

CABLE FRANCHISE AGREEMENT

BETWEEN

BETHLEHEM TOWNSHIP, NORTHAMPTON COUNTY

AND

RCN TELECOM SERVICES (LEHIGH) LLC

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## **CABLE FRANCHISE AGREEMENT**

This Cable Franchise Agreement (hereinafter referred to as the “Agreement”) is executed as of the \_\_\_\_ day of June, 2020 (hereinafter referred to as the “Effective Date”) by and between Bethlehem Township, Northampton County, a municipality located in Northampton County, Pennsylvania (hereinafter referred to as the “Township”) and RCN Telecom Services (Lehigh) LLC (hereinafter referred to as “Franchisee”).

WHEREAS, pursuant to the Cable Communications Policy Act of 1984, the Cable Television Consumer Protection and Competition Act of 1992, and the Telecommunications Act of 1996 (hereinafter collectively referred to as the “Cable Act”), the regulations of the Federal Communications Commission (hereinafter referred to as the “FCC”) and Pennsylvania law, the Township is authorized to grant franchises to construct, operate and maintain a Cable System utilizing public rights-of-way and properties within the Township’s jurisdiction;

WHEREAS, Franchisee currently holds a cable franchise from the Township; and RCN Telecom Services, Inc.;

WHEREAS, Franchisee has requested a renewal of its franchise to maintain, construct, operate, and upgrade its Cable System over, under and along the aforesaid rights-of-ways for use by the Township’s residents;

WHEREAS, the aforesaid rights-of-way used by Franchisee are public properties acquired and maintained by the Township at significant expense to the Township’s taxpayers and the right to use said rights-of-way is a valuable property right;

WHEREAS, the Township desires to protect and manage the aforesaid rights-of-way, ensure future technical improvements to maintain a state-of-the-art Cable System, and require high standards of customer service; obtain for its public buildings, receive financial compensation for Franchisee’s use of the Township’s rights-of-ways as provided by federal law, establish certain reporting requirements and provide for the current and future cable-related needs of its residents;

WHEREAS, the Township has determined that Franchisee has the financial, legal and technical ability to provide Cable Services to Subscribers located in the Township;

WHEREAS, the Township has determined that the public interest would be served by renewing Franchisee's franchise according to the terms and conditions contained herein; and

WHEREAS, the Township has determined that the public interest would be served by renewing Franchisee's franchise according to the terms and conditions contained herein.

NOW THEREFORE, in consideration of the mutual promises contained herein and intending to be legally bound hereby, the Township and Franchisee agree as follows:

## **SECTION 1**

### **GRANT OF FRANCHISE**

#### **1.1 GRANT OF AUTHORITY**

Pursuant to the Cable Act, the regulations of the FCC and Pennsylvania law, the Township hereby grants a non-exclusive and revocable franchise to Franchisee, authorizing and permitting Franchisee to construct, own, operate, extend, and maintain a Cable System in the Township's public rights-of-way.

Subject to the terms and conditions contained herein, the Township hereby grants to Franchisee the right to construct, own, extend, install, operate, maintain, upgrade and rebuild a Cable System, including such wires, cables, fiber, conductors, ducts, conduits, amplifiers, pedestals, attachments and other property and equipment as are necessary and appropriate to the operation of the Cable System in, under, over, along, across and upon the streets, lanes, avenues, alleys, sidewalks, bridges, highways and other public places and rights-of-way under the jurisdiction of the Township, including property over which the Township has a sufficient easement or right-of-way, for the purpose of reception, transmission, amplification, origination, distribution or redistribution of video, audio, and other electronic signals and impulses as permitted by applicable law.

Notwithstanding this authority, Franchisee shall obtain all necessary government permits for occupying or disturbing any public places and/or rights-of-way. Prior to obtaining such permits, Franchisee shall provide the Township with all reasonable information and documentation that the Township requires. Franchisee shall comply with all other government regulations and requirements thereto.

## **1.2 TERM OF FRANCHISE**

The term of this Agreement shall be for a period of ten (10) years commencing on the Effective Date and expiring on June \_\_\_\_, 2030, unless the franchise is terminated prior to the expiration date in accordance with the terms and conditions of this Agreement.

## **1.3 NON-EXCLUSIVITY**

This franchise granted to Franchisee shall be non-exclusive. Nothing in this Agreement shall affect the right of the Township to grant another franchise to construct, operate or maintain a Cable System or for any other purpose.

## **1.4 POLICE POWERS**

Franchisee's rights under this Agreement are subject to the police powers of the Township to adopt and enforce general laws and regulations necessary for the safety and welfare of the public. Such laws and regulations are separate and distinct from the terms and conditions contained in this Agreement.

## **1.5 NO WAIVER OF RIGHTS**

No course of dealing between the Township and Franchisee, nor any delay on the part of the Township in exercising any rights hereunder, shall operate as a waiver of any such rights of the Township or acquiescence in the actions of Franchisee in contravention of such rights, except to the extent expressly waived by the Township.

## **1.6 FRANCHISE SUBJECT TO FEDERAL, STATE AND LOCAL LAW**

This Franchise is subject to and shall be governed by all lawful and applicable provisions of federal, state and general local laws and regulations. Without waiving any of its powers, the Township agrees that, to the extent any terms of this Agreement are inconsistent with the terms of any Township cable franchise ordinances existing as of the Effective Date, this Agreement shall control.

## **1.7 COMPETITIVE EQUITY**

(a) Franchisee acknowledges and agrees that the Township reserves the right to grant one or more additional Franchises to construct, operate, and maintain a Cable System within the Township.

(b) The Franchise granted to Franchisee is non-exclusive; however, if the Township grants a subsequent Franchise that, when taken as a whole upon consideration of all of its material obligations, is more favorable or less burdensome to the subsequent franchisee than this Agreement is to Franchisee, then Franchisee may request an amendment to this Agreement to provide Franchisee with competitive equity. If the Township agrees with Franchisee that, when taken as a whole upon consideration of all of its material obligations, the subsequent Franchise is more favorable or less burdensome, then the Township and Franchisee shall enter into discussions in order to modify this Agreement to the mutual satisfaction of both parties to provide Franchisee with such competitive equity.

(c) In the event an application for a new Franchise for Cable Service is submitted to the Township proposing to serve Subscribers within the Township, then the Township shall notify Franchisee in writing of the submission of the application.

**SECTION 2**  
**COMPENSATION TO THE TOWNSHIP**

**2.1 FRANCHISE FEES**

Franchisee shall pay to the township an amount equal to five percent (5%) of the gross revenues derived from the operation of its cable system in the Township. The term “Gross Revenues” is defined in Section 14 “Definitions” below. Franchisee shall not deduct or otherwise credit against the franchise fee any tax, fee or assessment of general applicability. The Township may amend the franchise fee upon sixty (60) days written notice to Franchisee provided that the franchise fee may not exceed five percent (5%). In the event that federal law is amended to authorize a franchise fee higher than five percent (5%), the Township may, at its discretion, direct Franchisee to pay a higher franchise fee after notice to Franchise and action by the Board of Commissioners of the Township at a public meeting, and the Franchisee reserves the right to treat the additional fee as a pass through.

**2.2 QUARTERLY PAYMENTS**

Franchise fee payments to the Township under this provision shall be computed at the end of each calendar quarter and shall be due and payable within thirty (30) days after the end of each calendar quarter. Specifically, payments shall be due and payable on or before April 30 (for the first quarter), July 31 (for the second quarter), October 31 (for the third quarter), and January 31 (for the fourth quarter) of each year. In the event that any franchise fee payment is not made on or before the applicable date, then interest shall be added at the annual rate of six percent (6%) of the amount of franchise fee revenue due to the Township. No acceptance of any percent shall be construed as an accord that the amount paid is in fact the correct amount, nor shall acceptance of any payment be construed as a release of any claim the Township may have for additional sums payable under this Agreement.

### **2.3 QUARTERLY REPORTS**

For each franchise fee payment, Franchisee shall provide, within thirty (30) days of such payment a written report containing an accurate statement of Franchisee's Gross Revenues received for Cable Services for the quarter in connection with the operation of Franchisee's Cable System and a brief statement showing the basis for computation of fees. The statement shall contain a line item for every source of revenue received and the amount of revenue received from each source. The report shall be verified by an authorized representative of Franchisee.

### **2.4 AUDITS**

On an annual basis, upon a minimum of thirty (30) days prior written notice, the Township shall have the right to conduct an independent audit of Franchisee's records reasonably related to the sources, amounts and computation of gross revenues in accordance with Generally Accepted Accounting Principles. Such records shall be kept or made available to the Township at the notice location for Franchisee specified in Section 13.3 below. Provided the documents requested are not unduly burdensome, any reproduction of such records for purposes of inspection shall be performed at Franchisee's expense. If the audit shows that franchise fees have been underpaid then Franchisee shall pay the underpaid amount and monetary fines of ten percent (10%) of the underpayment. If franchise fees have been underpaid by five percent (5%) or more, then Franchisee shall also pay the reasonable cost of the audit.

At the time of the annual payment of the franchise fee, the Franchisee shall furnish the Township with such information as the Township shall reasonably require with respect to the Franchisee's services within the Township for such period.

### **2.5 NO LIMITATION ON TAXING OR FEE AUTHORITY**

Nothing in this Section or in this Agreement shall be construed to limit the authority of the Township to impose any tax, fee or assessment of general applicability in accordance to Section 622 (h) of the Cable Act. Such taxes, fees or assessments shall be in addition to franchise fees.

## **2.6 BUNDLED SERVICES**

If Cable Services subject to the franchise fee required under this Section are provided to Subscribers in conjunction with non-Cable Services and the total cost of the bundle reflects a discount from the aggregate retail prices of the services contained therein, the franchise fee shall be applied to the retail price of the Cable Services in the bundle reduced by no more than a proportionate share of the overall discount; provided, however, except it is expressly understood that equipment may be subject to inclusion in the bundled price at full rate card value.

### **SECTION 3**

#### **SYSTEM CONSTRUCTION, OPERATION AND MAINTENANCE**

##### **3.1 TECHNICAL REQUIREMENT**

(a) Franchisee shall operate, maintain, construct and extend the Cable System so as to provide high quality signals and reliable delivery of one-way and two-way Cable Services for all programming services throughout all parts of the Township where Franchisee's Cable System exists. The Cable System shall meet or exceed any and all technical performance standards of the FCC, the National Electrical Safety Code, the National Electric Code and any other applicable federal laws and the law, ordinances and construction standards of the Commonwealth of Pennsylvania and the Township. The Cable System shall be installed and located so as to not interfere with the rights and convenience of property owners and the use of Public Rights-of-Way.

(b) The Cable System shall provide signals that are reasonably free from co-channel interference. Should the Township provide written notice to Franchisee that it has received a historical record of complaints of co-channel interference from Subscribers, then Franchisee shall take reasonable and necessary actions to remove such co-channel interference.

(c) Stand-by power at the headend(s) shall be provided for a minimum of eight (8) hours in the event of an outage. The power supplies serving the nodes and distribution shall be capable of providing power for not less than six (6) hours in the event of an

electrical outage. Stand-by power must activate automatically upon the failure of commercial utility power.

### **3.2 AREA TO BE SERVED**

(a) Service shall be provided to every dwelling occupied by a person requesting Cable Service provided that Franchisee is able to obtain from the property owners any necessary easements and/or permits in accordance with Section 621(a)(2) of the Cable Act. Subject to the other conditions contained in this Section, Franchisee shall extend the Cable System into all areas within the Township in which Franchisee's Cable System exists, where there is a minimum of thirty (30) dwelling units per underground mile of cable, calculated from the end of the nearest trunk line. Franchisee shall complete said extensions within three (3) months of notification to Franchisee by the Township that an area has met the minimum density standard set forth herein. Franchisee's obligation hereunder shall be subject to the timely performance of walk-out, make ready and location of all underground utilities.

(b) Any dwelling unit within one hundred twenty-five feet (125 ft.) aerial distance of the cable plant shall be entitled to a standard installation rate. For any dwelling unit in excess of one hundred twenty-five feet (125 ft.) aerial distance or that requires an underground installation, Franchisee shall extend Cable Service at a rate not to exceed Franchisee's actual cost of installation from its main distribution system.

(c) All installations of wires and/or equipment by Franchisee shall be underground where required by the Township. In requiring such underground installations, the Township shall treat Franchisee the same as other similarly situated entities.

(d) Franchisee shall install, at its own cost and expense, cables or other Cable System facilities underground wherever all existing utilities are installed underground, or where statute or ordinance requires utilities to be placed underground; provided, however, that such underground locations are capable of accommodating Franchisee's facilities without technical degradation of the Cable System's signal quality. Previously

installed aerial cable shall be placed underground in concert with other utilities pursuant to the general ordinances of the Township or applicable law provided that the Township imposes such requirement on all similarly situated entities. Placing facilities underground does not preclude the use of ground-mounted appurtenances such as Subscriber taps, line extenders, system passive devices, amplifiers, power supplies, pedestals or similar facilities.

(e) Franchisee shall adhere to all building and zoning codes currently or hereafter in effect in the Township. Franchisee shall arrange its lines, cables and other appurtenances, on both public and private property, in such a manner as to cause no unreasonable interference with the use of said public or private property. In the event of such interference, the Township may require the removal and relocation of Franchisee's lines, cables and other appurtenances from the property in question at no cost to the Township.

### **3.3 SERVICE TO MULTIPLE DWELLING UNITS**

Franchisee and the Township hereto acknowledge and agree that installation and provision of Cable Service to Multi-Dwelling Units ("MDU's") are subject to, at the Township's option, separate negotiation between Landlord and Township any such MDU and Franchisee, which negotiations shall be conducted in accordance with the procedures set forth in the Cable Act, applicable FCC regulations, the Pennsylvania Landlord-Tenant Act, as amended, and the applicable provisions of 68 P.S. § 250.501-B et seq.

### **3.4 PERMITS**

Franchisee shall apply to the Township for all required permits and shall not undertake any activities in the public rights-of-way subject to a permit without receipt of such permit, issuance of which shall not be unreasonably withheld by the Township. Franchisee shall pay a franchise fee pursuant to Section 2 above and not be required to pay any permit fees. The Township shall waive any applicable permit application fee, provided, however, Franchisee shall pay any and all required inspection fees when the work performed pursuant to the applicable permit requires inspection(s) by the Township

or its agents. Further, Franchisee shall provide two (2) business days advanced written notice to the Township Manager prior to commencing any work pursuant to a permit.

### **3.5 REPAIRS AND RESTORATION**

(a) Whenever Franchisee or any agent, including any subcontractor, takes up or disturbs any pavement, sidewalk or other improvement of any public or private way or place, the same shall be replaced and the surface restored in as good condition as before the disturbance within ten (10) business days of the completion of the disturbance. Subject to Section 9.1 of this Agreement, upon failure of Franchisee to comply within the time specified, the Township may cause proper restoration and repairs to be made and the expense of such work shall be paid by Franchisee upon demand by the Township along with any monetary fines applied by the Township in accordance with Section 9 “Franchise Violations, Damages and Revocation” below.

(b) Whenever Franchisee or any agent, including any subcontractor, shall install, operate or maintain equipment, cable, or wires, it shall avoid damage and injury to property, including structures, improvements and trees in and along the routes authorized by the Township, except as may be approved by the Township if required for the proper installation, operation and maintenance of such equipment, cable, or wires. Franchisee shall promptly repair and restore any private property that is damaged as a result of construction, installation, repair or maintenance of the Cable System within ten (10) business days.

(c) Franchisee’s operating, construction, repair and maintenance personnel, including all agents and subcontractors, shall be trained in the use of all equipment and the safe operation of vehicles. Franchisee’s operating, construction, repair and maintenance personnel shall follow all safety procedures required by all applicable federal, state and local laws and regulations. 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 may be corrected before they become a hazard. Franchisee shall install and maintain its wires, cables,

fixtures, and other equipment in such a manner as shall not interfere with any installations of the Township or any public utility serving the Township.

(d) Whenever Franchisee or any agent, including any subcontractor, shall disturb any pavement, sidewalk or other public property in order to perform any underground activity, it shall utilize the Pennsylvania One Call System prior to any such disturbance. It shall notify the Pennsylvania One Call System no less than three (3) and no more than ten (10) working days in advance of any such disturbance and adhere to any additional requirements which the Commonwealth may establish in the future. Franchisee shall also adhere to all requirements of the Pennsylvania Underground Utility Line Protection Act.

(e) All structures and all lines, equipment and connections in, over, under, and upon streets, sidewalks, alleys, and public and private ways and places of the Township, wherever situated or located, shall at all times be kept and maintained in a safe and suitable condition and in good order and repair. Franchisee shall not keep or maintain disconnected or loose cables, lines, or wires on utility poles or anywhere else in the public rights-of-way.

(f) Franchisee shall notify property owners adjacent to the Public Rights-of- Way of impending construction that requires a permit in the manner required by the general provisions of the Township Ordinances and Regulations, including this Agreement.

### **3.6 SYSTEM MONITORING**

Within sixty (60) days of completing any construction, and otherwise on an annual basis, Franchisee shall conduct signal monitoring and system performance tests in accordance with the regulations of the FCC. Such capability shall enable Franchisee to monitor the signal quality of all channels delivered on the Cable System.

### **3.7 SERVICE AREA MAPS**

Franchisee shall within thirty (30) days, provide to the Township for its exclusive use and shall maintain at its local offices a complete set of Franchisee service area maps of the Township, on which will be shown the type of facilities that Franchises maintains

in the Township, those areas in which its facilities exist, and the location of all streets. Such maps shall be updated and made available to the Township for inspection upon reasonable advanced written notice.

### **3.8 BUILDING MOVES**

In accordance with applicable laws, Franchisee shall, upon the request of any person holding a building moving permit issued by the Township, temporarily raise or lower its wires to permit the moving of the building. Franchisee shall be given at least thirty (30) days advance notice to arrange for such temporary wire changes. If the building to be moved is owned or operated by the Township, Franchisee shall raise or lower its wires at no cost to the Township.

### **3.9 DISCONNECTION AND RELOCATION**

Franchisee shall, at no cost to the Township, protect, support, temporarily disconnect, relocate in the same street, or other public way and place, or remove from any street or any other public way or place, any of its property as required by the Township or its designee by reason of traffic conditions, public safety, street construction, change or establishment of street grade, or the construction of any public improvement or structure.

In requiring Franchisee to protect, support, temporarily disconnect, relocate or remove any portion of its property, the Township shall treat Franchisee the same as, and require no more of Franchisee than, any similarly situated entity.

### **3.10 EMERGENCY REMOVAL OF EQUIPMENT**

If, at any time, in case of fire or other disaster in the Township, it shall be necessary, in the reasonable judgment of the Township or its agent, to cut or move any of the wires, cable or equipment of the Cable System, the Township shall have the right to do so without cost or liability, provided that, wherever possible, the Township shall give Franchisee notice and the ability to relocate wires, cable or other equipment prior to any action by the Township with respect to such wires, cable, or equipment.

### **3.11 TREE TRIMMING**

Franchisee, or its agents, including subcontractors, shall have the authority to trim trees upon and overhanging public streets, alleys, sidewalks and the public rights-of-way so as to prevent the branches of such trees from coming in contact with the wires, cables or other equipment of Franchisee in accordance with applicable laws and regulations. Franchisee shall reasonably compensate the Township or other property owner for any damages caused by such tree trimming or removal. If Franchisee or its agents, including subcontractors, wish to cut down and remove any tree or trees as may be necessary for the installation and maintenance of its plant and/or equipment, it shall apply to the Township Board of Commissioners for permission and, if permission is granted, shall perform such cutting and removal in accordance with accepted arboreal standards and with the regulations of the Township. Franchisee shall notify adjacent property owners at least seven (7) days prior to any tree removal.

### **3.12 NON-DISCRIMINATION**

Franchisee shall not discriminate between or among any individuals in the availability of Cable Service based upon income in accordance with 47 U.S.C. § 541(a)(3) or based upon race or ethnicity.

## **SECTION 4**

### **SYSTEM SPECIFICATIONS AND STATE-OF-THE-ART**

#### **4.1 SYSTEM SPECIFICATIONS**

(a) Franchisee shall design, construct and maintain a Cable System covering the Township that utilizes fiber optic backbone connections from headend to hubs, hubs to hubs, and hubs to nodes. This Cable System shall be built for digital television standards with a bandwidth no less than 750 MHz and shall allocate sufficient portion of the bandwidth to deliver reliable two-way Cable Services (the “Bandwidth”). The Bandwidth must be obtained within three (3) years after execution of this Agreement. The Cable System shall include nodes that serve no more than six hundred (600) dwellings on average.

(b) Franchisee reserves the right to alter, adjust, modify, rebuild, upgrade, redesign, or otherwise reconfigure the Cable System at any time during the term of the Agreement, provided that no alteration, adjustment, modification, rebuild, upgrade, redesign, or other reconfiguration of the Cable System shall have the effect of reducing the technical capabilities of the Cable System as set forth in Section 4.1(a) herein above.

## **4.2 SYSTEM TESTS AND INSPECTIONS**

Franchisee shall conduct the required system tests as follows:

(a) Franchisee shall be responsible for ensuring that its Cable System is designed, installed, and operated in a manner that fully complies with FCC technical standards, Subpart K, 47 C.F.R. §§ 76.601 – 76.617, as amended.

(b) In accordance with FCC Technical standards, Franchisee shall conduct complete performance tests of its Cable System at least twice each calendar year at intervals not to exceed seven months. The performance tests shall be directed at determining the extent to which the system complies with technical standards set forth in 47 C.F.R. § 76.605(a) regarding the transmission and reception capabilities of cable signals.

(c) In accordance with 47 C.F.R. § 76.614, Franchisee shall maintain performance test records on file for a period of two (2) years. Such records shall be made available to authorized representatives of the Township upon thirty (30) days' written request.

(d) In the event a proof-of-performance test reveals substandard performance readings, additional tests may be required by the Township until compliance with the technical standards is secured. Prior to requiring any additional testing pursuant to 47 C.F.R. § 76.601, the Township shall notify Franchisee in writing. The cable operator will then be allowed thirty (30) days to come into compliance and correct any perceived signal quality problems.

(e) The rights and obligations of the Township and Franchisee under this Section shall at all times be subject to applicable federal law and FCC regulation.

#### **4.3 EMERGENCY ALERT SYSTEM**

Franchisee shall comply with all emergency or disaster notification requirements in accordance with the Emergency Alert System (“EAS”) requirements of the FCC contained in 47 C.F.R. Part 11, “FCC Rules and Regulations, Emergency Alert System (EAS)” and cooperate with the Township in the formulation of an emergency alert plan to the extent required by federal and state law.

#### **4.4 STATE-OF-THE-ART**

(a) Franchisee and the Township acknowledge that the technology of Cable Systems is an evolving field. Franchisee’s Cable System in the Township shall be capable of offering Cable Services that are comparable to other Cable Systems owned or managed by Franchisee or its Affiliated Entities in the Commonwealth of Pennsylvania (“Comparable Systems”) pursuant to the terms of this Section. The Township may send a written notice to Franchisee, not to exceed one request every two (2) years, requesting information on Cable Services offered by such Comparable Systems. Within sixty (60) days of receiving such request, Franchisee shall provide the Township with information on any Cable Services that are offered in any of the Comparable Systems but not being offered in the Township, the percentage of total Subscribers in such Comparable Systems to whom such Cable Services are available, and when Franchisee anticipates making such Cable Services available in the Township.

(b) If the identified Cable Services are being offered by Franchisee and/or its Affiliated Entities to at least twenty-five percent (25%) of the total Subscribers in the Comparable Systems, then the Township may require that Franchisee make such Cable Services available in the Township. Should the Township determine that Franchisee shall commence provision of such Cable Services, then the Township and Franchisee shall enter into good faith discussions to negotiate a schedule for deployment of such Cable Services. The discussions shall take into consideration the benefits from the

provision of such Cable Services, the cost of implementing them in the Township, and the impact, if any, on Subscriber rates.

**SECTION 5**  
**CUSTOMER SERVICE STANDARDS**

**5.1 OFFICE HOURS AND TELEPHONE AVAILABILITY**

(a) Franchisee shall maintain a business office that is conveniently located and which shall be open during Normal Business Hours. The term “Normal Business Hours” is defined in Section 14 “Definitions” below.

(b) Franchisee shall provide and maintain a toll free telephone access line that will be available to Subscribers twenty-four (24) hours a day, seven (7) days a week. Trained representatives shall be available to respond to customer telephone inquiries during Normal Business Hours. After Normal Business Hours, the access line may be answered by a service or an automated response system. Inquiries received after Normal Business Hours must be responded to by a trained company representative on the next business day.

(c) Under Normal Operating Conditions, telephone answering time by a customer representative, including wait time, shall not exceed thirty (30) seconds after the connection is made. If the call needs to be transferred, transfer time shall not exceed thirty (30) seconds. These standards shall be met no less than ninety (90) percent of the time under Normal Operating Conditions measured on a quarterly basis. The term “Normal Operating Conditions” is defined in Section 14 “Definitions” below.

(d) Under Normal Operating Conditions, the customer shall receive a busy signal less than three (3) percent of the time.

(e) Franchisee shall not be required to acquire equipment or perform surveys to measure compliance with the telephone answering requirements above unless a historical record of complaints indicates a clear failure to comply. If the Township determines, after receiving complaints itself and/or receiving a record of complaints made to

Franchisee in accordance with Section 9 below, that there is a clear failure to comply with the telephone answering requirements above, the Township shall notify Franchisee that it must measure its compliance with these requirements for the next ninety (90) days and report to the Township with its results.

## **5.2 INSTALLATIONS AND SERVICE CALLS**

(a) Franchisee shall maintain a competent staff of trained employees sufficient to provide adequate and prompt service to its Subscribers. Any Franchisee employee or agent, including any subcontractor, who personally visits any residential dwelling shall display a photo identification badge. Any vehicle used for installation, operation or maintenance activities by any Franchisee employee or agent, including any subcontractor, shall prominently display the Franchisee's name and/or logo.

(b) Under Normal Operating Conditions, Standard installations will be performed within seven (7) business days after an order has been placed. "Standard" installations are those aerial installations that are located up to one hundred twenty-five (125) feet from the existing distribution system.

(c) Excluding conditions beyond its control, Franchisee shall begin working, on a Service Interruption promptly and in no event later than twenty-four (24) hours after the interruption becomes known and shall diligently pursue to completion. Notice of a Service Interruption of a single Subscriber shall give rise to this obligation on behalf of Franchisee. The term "Service Interruption" is defined in Section 14 "Definitions" below. All other service calls not affecting public health, safety or welfare shall occur within a maximum of forty-eight (48) hours after notice to Franchisee or scheduled at the convenience of the customer and shall be diligently pursued to completion.

(d) Upon scheduling of appointments with the customer for installations, service calls and other activities, Franchisee shall provide the customer with either a specific time or an "appointment window" of a maximum of four (4) hours during Normal Business Hours. Franchisee may schedule service calls and installation activities outside of Normal Business Hours for the express convenience of the customer.

(e) Franchisee may not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment. If, at any time, an installer or technician is running late, an attempt to contact the customer must be made prior to the time of the appointment. If the appointment must be rescheduled, it must be done so at a time that is convenient for the customer.

### **5.3 NOTICES**

(a) Franchisee shall provide written notice to each Subscriber upon initial subscription, at intervals not more than one (1) year thereafter to each Subscriber and the Township, and at any time upon request, regarding each of the following areas:

- (1) Products and services offered;
- (2) Prices and options for programming services and conditions of subscription to programming and other services;
- (3) Channel positions and information regarding programming carried on the Cable System such that the programming information corresponds to the channel positions;
- (4) Installation and service maintenance policies;
- (5) Instructions on how to use the Cable Service and any converters;
- (6) Customer service requirements contained in the Section 76.309 of the Code of Federal Regulations;
- (7) Billing and customer complaint procedures;
- (8) Policy and procedures for disconnecting or terminating a Subscriber's service for cause;
- (9) Franchisee's address, telephone number and office hours;

(10) The Subscriber's right to obtain a parental control device contained in Section 10.5; and

(11) A notice of Subscriber privacy rights as required by federal law.

(b) Franchisee shall notify Subscribers and the Township in writing of any changes in rates, substantial changes in programming services or channel positions a minimum of thirty (30) days in advance of such changes. Franchisee shall not be required to provide prior notice to Subscribers of any rate change that is the result of a regulatory fee, franchise fee or any other fee, tax, assessment or charge of any kind imposed by any federal agency, the Commonwealth of Pennsylvania or the Township on the transaction between Franchisee and the Subscriber.

#### **5.4 BILLING**

(a) Bills shall be clear, concise and understandable. Bills must be fully itemized, with itemizations including, but not limited to, Basic Service Tier, Cable Programming Services Tier and Premium tier service charges, if applicable, equipment charges and any installation or repair charges. Bills shall state the billing period, including an effective due date, the amount of current billing and any relevant credits or past due balances.

(b) Franchisee shall not assess late fees for non-payment of a current bill until at least thirty (30) days have elapsed since the mailing of the bill by Franchisee.

(c) Franchisee shall provide its telephone number and address on Subscribers' bills unless the Township requests in writing to omit such information.

(d) Franchisee shall forward a copy of any Cable Service related billing inserts or other mailing sent to Subscribers to the Township upon request.

#### **5.5 CUSTOMER COMPLAINT PROCEDURES**

Franchisee shall establish clear written procedures for resolving all customer complaints, which shall include at least the following:

(a) Franchisee shall provide the customer with a written response to a written complaint within thirty (30) days of its receipt. Such response shall include the results of its inquiry into the subject matter of the complaint, its conclusions based on the inquiry, and its decision in response to the complaint.

(b) If the Township is contacted directly about a customer complaint, it shall notify Franchisee in writing. When Franchisee receives such notification, the time period for Franchisee to respond as required above shall commence.

(c) Any Subscriber who, in good faith, disputes all or part of any bill sent by Franchisee has the option of withholding the disputed amount, without a late fee, until Franchisee has investigated the dispute in good faith and has made a determination that the amount is owed provided that

(1) The Subscriber provides a written complaint to Franchisee in a timely fashion and includes identifying information;

(2) The Subscriber pays all undisputed charges; and

(3) The Subscriber cooperates in determining the appropriateness of the charges in dispute.

(d) Franchisee shall maintain customer complaint records, which shall contain the date each complaint is received, the name and address of the affected Subscriber, a description of the complaint, the date of resolution of the complaint, and a description of the resolution. Said records may be maintained electronically.

## **5.6 DISCONNECTION**

Franchisee may disconnect or terminate a Subscriber's service for cause:

(a) Franchisee will comply with all PUC regulations in regard to all regulated and non-regulated services.

(b) If Franchisee has provided at least ten (10) days written notice to the affected Subscriber prior to disconnection, specifying the effective date after which Cable Services are subject to disconnection; and

(c) If there is no pending written dispute with Franchisee regarding the bill; or

(d) If at any time and without notice, Franchisee determines in good faith that Subscriber has tampered with or abused Franchisee's equipment or is engaged in theft of Cable Service.

## **5.7 CREDIT FOR SERVICE OUTAGE**

In the event that there is a Service Interruption to any Subscriber for twelve (12) or more consecutive hours, except for those covered by Force Majeur, it shall grant such Subscriber, upon such Subscriber's written or oral request, 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 that is currently due.

## **5.8 PRIVACY**

(a) Franchisee shall protect and abide by the rights of privacy of every Subscriber and shall not violate such rights through the use of any device or signal associated with the Cable System. Franchisee shall at all times comply with the privacy provisions of Section 631 of the Cable Act and all other applicable federal and state privacy laws and regulations. All references to privacy in this Section are subject to the provisions of Public Law 107-56 (October 26, 2001), Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, known as the "USA PATRIOT ACT."

(b) Franchisee shall be responsible for carrying out and enforcing such privacy policy and shall at all times maintain adequate physical, technical and administrative security safeguards to ensure that personal Subscriber information is handled and protected strictly in accordance with this policy and all applicable laws and regulations.

(c) Except as otherwise provided under federal or state law, neither Franchisee nor its designee shall tap, monitor, arrange for the tapping or monitoring, or permit any person to tap or monitor, any cable, line, signal, input device, or Subscriber outlet or receiver for any purpose, without the prior written authorization of the affected Subscriber or user, provided, however, that Franchisee may conduct system-wide or individually addressed “sweeps” solely for the purpose of verifying system integrity, checking for illegal taps, controlling return-path transmission, billing for pay services or monitoring channel usage in a manner not inconsistent with the federal law. Franchisee shall not record or retain any information transmitted between a Subscriber and any third party, except as required for lawful business purposes.

(d) Except as permitted by Section 631 of the Cable Act as amended, neither Franchisee nor its designee nor its employees shall make available to any third party, including the Township, information concerning the viewing habits or subscription package decisions of any individual Subscriber. If a court authorizes or orders such disclosure, Franchisee shall notify the Subscriber prior to disclosure, unless such notification is otherwise prohibited by applicable law or the court.

(e) Upon a request by a Subscriber, Franchisee shall make available for inspection at a reasonable time and place all personal Subscriber information that Franchisee maintains regarding said Subscriber. 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.

(f) Franchisee shall not make its Subscriber list or lists, or any portion thereof, available to any other person or entity, with or without remuneration, except where expressly permitted by law

**SECTION 6**  
**SERVICES TO THE COMMUNITY**

**6.1 SERVICES TO COMMUNITY FACILITIES**

(a) Franchisee shall, at no charge to the Township, provide the following services to all present and future public facilities in Franchisee's service area as contained in *Exhibit "A"*:

(b) Within three (3) months of the Effective Date of this Agreement, one (1) cable drop, outlet and Basic and Expanded Basic Services (or equivalent) package to each building identified in Exhibit A. No charge shall be made for installation or service, except that Franchisee may charge for installation and service for more than one (1) drop in each building

**6.2 PAYMENT OF EXPENSES**

All advertising or printing fees or expenses incurred by the Township in connection with the preparation of this Agreement, preparation and passage of any resolution or ordinance authorizing execution of this Agreement and conducting any public hearing(s) associated therewith shall be paid by the Franchisee to the Township within thirty (30) days of written notice by the Township to the Franchisee. In addition, within the foregoing 30-day period, Franchisee shall pay the Township up to \$5,000.00 for legal costs associated with preparation of the ordinance authorizing execution of this Agreement and preparation of the public notice for any public hearing associated therewith.

**6.3 PEG CHANNEL**

Township reserves the right to obtain from Franchisee, upon ninety (90) days written notice, the use of one public, educational and/or governmental channel (PEG Channel) in accordance with Section 611 of the Cable Act for use by the Township. The PEG Channel shall be used for community programming related to public, educational and/or governmental activities. Its purpose is to contribute to an informed citizenry by,

among other things, showing local government at work, responding to local needs, and bringing education into the home. The Township shall have complete control over the content, scheduling, administration and all other aspects of the PEG Channel and may delegate such functions to an appropriate designee. Franchisee shall not exercise any editorial control over the PEG Channel programming.

**SECTION 7**  
**REGULATION BY TOWNSHIP**

**7.1 RIGHT TO INSPECT**

(a) The Township shall have the right, upon seven (7) business days written notice and during Normal Business Hours, to inspect at the notice location for Franchisee specified in Section 13.3 below all documents, records and other pertinent information maintained by Franchisee which relate to the terms of this Agreement.

(b) In addition, Franchisee shall maintain for inspection by the public and the Township all records required by the FCC and as specified in 47 C.F.R. §76.305 in the manner specified therein.

(c) Notwithstanding anything to the contrary set forth herein, all information specifically marked by Franchisee as proprietary or confidential in nature and furnished to the Township or its designated representatives shall be treated as confidential so long as permitted to do so under applicable law. Representatives and/or agents and/or designees of the Township may be required to execute a non-disclosure agreement prior to the provision by Franchisee of confidential information provided such representatives and/or agents and/or designees are permitted to do so under applicable law. Information and documentation marked by Franchisee as proprietary or confidential shall include a brief written explanation as to its proprietary nature or confidentiality subject to review by the Township. The Township and its officially designated representatives agree in advance to treat any such information or records which Franchisee reasonably deems would provide an unfair advantage for Franchisee's competitors (e.g., system design maps, engineering plans, programming contracts, etc.) as confidential so long as

permitted to do so under applicable law and only to disclose it to Township employees, agents, or representatives who have a need to know or in order to enforce the provisions of this Agreement. In the event a request is made by an individual or entity not an employee, agent or representative of the Township acting in their official capacity for information related to the Franchise and marked by Franchisee as confidential and/or proprietary, the Township shall notify Franchisee of such request. Franchisee shall not be required to provide Subscriber information in violation of Section 631 of the Cable Act, or information which is not relevant to regulation of the Franchise (e.g., employee files, tax returns, etc.).

## **7.2 RIGHT TO CONDUCT COMPLIANCE REVIEW**

The Township or its representatives may conduct a full compliance review, including possible public hearings, with respect to whether Franchisee has complied with any material term of this Agreement so long as it provides Franchisee with ten (10) days written notice in advance of the commencement of any such reviews or public hearings. Such compliance reviews may not be conducted more frequently than once in any twelve (12) month period.

## **7.3 RESERVED AUTHORITY**

The Township reserves the regulatory authority arising from the Cable Act, any amendments thereto, and any other relevant federal, state or local laws or regulations.

# **SECTION 8**

## **REPORTING REQUIREMENTS**

### **8.1 QUARTERLY FRANCHISE FEE REPORT**

In accordance with Section 2.3 of this Agreement, Franchisee shall accompany each quarterly franchise fee payment with a written report containing an accurate statement of Franchisee's Gross Revenues received for the quarter in connection with the operation of Franchisee's Cable System and a brief statement showing the basis for computation of fees. The statement shall contain a line item for every source of revenue

received and the amount of revenue received from each source. The report shall be verified by an authorized representative of Franchisee.

## **8.2 ANNUAL FINANCIAL REPORT**

Franchisee shall submit to the Township, not later than ninety (90) days after the completion of each fiscal year, a financial statement including a statement of income, balance sheet and a statement of sources and applications of funds related to the Township, which shall be certified by Franchisee's Chief Financial Officer in accordance with Generally Accepted Accounting Principles. The Franchisee may provide the Township with a copy of its annual 10K SEC filing in satisfaction of this Agreement.

## **8.3 QUARTERLY CUSTOMER COMPLAINT REPORT**

Upon written request, Franchisee shall submit to the Township on a quarterly basis a report showing the number of Complaints, as defined in Section 14 of "Definitions" below that have generated a work order or necessitated a response originating from the Township received during the reporting period. The report shall indicate the number of such Complaints, the dates they were received, summary descriptions of such Complaints, the dates such Complaints were resolved and summary descriptions of the resolutions.

## **8.4 GOVERNMENT REPORTS**

Franchisee shall provide to the Township, upon written request, copies of any and all communications, reports, documents, pleadings and notifications of any kind which Franchisee or any of its Affiliated Entities have submitted to any federal, state or local regulatory agencies, courts or other governmental bodies if such documents relate to Franchisee's Cable System within the Township. The term "Affiliated Entity" is defined in Section 14 "Definitions" below. Franchisee shall provide copies of such documents no later than thirty (30) days after their request if Franchisee marks any such documents as confidential and provides the Township with an explanation of its confidentiality, the Township shall treat such documents as confidential so long as it is permitted to do so under applicable law.

## **8.5 SYSTEM PERFORMANCE TEST REPORTS**

Upon written request, Franchisee shall submit to the Township its most recent system performance test reports of its Cable System in the Township as required by the FCC and Section 3.5 of this Agreement. These reports shall detail the results of the Franchisee's system performance tests.

## **SECTION 9**

### **FRANCHISE VIOLATIONS AND REVOCATION**

#### **9.1 VIOLATIONS**

(a) If the Township has reason to believe that Franchisee violated any provision of this Agreement, it shall notify Franchisee in writing of the nature of such violation and the Section of this Agreement that it believes has been violated. If the Township does not notify Franchisee of any violation of this Agreement, it shall not operate as a waiver of any rights of the Township hereunder or pursuant to applicable law.

(b) Franchisee shall have thirty (30) days to cure such violation after written notice is received by taking appropriate steps to comply with the terms of this Agreement. If the nature of the violation is such that, in the Township's reasonable judgment, it cannot be fully cured within thirty (30) days due to circumstances outside of Franchisee's control, the period of time in which Franchisee must cure the violation may be extended by the Township in writing for such additional time necessary to complete the cure, provided that Franchisee shall have promptly commenced to cure and is diligently pursuing its efforts to cure in the reasonable judgment of the Township.

(c) If the violation has not been cured within the time allowed under Section 9.1(b) above, then Franchisee shall be liable for liquidated damages and the Township's costs in accordance with Section 9.2 below.

## **9.2 LIQUIDATED DAMAGES**

Because Franchisee's failure to comply with provisions of this Agreement will result in injury to the Township and because it will be difficult to measure the extent of such injury, the Township may assess liquidated damages against Franchisee in the amount of three hundred dollars (\$300) per day for each day the violation continues, provided Franchisee has had an opportunity to cure in accordance with section 9.1(b). Such damages shall not be a substitute for specific performance by Franchisee but shall be in addition to such performance.

## **9.3 PERFORMANCE BOND**

(a) Franchisee shall obtain and maintain during the franchise term, at its sole cost and expense, a performance bond running to the Township with a company surety licensed to do business in the Commonwealth of Pennsylvania and satisfactory to the Township to ensure Franchisee's faithful performance of its obligations. The performance bond shall provide that the Township may recover from the principal and surety any and all liquidated damages and/or compensatory damages incurred by the Township for Franchisee's violations of this Agreement, after notice and opportunity to cure, in accordance with Section 9.1 and 9.2 above.

(b) The performance bond shall be in the amount of Thirty-Five Thousand Dollars (\$35,000). Franchisee shall not reduce, cancel or materially change said bond from the requirement contained herein without the express prior written permission of the Township.

## **9.4 REVOCATION**

(a) In addition to the other rights, powers and remedies retained by the Township under this Agreement, the Township reserves the separate and distinct right to revoke this franchise if:

(1) Franchisee practices any fraud or deceit upon the Township in its operation of its Cable System or any other activities pursuant to this Agreement;

(2) Franchisee seeks, or an involuntary case is brought against Franchisee seeking liquidation, reorganization, or other relief under any bankruptcy, insolvency or other similar law or seeking the appointment of a trustee, receiver, custodian or other similar official of a substantial part of Franchisee's property and such proceeding shall remain undismissed for a period of sixty (60) days.

(3) Subject to the limitations contained in Section 12.1, Franchisee transfers, assigns or changes the control of this franchise, the Cable System or any significant portion thereof, or more than twenty (20%) of the equitable ownership of the Cable System without the consent of the Township;

(4) Franchisee repeatedly fails, after notice and opportunity to cure, to maintain signal quality pursuant to the standards provided for by the FCC or the technical requirements set forth in Section 3.1 of this Agreement;

(5) Franchisee repeatedly violates, after notice and opportunity to cure, one or more of the material terms or conditions of this Agreement.

(d) The foregoing shall not constitute a violation of a material term or condition if the violation occurs without the fault of Franchisee or occurs as a result of circumstances beyond its control in the reasonable judgment of the Township. Franchisee shall not be excused from the performance of any of its obligations under this franchise by mere economic hardship or by the misfeasance or malfeasance of its directors, officers or employees.

(e) A revocation shall be declared only by a written decision of the Township Board of Commissioners after an appropriate public hearing that shall afford Franchisee due process and full opportunity to be heard and to respond to any notice of grounds to terminate. All notice requirements shall be met by providing Franchisee at least thirty (30) days prior written notice of any public hearing concerning the proposed revocation of this franchise. Such notice shall state the grounds for revocation. The Township Board of Commissioners, after a public hearing and upon finding the existence of grounds for revocation, may either declare this franchise terminated or excuse such

grounds upon a showing by Franchisee of mitigating circumstances or good cause for the existence of such grounds.

## **SECTION 10**

### **PROGRAMMING**

#### **10.1 CHANNEL CAPACITY**

Franchisee shall meet or exceed programming and channel capacity requirements set forth in this Agreement and required by federal, state and local law and regulations.

#### **10.2 BROADCAST CHANNELS**

To the extent required by federal law, Franchisee shall provide all Subscribers with Basic Service including, but not limited to: 1) all broadcast television signals carried in fulfillment of the requirements of Section 614 of the Cable Act; 2) qualified local non-commercial educational television signals; 3) PEG Channel (defined by Section 6.3 above) and 4) the Local Origination channel. All such signals shall be delivered to Subscribers in high quality resolution.

#### **10.3 SIGNAL SCRAMBLING**

Franchisee shall at all times comply with FCC regulations regarding scrambling or other encryption of audio and video signals.

#### **10.4 CONTINUITY OF SERVICE**

It shall be the right of all Subscribers to continue to receive service from Franchisee provided their financial and other obligations to Franchisee are honored. Subject to the force majeure provisions in Section 13 of this Agreement, Franchisee shall use commercially reasonable efforts to ensure that all Subscribers receive continuous, uninterrupted service regardless of the circumstances. For the purpose of construction, routine repairing or testing of the Cable System, Franchisee shall use commercially reasonable efforts to interrupt service only during periods of minimum use. When

necessary service interruptions of more than twenty-four (24) hours can be anticipated, Franchisee shall notify Subscribers in advance of such service interruption.

## **10.5 PARENTAL CONTROL CAPABILITY**

Upon request, Franchisee shall provide Subscribers with the capability to control the reception of any video and/or audio channel on the Cable System providing sexually explicit adult programming.

## **SECTION 11**

### **LIABILITY AND INDEMNIFICATION**

#### **11.1 INDEMNIFICATION**

Franchisee shall indemnify, defend, save and hold harmless the Township, its officers, agents and employees, from any and all claims for injury, loss, liability, cost or expense arising in whole or in part from, incident to or connected with any act or omission of Franchisee, its officers, agents or employees, including contractors and subcontractors, arising out of or in any way connected to, but not limited to, the construction, installation, upgrade, reconstruction, operation, maintenance or removal of the Cable System or any other equipment or facilities. The obligation to indemnify, defend, save and hold the Township harmless shall include, but not be limited to, the obligation to pay judgments, injuries, liabilities, damages, reasonable attorneys' fees, expert fees, court costs and all other costs of such indemnification.

#### **11.2 INSURANCE**

(a) Franchisee shall maintain insurance throughout the term of this Agreement with the Township as an additional primary insured, with an insurance company which is authorized to conduct business in Pennsylvania and which has an A.M. Best rating (or equivalent) no less than "A", indemnifying the Township from and against any and all claims for injury or damage to persons or property, both real and personal, caused by the construction, installation, reconstruction, operation, maintenance or removal of the Cable

System by Franchisee or any of its contractors, subcontractors, agents or employees in the following amounts:

- (1) The amount of such insurance against liability for damage to property shall be no less than Three Million Dollars (\$3,000,000) as to any one (1) occurrence.
- (2) The amount of such insurance against liability for injury or death to any person shall be no less than One Million Dollars (\$1,000,000).
- (3) The amount of such insurance for excess liability shall be Five Million Dollars (\$5,000,000) in umbrella form.
- (4) The amount of such insurance against all claims arising out of the operation of motor vehicles and general tort or contract liability shall be One Million Dollars (\$1,000,000).

(b) All insurance coverage shall be maintained throughout the period of this Agreement. All insurance policies shall contain a provision that the Township will receive thirty (30) days written notice prior to any changes or cancellation of the policy. All expenses incurred for said insurance shall be at no cost to the Township.

(c) An insurance policy or policies and necessary endorsements evidencing the insurance coverage required herein shall be provided by Franchisee to the Township within thirty (30) days of the Effective Date of this Agreement.

## **SECTION 12**

### **FRANCHISE TRANSFER AND RENEWAL**

#### **12.1 TRANSFER, ASSIGNMENT OR CHANGE IN CONTROL**

(a) Neither Franchisee nor its parent nor any Affiliated Entity shall transfer, assign or otherwise encumber, through its own action or by operation of law, its right, title or interest in the Cable System or in this Agreement without the prior written consent

of the Township, except for financial actions that do not result in a change of control or ownership.

(b) Neither Franchisee nor its parent nor any Affiliated Entity shall change, transfer or assign, through its own action or by operation of law, its control of the Cable System or of this Agreement without the prior written consent of the Township.

(c) Neither Franchisee nor its parent nor any Affiliated Entity shall sell, convey, transfer, exchange or release more than twenty percent (20%) of its equitable ownership in the Cable System without the prior written consent of the Township.

(d) Franchisee shall make written application to the Township of any transfer, change in control or assignment as described above and shall provide all information required by FCC Form 394 and any other applicable federal, state, and local statutes and regulations regarding transfer or assignment. The Township shall have one hundred twenty (120) days from the receipt of all required information to take action on the transfer or assignment. (e) Any consent by the Township for any transfer or assignment described above shall not be effective until the proposed transferee or assignee shall have executed a legally binding document stating that it shall be bound by all the terms and conditions contained in this Agreement.

(e) Any consent by the Township for any transfer or assignment described above shall not be effective until the proposed transferee or assignee shall have executed a legally binding document stating that it shall be bound by all the terms and conditions contained in this Agreement.

(f) No such prior written consent shall be required for a transfer to an Affiliated Entity. In the event of a transfer to an Affiliated Entity, Franchisee shall provide the Township with no less than thirty (30) days advance written notice of such transfer.

(g) In the event that Franchisee, its parent or any Affiliated Entity seeks approval of the Township for a transfer, assignment or change of control, Franchisee shall be

responsible for any and all reasonable attorneys' and/or consulting fees incurred by the Township up to \$5,000.00 relative to the transfer, assignment, or change of control.

(h) For the avoidance of doubt, Franchisee shall not be required to seek approval from the Township for the pending intracorporate transaction whereby this Agreement may be assigned by operation of law as a result of an intracorporate reorganization whereby Franchisee is merged into and with RCN Telecom Services (Lehigh) LLC, a newly formed Affiliated Entity of Franchisee organized under the laws of the State of Delaware; and provided further that notwithstanding the requirements of this Section 12 and provided that RCN Telecom (Lehigh) LLC accepts, in writing, to be bound by the terms and conditions of this Agreement, Franchisee shall not be required to seek approval from the Township for the pending transaction whereby control of Franchisee or its successor in interest is transferred to ABRY Partners, LLC.

## **12.2 RENEWAL**

The Township and Franchisee agree that any proceedings or activities that relate to the renewal of Franchisee's franchise shall be governed by applicable federal, state and local law.

## **SECTION 13** **MISCELLANEOUS**

### **13.1 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 of this Agreement during the continuance of such inability. The term "force majeure" as used herein shall have the following meaning: acts of God; acts of public enemies, including acts of terrorism, orders of any kind of the government of the United States of America or of the Commonwealth of Pennsylvania 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, explosions, and partial or entire failure of utilities.

### **13.2 REMOVAL OF SYSTEM**

(a) Subject to the requirements of applicable federal and/or state law, upon lawful termination or revocation of this Agreement or of any renewal hereof by passage of time or otherwise, Franchisee shall remove its supporting structures, poles, transmissions and distribution systems and other appurtenances from the streets, ways, lanes, alleys, parkways, bridges, highways, and other public and private 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 lawful termination or revocation, the Township or property owner may deem any property not removed as having been abandoned and the Township may remove it at Franchisee's cost.

(b) Subject to the requirements of applicable federal and/or state law, if during the term of the Agreement, if Franchisee decides to abandon or no longer use all or part of its Cable System, it shall give the Township written notice of its intent at least ninety (90) days prior to such decision, which notice shall describe the property and its location. The Township shall have the right to either require Franchisee to remove the property, remove the property itself and charge Franchisee with the costs related thereto, or transfer ownership of the property to the Township's designee provided fair market value is paid to Franchisee.

(c) Notwithstanding the above, Franchisee shall not be required to remove its Cable System, or to relocate the Cable System, or to sell the Cable System, or any portion thereof as a result of denial of renewal, revocation, or any other lawful action to forbid or disallow Franchisee from providing Cable Services, if the Cable System is actively being used to facilitate any other services not governed by Title VI of the Communications Act of 1934, as amended, or any portion thereof.

### **13.3 NOTICES**

Every notice or payment to be served upon or made to the Township shall be sent to:

Doug Bruce, Township Manager  
Bethlehem Township, Northampton County  
4225 Easton Avenue  
Bethlehem, PA 18020

With a copy to: Township Solicitor

James L. Broughal, Esquire  
Broughal & DeVito, L.L.P.  
38 W. Market Street  
Bethlehem, PA 18018-5796

The Township may specify any change of address in writing to Franchisee.

Every notice to be served upon Franchisee shall be sent to:

Randy Nungester VP, General Manager – PA Market  
RCN Telecom Services (Lehigh) LLC  
2124 Avenue C  
Bethlehem, PA 18017

With a copy to:

General Counsel  
RCN Telecom Services, Inc.  
President's Plaza 196  
196 Van Buren St., Suite 300  
Herndon, VA 20170

Franchisee may specify any changes of address in writing to the Township.

Each delivery to Franchisee or the Township shall be equivalent to direct personal notice, direction or order, and shall be deemed to have been given at the time of receipt.

### **13.4 EQUAL EMPLOYMENT OPPORTUNITY**

Franchisee is an equal opportunity employer and shall comply with all applicable federal and state laws and regulations regarding equal opportunity employment.

### **13.5 CAPTIONS**

The captions for sections throughout this Agreement are intended solely to facilitate reading and reference to the sections and provisions of this Agreement. Such captions shall not affect the meaning or interpretation of this Agreement.

### **13.6 GOVERNING LAW**

This Agreement shall be governed and construed by and in accordance with the laws of the Commonwealth of Pennsylvania. If suit is brought by a party to this Agreement, the parties agree that trial of such action shall be vested exclusively in the state courts of Pennsylvania, County of Northampton, or in the United States District Court for the Eastern District of Pennsylvania.

### **13.7 ENTIRE AGREEMENT**

This written instrument contains the entire, agreement between the parties, supersedes all prior agreements or proposals except as specifically incorporated herein, and cannot be changed without written amendment approved by both the Township and Franchisee.

### **13.8 SEVERABILITY**

If any section, provision or clause of this Agreement is held by a court of competent jurisdiction to be illegal, invalid or unenforceable, or is pre-empted by federal or state laws or regulations, such section, provision or clause shall be deemed to be severable from the remaining portions of this Agreement and shall not affect the legality, validity or enforceability of the remaining portions of this Agreement.

### **13.9 CHANGE OF LAW**

In the event there is a change in a federal or state statute or regulation applicable to the Cable System or to this Agreement, the Township or Franchisee may notify the other party of its desire to amend this Agreement in order to comply with the change in statute or regulation. The Township and Franchisee may amend this Agreement to

comply with such change in statute or regulation provided such amendment is approved by the Township and Franchisee.

### **13.10 APPLICABILITY OF AGREEMENT**

All of the provisions in this Agreement shall bind Franchisee, the Township and their respective successors and assigns. This Agreement is authorized by Ordinance No. \_\_\_\_\_ dated \_\_\_\_\_, 2020 of the Township.

### **SECTION 14**

#### **DEFINITIONS**

The following terms used in this franchise shall have the following meanings:

- (a) Affiliated Entity - Any corporation, partnership or other business entity that owns, controls, is owned or controlled by, or is under common ownership or control with Franchisee.
  
- (b) Basic Service - That service tier which shall include at least the retransmission of local broadcast television signals consistent with federal law, qualified local non-commercial educational television signals, PEG Channel and the local origination channel.
  
- (c) Broadcast - Over-the-air transmission by a television or radio station.
  
- (d) 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. Cable Service also includes internet access provided such service is deemed to be a cable service by the FCC or a court of competent jurisdiction.
  
- (e) 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 the Township, but such term does not include (A) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (B) a facility that serves Subscribers without using any public right-of-way; (C) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Cable Communications Act, except that such facility shall be considered a Cable System (other than for purposes of Section 521 of the Cable Communications Act) to the extent that facility is used in the transmission of video programming directly to Subscribers unless the extent of that use is solely to provide interactive on-demand services; (D) an open video system that complies with Section 653 of the Cable Communications Act; or (E) any facilities of any electric utility used solely for operating its electric utility systems.

(f) Complaint - Any written communication by a Subscriber expressing dissatisfaction with any aspect of Franchisee's business or the operation of its Cable System.

(g) Drop - The coaxial or fiber optic or other cable that connects a home or building to the Cable System.

(h) FCC - Federal Communications Commission.

(i) Gross Revenues - All revenue received directly or indirectly by Franchisee or its Affiliated Entities from any source whatsoever arising from, attributable to, or in any way derived from the operation of Franchisee's Cable System in the Township to provide Cable Services. Gross Revenues shall include, but are not limited to, the following:

- (1) Basic Service fees;
- (2) fees charged to Subscribers for any service tier other than Basic Service;
- (3) fees charged for premium services;
- (4) fees charged to Subscribers for any optional, per-channel or per program services;

- (5) revenue from the provision of any other Cable Services;
- (6) charges for installation, additional outlets, relocation, disconnection, reconnection and change-in-service fees for video or audio programming;
- (7) fees for downgrading any level of Cable Service programming;
- (8) fees for “trouble calls;”
- (9) fees for leasing of channels;
- (10) charges based on the sale or lease of any portion of the Cable System or fiber capacity;
- (11) rental or sales of any and all equipment, including converters and remote control devices;
- (12) studio rental, production equipment and personnel fees;
- (13) any and all advertising revenues *pro rata* to the Township;
- (14) fees charged for use of any equipment, including cable transmission wires, by any other entity;
- (15) sale or rental of Subscriber lists;
- (16) revenues or commissions from home shopping channels;
- (17) revenue from interactive television services;
- (18) fees for any and all music services where such, services are available to Subscribers as an optional service and/or on a subscription basis;
- (19) fees for video-on-demand;
- (20) sales of program guides;

(21) late payment fees;

(22) Franchise fees (excepting the 5% Franchise Fee required to be paid pursuant to this Agreement).

Gross Revenues shall not include bad debts; interest income; revenue of the Franchisee or any Affiliated Entity from the facilities of a common carrier, which is subject to Title 11 of the Communications Act, as amended; or any taxes on services furnished by Franchisee and imposed directly upon any Subscriber or user by the Township, state, federal or other governmental unit.

(j) Normal Business Hours - Those hours during which most similar businesses in the community are open to serve customers. In all cases, "Normal Business Hours" must include some evening hours at least one night per week and/or some weekend hours.

(k) Normal Operating Conditions - Business conditions within Franchisee's service department which are within the control of Franchisee. Those conditions that are not within the control of Franchisee include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages and severe or unusual weather conditions.

(l) Outlet - An interior receptacle that connects a television set to the Cable System.

(m) Programming - Any video, audio, text or data coded signal carried over the Cable System.

(n) Service Interruption - The loss of picture, text, data or sound on one (1) or more channels.

(o) Subscriber - A person or entity who contracts with Franchisee for, and lawfully receives, the video signals and Cable Services distributed by the Cable System.

**SECTION 15**  
**LOW INCOME SENIOR DISCOUNT**

Any qualified subscriber sixty-five years or older shall be eligible to receive and shall receive from Franchisee a discount in the manner described in Exhibit "B".

WITNESS our hands and official seals, this \_\_\_\_ day of June, 2020.

ATTEST:

TOWNSHIP OF BETHLEHEM,  
NORTHAMPTON COUNTY, PA

By: \_\_\_\_\_

By: \_\_\_\_\_

Doug Bruce, Township Manager

Michael Hudak, Chairman  
Board of Commissioners

Date: \_\_\_\_\_

Date: \_\_\_\_\_

RCN TELECOM SERVICES  
(LEHIGH) LLC

By: \_\_\_\_\_

Name:

Title:

Date: \_\_\_\_\_

**EXHIBIT "A"**

**LIST OF BUILDINGS / LOCATIONS IN BETHLEHEM TOWNSHIP TO  
RECEIVE CABLE SERVICES FROM RCN AT NO CHARGE:**

1. Bethlehem Township Municipal Building  
4225 Easton Avenue  
Bethlehem, Pennsylvania 18020
  
2. The Bethlehem Township Community Center  
2940 Farmersville Road  
Bethlehem, Pennsylvania 18020
  
3. Bethlehem Township Public Works Building  
4450 Falmer Road  
Bethlehem, Pennsylvania 18020
  
4. The Coolidge Building  
2740 Fifth Street  
Bethlehem, PA 18020
  
5. Physical Plant and Information Services Building  
Austin Wismer Conference Room  
3535 Orth Street  
Bethlehem, PA 18020; and,
  
6. Physical Plant and Information Services Building  
Director's Office  
3535 Orth Street  
Bethlehem, PA 18020

**EXHIBIT "B"**

**LOW INCOME SENIOR DISCOUNT**

EXHIBIT B

**SENIOR DISCOUNT FORM**

To Qualify for this discount:

1. Applicant's name must be on the account.
2. Applicant must be the head of household.
3. Applicant must be 65 years of age or above.
4. Applicant must provide proof of age.
5. Applicant must provide proof of income eligibility by submitting one of the following documents:
  - a.) Supplemental Security Income
  - b.) Veterans Service Benefits
  - c.) PACE or PACENET Medical Card
  - d.) Medicaid Medical Card

Discount is not applicable to promotional rates, currently discounted rates and/or Bundled Services.

Discount is \$2.00 off Limited Basic Service or \$4.00 off Full Channel Lineup Service.

We appreciate your patronage!

Please return the bottom portion in the enclosed envelope with the required documents.

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I declare there is not more than one other person under the age of 65 residing at the above address with me. I further, and finally, declare that the foregoing statements made by me are true. I am aware that if any of the statements I have made are willfully false, I am subject to punishment to the extent allowed by law.

**SOCIAL SECURITY NUMBER:** \_\_\_\_\_

**SIGNATURE:** \_\_\_\_\_ **DATE:** \_\_\_\_\_