty (60) days from a request in writing from the Franchise Authority, Franchisee shall provide to the Town a complete set of strand maps of the service area which will show those areas in which Franchisee's facilities exist and the location of all Streets. Upon reasonable request by the Franchise Authority, Franchisee shall provide updated maps.

#### **SECTION 4.6 – BUILDING MOVES**

In accordance with Applicable Law, Franchisee shall, upon the request of any Person holding a valid building moving permit issued by the Town, temporarily raise or lower its wires to permit the moving of the building(s). Franchisee shall be given not less than forty-five (45) days advance notice to arrange for such temporary wire changes. The cost to raise or lower wires, including any refunds to subscribers for interruption of services, shall be borne exclusively by the Person(s) holding the building move permit. Franchisee may require full or partial payment in advance.

#### **SECTION 4.7 – EMERGENCY POWER**

The Cable System shall incorporate equipment capable of providing standby powering of the head-end for a minimum of seventy-two (72) hours upon failure of the power furnished by the electric utility company unless for reasons of force majeure as defined in Section 8.2 hereof.

#### **SECTION 4.8 – RESIDENTIAL EXTERIOR WIRING**

Franchisee shall adhere to any Subscriber's reasonable request for location of the cable Drop entry and shall in other respects observe standard specifications for Drop connections into the residence. Installation of new exterior wiring on a residence after the Effective Date of this Agreement shall be installed in a professional manner consistent with the homeowner's requests at the time of installation.

## **SECTION 4.9 – DIG SAFE**

Franchisee shall comply with all applicable “dig safe” provisions, pursuant to Applicable Law.

## **ARTICLE 5 CUSTOMER SERVICE, MARKETING OF SERVICES AND CONSUMER PROTECTION**

### **SECTION 5.1 – CUSTOMER SERVICE**

(a) Franchisee shall comply with the FCC’s Customer Service Obligations, required by federal law and currently codified at 47 CFR §76.309, as may be amended from time to time.

(b) Unless otherwise approved by the Town, which approval shall not be unreasonably withheld, conditioned or delayed, Franchisee shall maintain a regional customer service office for the transaction of in-person business (i.e., returns of equipment, payments, questions, reports, orders, customer service) with Subscribers. Franchisee shall provide and maintain twenty-four (24) hour, toll-free answering lines which Subscribers may call so that prompt maintenance and service is available.

(c) At the time of initial subscription and annually thereafter, Franchisee shall give each subscribing household a written notice, which shall include full disclosure of (i) products and services offered, (ii) prices and options for programming services and conditions of subscription to programming and other services, (iii) installation equipment and service maintenance charges and policies, (iv) instructions on how to use the Cable Service and Channel positions of Programming carried on the Cable System; (v) billing and complaint procedures for reporting and resolving Subscriber complaints, including the address and telephone number of the local Franchise Authority; (vi) information regarding availability of parental control devices; and (vii) a list of monthly and non-recurring fees and charges. Franchisee shall provide notice of any changes to Subscribers as required by Section 3.3(b) above.

(d) Franchisee shall provide technical support twenty-four (24) hours per day, seven (7) days per week, and make all reasonable efforts to respond to all service calls within twenty-four (24) hours and correct malfunctions as promptly as possible. A serious system malfunction will be serviced as soon as possible after its discovery.

(e) Except as limited by federal law or FCC regulations concerning privacy, Franchisee shall maintain a record of all written complaints and such records shall be available at Franchisee's local offices for at least two (2) years for inspection by the Town as it may from time to time request, during regular business hours and upon reasonable notice. Nothing herein shall be deemed to require Franchisee to maintain records of oral complaints which can be handled to the customer's satisfaction in the course of the initial conversation in which the complaint is made or which does not require technical field response. Upon request and in accordance with Applicable Law, Franchisee shall provide to the Town with an accounting of the number and nature of such written complaints.

(f) Franchisee shall maintain its records as required by and in a manner not inconsistent with Applicable Law.

#### **SECTION 5.2 – TERMINATION OF SERVICE**

(a) In the event a Subscriber's Cable Service is terminated, monthly charges for service shall be pro-rated on a daily basis and, where advance payment has been made by a Subscriber, the appropriate refund shall be made by Franchisee to the Subscriber within forty-five (45) days of such termination provided, in the instance when the subscriber is relocating, subscriber has provided Franchisee a forwarding address.

(b) Franchisee shall have the right to disconnect a Subscriber for failure to pay an overdue account, for theft of services, or other violation of cable-related laws; provided that:

- (i) Franchisee's billing practices and policy statement set forth the conditions under which an account will be considered overdue; and
- (ii) the Subscriber's account is at least thirty (30) days delinquent.

#### **SECTION 5.3 – SERVICE INTERRUPTIONS**

In the event of a Cable System failure resulting in a Subscriber experiencing a Service Interruption for twenty-four (24) or more consecutive hours, Franchisee shall, upon request by any Subscriber, grant such Subscriber a pro rata credit or rebate, on a daily basis, of that portion of the service charge during the next consecutive billing cycle or, at its option, apply such credit to any outstanding balance then currently due. Credits shall be applied as described above upon request if Franchisee knew of the interruption or after due notice to Franchisee from the Subscriber.

Franchisee shall consider a similar credit for any Service Interruptions lasting less than twenty-four (24) hours, excluding interruptions which are beyond the control of Franchisee, such as, but not limited to, electrical outages, acts of God, or for any reason of force majeure.

#### **SECTION 5.4 – IDENTIFICATION**

Franchisee shall ensure that all of its vehicles, employees, agents and subcontractors are reasonably identified to the general public. Agents and contractors hired by Franchisee to perform any substantial work on the Cable System in the Town shall reasonably inform the Town's Police Department of the general work location within the Town and provide relevant vehicle identification prior to commencing such work.

#### **SECTION 5.5 – SUBSCRIBER PRIVACY AND RIGHTS TO INFORMATION**

(a) Except as otherwise permitted by Applicable Law, Franchisee shall not collect, store, use or make available to any third party data relating to individual Subscriber households by name, phone number, mailing address or e-mail address, whether the data is for providing Cable Service or other services which are not considered a Cable Service, without first giving the Subscriber an opportunity to remove his or her name from Franchisee's list of Subscribers, unless such disclosure is necessary to provide Cable Service or other service or to conduct cable related business activities (for example, disclosure to the company that addresses and mails out monthly bills and guides, the Programming services or a collections service for past due accounts). The conduct of Franchisee under this section shall be consistent with and governed by Section 631 of the Communications Act, "Protection of Subscriber Privacy" (47 U.S.C. §551) and the regulations of the FCC on subscriber privacy. Any Subscriber may, upon written request and during normal business hours, examine all records maintained by Franchisee relating to the Subscriber's account. Franchisee shall ensure that all information related to billing and service requests is accurate and up-to-date and shall promptly correct any errors upon discovery.

(b) Franchisee shall not record or retain any information transmitted between a Subscriber or user and any third party, except as required for lawful business purposes or as permitted by Applicable Law. Pursuant to Section 631(e) of the Communications Act (47 U.S.C. § 551(e)), Franchisee shall destroy personally identifiable information if the information is no longer necessary for the purpose for which it was collected and there are no pending requests or

orders for access to such information pursuant to a request from a Subscriber or pursuant to a court order.

## **ARTICLE 6 RATES AND CHARGES**

### **SECTION 6.1 – RATES AND CHARGES**

(a) A price schedule for service and installation in effect on the Effective Date is attached hereto as Exhibit D. Any changes in price for Cable Service, equipment and installation will be in conformance with Applicable Law including, but not limited to, FCC regulations currently codified at 47 C.F.R. §§ 76.1602, 76.1603 and 76.1619.

(b) The Franchising Authority shall have the right to the extent granted under Applicable Law, to regulate Basic Service rates and related equipment, installation and service charges to Subscribers.

(c) Franchisee may require a deposit or refuse service to any applicant for a bona fide credit reason. Franchisee may require that the account of any Subscriber requesting cable equipment and/or work be current before such work is performed.

(d) Franchisee shall notify the Franchising Authority in writing at least thirty (30) days prior to any adjustment in price for Cable Service provided by the Cable System. The notice shall state the date on which the adjustment in price is to occur.

(e) Franchisee may levy collection charges in a manner consistent with Applicable Law.

(f) Franchisee's monthly subscriber statements may be itemized in a manner consistent with Applicable Law.

## **ARTICLE 7 REGULATORY OVERSIGHT**

### **SECTION 7.1 – INDEMNIFICATION**

(a) Franchisee shall, at its sole cost and expense, indemnify and hold the Town harmless at all times during the term of this Franchise Agreement, and subsequent renewals, if

any, from any and all claims for injury and damage to persons or property, both real and personal, caused by the installation, operation or maintenance by Franchisee of any Franchisee-owned structure, equipment, wire or cable within the Franchise area. Upon receipt of notice of any such claim in writing from the Town Board of Selectmen, Franchisee shall at its own expense defend any action or proceeding against the Town in which it is claimed that personal injury or property damage was caused by activities of Franchisee, its employees and/or agents in the installation, operation or maintenance of its Cable System.

(b) In the event of any claim, demand or litigation specified in Section 7.1(a), the Town shall give prompt written notice to Franchisee of such claim, demand or litigation. Franchisee, at its sole cost and expense, shall resist and defend such claim, demand or litigation with legal counsel selected by Franchisee or Franchisee's applicable insurer and shall have sole control of the defense or settlement of any claim, demand or litigation and all negotiations for the settlement or compromise of the same. The Town and its representatives shall cooperate with Franchisee and its representatives in the defense and/or settlement of any claim, demand or litigation. Nothing herein shall be deemed to prevent the Town from participating in the defense and/or settlement of any claim, demand or litigation by the Town's own counsel at the Town's own expense; however, Franchisee shall have sole control of the defense and/or settlement of any claim, demand or litigation and all negotiations for the settlement or compromise of the same. To the extent Franchisee makes payment pursuant to this section, it may require from the Town an assignment of all right of recovery against any party.

## **SECTION 7.2 – INSURANCE**

(a) Franchisee shall carry insurance with the Town as additional insured for coverage against claims for injury or damage to persons or property, both real and personal, caused by construction, installation, operation, maintenance or removal of its Cable System. The amount of such insurance against liability for damage to property shall be no less than One Million Dollars (\$1,000,000) as to any one occurrence. The amount of such insurance for liability for injury or death to any person shall be no less than One Million Dollars (\$1,000,000) and Two Million Dollars (\$2,000,000) on account of injury to or death of any number of persons in any occurrence. Such liability insurance shall include products and completed operations,

independent contractors, personal and advertising injury, and automobile; and Franchisee's liability insurance shall be endorsed to include the full indemnity for the Town.

(b) Worker's Compensation, including liability benefits and any other legally required employee benefits, shall be supplied in statutory amounts.

(c) All insurance coverage, including Worker's Compensation, shall be maintained throughout the period of this Franchise Agreement. All expenses incurred for said insurance shall be at the sole expense of Franchisee. No later than thirty (30) days after the execution of this Franchise, Franchisee shall furnish to the Town certificates of insurance. Any certificates for new or replacement insurance coverage shall be provided to the Town within thirty (30) days of when they become effective.

(d) In the event that the insurer does not provide such notice directly to the Town as an additional insured, Franchisee agrees to provide the Town with as much advance written notice as is reasonably practicable in the event that any such insurer provides Franchisee with notice that it intends to cancel the policy or fail to renew the policy for any reason.

### **SECTION 7.3 – ANNUAL REPORTING BY FRANCHISEE**

Upon request from the Town not more than thirty (30) days after the end of each year of the Franchise term, Franchisee shall report to the Town within one hundred eighty (180) days after the end of such year, in writing, an updated version of Franchisee's rates and charges consistent with the form attached hereto as Exhibit D (Rates and Charges) and an annual system report in substantially the form attached hereto as Exhibit E (Annual System Report), such annual reports to include, at a minimum, the information described in those Exhibits.

### **SECTION 7.4 – NOTICE AND OPPORTUNITY TO CURE**

(a) Prior to instituting any action against Franchisee under Section 7.5, the Franchising Authority shall notify Franchisee in writing of the specific failure and shall give Franchisee sixty (60) days, or such longer time as may be granted by the Franchising Authority in its reasonable discretion, in which to demonstrate that a failure does not exist or to rectify such failure, and shall not proceed further if the matter is resolved to the reasonable satisfaction of the Town within the specified time period.

(b) In the event that Franchisee fails to cure, or to take reasonable steps to cure, the default within sixty (60) days, (or such other time period reasonably established by the Franchising Authority, at the written request of Franchisee) the Franchising Authority shall schedule a public hearing with fifteen (15) days written notice to Franchisee. Franchisee shall be provided the opportunity to offer evidence and to be heard at such public hearing.

(c) Within thirty (30) days following any such public hearing, the Franchising Authority shall determine if Franchisee is in default and, if so, the Franchising Authority may then pursue any and all lawful remedies, including revocation of this Franchise.

#### **SECTION 7.5 – REVOCATION OF FRANCHISE; DEFAULT**

The Franchise issued hereunder may, after due notice and hearing as defined herein, be revoked by the Franchising Authority for any of the following reasons:

- (i) for failure to comply with any of the material terms and conditions of the Franchise after any applicable cure period under Section 7.4 has elapsed; or
- (ii) for any transfer or assignment of the Franchise Agreement or control thereof without consent of the Franchising Authority.

#### **SECTION 7.6 – REMOVAL OF SYSTEM**

Upon termination of the Franchise Agreement or of any renewal hereof by passage of time or otherwise, Franchisee shall remove its supporting structures, poles, transmission and distribution systems and other appurtenances from the Streets, ways, lanes, alleys, parkways, bridges, highways, and other public places in, over, under, or along which they are installed and shall restore the areas to their original condition. If such removal is not completed within six (6) months of such termination, the Franchising Authority may deem any property not removed as having been abandoned, or at Franchisee's expense remove or cause to be removed any components of the Cable System and restore the areas to its original condition.

#### **SECTION 7.7 – INCORPORATION BY REFERENCE**

All presently and hereafter applicable conditions and requirements of federal and State law and the rules and regulations of the FCC, as they may be amended from time to time are incorporated herein by reference and shall control the interpretation and performance of this Franchise, to the extent that any provision of this Franchise conflicts with or is inconsistent with such laws, rules or regulations.



## **ARTICLE 8 MISCELLANEOUS**

### **SECTION 8.1 – SEVERABILITY**

If any section, paragraph, term or provision of this Franchise Agreement is determined to be illegal, invalid or unconstitutional, by any court of competent jurisdiction or by any State or federal regulatory agency having jurisdiction thereof, such determination shall have no effect on any other section, paragraph, term or provision hereof, all of which will remain in full force and effect for the term of this Agreement or any renewal or renewals hereof.

### **SECTION 8.2 – FORCE MAJEURE**

If for any reason of force majeure Franchisee is unable in whole or in part to carry out its obligations hereunder, Franchisee shall not be deemed in violation or default during the continuance of such inability. Unless further limited elsewhere in this Franchise Agreement, the term force majeure as used herein shall have the following meaning: strikes; acts of God; acts of public enemies; orders of any kind of the government of the United States of America or of the State of Maine or any of their departments, agencies, political subdivisions, or officials, or any civil or military authority; insurrections; riots; epidemics; landslides; lightning; earthquakes; fires; hurricanes; volcanic activity; storms; floods; washouts; droughts; arrests; civil disturbances; explosions; partial or entire failure of utilities; or any cause or event not reasonably within Franchisee's control.

### **SECTION 8.3 – NOTICES**

Every notice to be served upon the Franchising Authority shall be delivered or sent by certified mail (postage prepaid) to Attn: Chairman of the Board, Town of Shapleigh, P.O. Box 26, 22 Back Road, Shapleigh, ME 04076, or such other address as the Franchise Authority may specify in writing to Franchisee. Every notice served upon Franchisee shall be delivered or sent certified mail (postage prepaid) to Attn: General Manager, MetroCast Cablevision of New Hampshire, LLC, 9 Apple Road, Belmont, NH 03220, with a copy to Attn: General Counsel, Harron Communications, L.P., 70 E. Lancaster Avenue, Frazer, PA 19355 or such other address as Franchisee may specify in writing to the Franchise Authority. The delivery shall be equivalent to direct personal notice, direction or order, and shall be deemed to have been given at the time of receipt.

#### **SECTION 8.4 – AMENDMENT OR MODIFICATION**

This Franchise shall not be amended or modified except by written agreement following publication of the proposed amendment in a manner consistent with the publication and notice provisions of RSA Chapter 43.

#### **SECTION 8.5 – ANNUAL TOWN REVIEW**

At the Town's request and with reasonable advance notice, Franchisee shall attend annual meetings with authorized Town official(s) to review compliance with the terms of this Franchise and matters of interest to either party. No later than ten (10) days prior to such meeting either party may submit a list of items to be reviewed.

#### **SECTION 8.6 – DELEGATION**

The Town may delegate to any Town official, employee, agency or commission the authority to exercise any of the Town's rights hereunder which may lawfully be so delegated. The Town shall notify Franchisee in writing of any delegation of authority to exercise the Town's rights hereunder.

#### **SECTION 8.7 – FINAL AGREEMENT**

The Agreement stated herein, in writing, constitutes the final agreement between the parties and any prior agreements, whether written or oral, with respect thereto are superseded hereby.

#### **SECTION 8.8 PROPRIETARY AND CONFIDENTIAL INFORMATION**

If Franchisee reasonably believes that any documentation to be provided to the Franchising Authority in accordance with the provisions of this Agreement contains proprietary or confidential information, then Franchisee shall provide the Franchising Authority with written notice thereof, and thereafter the Franchising Authority will safeguard the information against disclosure.

#### **SECTION 8.9 – STANDARD OF REASONABLENESS**

Whenever a party to this Agreement is required, or has the right or discretion, to take an action or to refrain from taking an action with respect to a particular matter, then, in the exercise

of any of its contractual obligations or rights, such party shall take such action or refrain from taking such action as is reasonable under the circumstances that exist at the time the action or non-action occurs.

**SECTION 8.10 – GOVERNING LAW**

This Agreement is governed by and construed in accordance with the Communications Act and the FCC regulations and policies adopted pursuant thereto, except where the law of the State of Maine may control, in which case the law of the State of Maine will govern (collectively, “Applicable Law”). All rights, requirements and obligations under this Agreement are subject to the requirements and limitations of Applicable Law. To the extent that any right, requirement or obligation under this Agreement is contrary to Applicable Law, then such provision shall be invalid to the extent that such provision is inconsistent with Applicable Law.

IN WITNESS WHEREOF, the parties hereto have caused this Franchise Agreement to be executed by their duly authorized representatives.

*Terms of Franchise is Five years* (63)

**THE TOWN OF SHAPLEIGH, MAINE**

By: *William Magrany*  
Name: *Michael S. Ryan*  
Title: *Mark R. Calhoun*  
Date: *Board of Selectmen 11/20/15*

**METROCAST CABLEVISION OF NEW HAMPSHIRE, LLC**

By: *[Signature]*  
Name: *Danny Jobe*  
Title: *Vice President of System Operations*  
Date: *12/15/14*

**EXHIBIT A**  
**PROGRAM UNDERWRITING GUIDELINES FOR PEG CHANNELS**

**Underwriting announcements may include the following information:**

- The name of the donor.
- The purpose to which the donation was directed.
- The donor's location (which may include website addresses).
- The donor's brand or trade names, including visual depictions of the same.
- The date of the donor's founding or the number of years it has been in business.
- The donor's telephone number.
- Established slogans which viewers would associate with the donor or its products or services.
- Statements of the donor's institutional goals ("dedicated to..."), so long as no promotional reference is made to the donor's products or services.

**Underwriting announcements should not contain any of the following elements:**

- Any language explicitly urging patronage of particular goods, products, services or facilities (calls to action).
- Any explicit mention or comparison of the price, quality or quantity of goods, products, services or facilities.
- Any endorsement or depiction of apparently satisfied customers of the donor.
- Any slogan that is not routinely used by the underwriter in its business (a logo or jingle specially created for public broadcasting cannot be used) or that is overtly promotional in content or style.

**EXHIBIT B**  
**MAP OF SERVICE AREA**

**EXHIBIT C  
CABLE SERVICE DROP POINTS**

<b>Location</b>	<b>Address</b>
Shapleigh Library	607 Shapleigh Corner Road, Shapleigh, ME 04076-3804
Shapleigh Fire Dcpartment	506 Shapleigh Corner Road, Shapleigh, ME 04076-3808
Town of Shapleigh	22 Back Road, Shapleigh, ME 04076-4201

**EXHIBIT D**

**RATES & CHARGES**

Television networks each year impose substantial increases in the license fees they charge MetroCast for the right to distribute their channels. Local broadcast stations also have demanded much higher "Retransmission Consent" fees for MetroCast to be able to retransmit their signals. Due to the dramatic escalation in these programming costs, which are growing well beyond the rate of inflation, MetroCast must increase certain rates effective with the first billing statement you receive in January 2016 (see below). Should you have any questions regarding this notice or our services, please call us at 1-800-952-1001 or visit [www.MetroCast.com](http://www.MetroCast.com).

## MetroCast - New Hampshire & Maine Residential Rate Information as of January 1, 2016

VIDEO SERVICES			Current Monthly Price	New Monthly Price
Basic <sup>1</sup>	\$35.95	No Change		
Expanded Basic <sup>1</sup>	\$44.00	\$48.00		
Basic & Expanded Basic Package <sup>1</sup>	\$79.95	\$83.95		
Broadcast TV Fee <sup>4</sup>	\$4.92	\$7.39		
Digital Basic <sup>2</sup>	\$13.95	\$14.95		
Digital Plus <sup>2</sup>	\$7.95	No Change		
HD Ultra <sup>2</sup>	\$9.95	No Change		
Showtime Unlimited <sup>2</sup>	\$16.95	\$17.95		
HBO Multiplex <sup>2</sup>	\$19.95	\$20.95		
Cinemax Multiplex <sup>2</sup>	\$10.95	No Change		
Starz/Encore SuperPak <sup>2</sup>	\$16.95	\$17.95		
<b>INSTALLATION &amp; ONE-TIME CHARGES</b>				
Service Assurance Plan	\$3.95	No Change		
Standard VIP Installation (3 products - Video, Internet, Phone) ..... \$99.95 No Change				
Standard Video Installation (up to 2 outlets)..... \$49.95 No Change				
Two Product Installation ..... \$99.95 No Change				
Additional Video Outlet per outlet (over 2 outlets) - same trip..... \$20.00 No Change				
Additional Video Outlet (up to 2 outlets) - separate trip ..... \$49.95 No Change				
Reconnection of Services..... \$40.00 No Change				
Multi-Room DVR (mDVR) Installation ..... \$99.95 No Change				
Remote Control Purchase ..... \$10.00 No Change				
Standard Wired or Wireless Internet Installation ..... \$99.95 No Change				
Standard Digital Phone Installation ..... \$99.95 No Change				
Digital Phone Line Activation ..... \$20.00 No Change				
Add/Move/Change Phone Service or Phone Number ..... \$20.00 No Change				
Relocate Phone Service or Phone Number..... \$30.00 No Change				
Additional Jack - with initial install..... \$20.00 No Change				
Additional Jack - separate trip ..... \$40.00 No Change				
Returned Check Fee ..... \$25.00 No Change				
Field Collections Fee ..... \$25.00 No Change				
Late Fee <sup>11</sup> ..... \$5.00 No Change				
Service Call, minimum 1 hour charge..... \$50.00 No Change				
Additional Service Call Charge (charged in 1/4 hour increments for calls lasting over 1 hour) ..... \$12.50 No Change				
Change of Service - automated upgrade..... \$5.00 No Change				
Change of Service - separate trip upgrade..... \$40.00 No Change				
Live Agent Convenience Fee (charged per occurrence) ..... \$5.00 No Change				
HD Converter Deposit ..... \$200.00 No Change				
HD/DVR Converter Deposit ..... \$200.00 No Change				
Multi-Room DVR (mDVR) HD Converter Deposit ..... \$200.00 No Change				
Multi-Room DVR (mDVR) Storage Device Deposit..... \$100.00 No Change				
Non Returned/Damaged Digital Converter ..... \$150.00 No Change				
Non Returned/Damaged HD Converter ..... \$250.00 No Change				
Non Returned/Damaged HD/DVR ..... \$329.00 No Change				
Non Returned/Damaged Multi-Room DVR (mDVR) HD Converter..... \$329.00 No Change				
Non Returned/Damaged Multi-Room DVR (mDVR) Storage Device ..... \$195.00 No Change				
Non Returned/Damaged DTA ..... \$31.50 No Change				
Non Returned/Damaged HD DTA ..... \$60.00 No Change				
Non Returned/Damaged HD DTA Wall Mount..... \$75.00 No Change				
Non Returned/Damaged CableCARD ..... \$50.00 No Change				
Non Returned/Damaged Cable Modem ..... \$48.00 No Change				
Non Returned/Damaged Cable Modem with Wireless ..... \$84.00 No Change				
Non Returned/Damaged eMTA ..... \$67.50 No Change				
Non Returned/Damaged eMTA with Wireless ..... \$101.00 No Change				
<sup>1</sup> CableCARD, DTA, digital converter or digital ready television set with QAM tuner (not provided by MetroCast) is required to view all channels. <sup>2</sup> CableCARD or digital converter required. <sup>3</sup> Digital Basic required. <sup>4</sup> HD equipment required. <sup>5</sup> Deposit may be required based on results of credit check. <sup>6</sup> Up to three (3) rooms; one converter required per room for full functionality. <sup>7</sup> MetroCast Internet service speeds may vary and are not guaranteed. Modem required. For best performance, use of a MetroCast-approved cable modem is recommended. A DOCSIS 3.0 modem is required to receive the fastest speeds for the High Speed Turbo and High Speed Ultra tiers and is strongly recommended for all other tiers. <sup>8</sup> eMTA phone modem required. <sup>9</sup> Equipment not included. Refer to individual product categories for any equipment information. <sup>10</sup> Not available for new subscription. <sup>11</sup> Applicable in New Hampshire only.				
In the event of a video service outage lasting 24 or more consecutive hours, the affected subscriber must notify us to receive a credit or refund within 30 days after the qualifying outage.				
*Each customer billing statement for video services (whether stand-alone or as part of a bundle of services) will include a Broadcast TV Fee to defray the rising cost of Retransmission Consent fees that local broadcasters have chosen to charge MetroCast.				
Prices shown are for residential service only. Franchise fees, taxes and other regulatory fees not included in above pricing. Some services may not be available in all areas. All prices are monthly charges unless otherwise indicated. Prices and services are subject to change. Federal law requires a subscription to Basic Service to receive any other levels of service of video programming. Additional equipment charges may apply. For customers currently receiving promotional pricing, those prices will not be affected during the promotional period.				
I232F SAAF03K 6282-1600/1700/1800 (ALL)				



**EXHIBIT E**

**Annual System Report**  
**Town of Shapleigh**

Office Location: MetroCast  
21 Jarvis Ave  
Rochester, NH 03868

Mailing Address: 21 Jarvis Ave  
Rochester, NH 03868

Office Hours:  
Phone Number: (603) 524-4425

Headend (tower) location: 21 Jarvis Ave, Rochester, NH 03868

Miles of Cable Plant:

Number of Subscribers:

Customer Service Statistics:

Projects Constructed:

Franchise Fees paid:

Emergency Contact: