

# REQUEST FOR BOARD ACTION

## HENDERSON COUNTY BOARD OF COMMISSIONERS

**MEETING DATE:** December 5, 2005

**SUBJECT:** MediaCom Cable Franchise Agreement

**ATTACHMENTS:** Draft Version 7.1 – MediaCom/Henderson County Cable Franchise Agreement

### **SUMMARY OF REQUEST:**

John Crook, Chairman of the Cable Franchise Renewal Advisory Committee (CFRAC) and David Hutto, member of the CFRAC, will be present at the meeting to present and discuss several issues concerning the cable franchise renewal. Items to be discussed include an educational channel, status of the renewal process, and the processes forward to negotiate with MediaCom. Commissioners are welcome to ask about other issues concerning the franchise.

The Board may wish to take action concerning an educational channel and the selection of a person to negotiate on behalf of the County.

Franchise Agreement  
To Provide Cable Services

between

*County of Henderson*

and

*Mediacom Southeast LLC*

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***AGREEMENT***

This ***AGREEMENT***, executed as of the \_\_\_\_\_ (the "Effective Date") by and between **COUNTY OF HENDERSON** (hereinafter referred to as the "Franchising Authority"), and **MEDIACOM SOUTHEAST LLC, DBA Mediacom.**, a corporation duly organized and validly existing under the laws of the State of North Carolina, whose principal place of business is located at 719 Old Spartanburg Hwy., Hendersonville, NC 28792 (hereinafter referred to as the "Company"). For purposes of this Agreement, unless otherwise defined in this Agreement the capitalized terms, phrases, words, and their derivations shall have the meanings set forth in Appendix A.

***WITNESSETH:***

WHEREAS, pursuant to the Cable Communications Policy Act of 1984, the Cable Television Consumer Protection and Competition Act of 1992 (the "Cable Act"), and the Telecommunications Act of 1996 (the "Telcom Act"), all of which amend the Communications Act of 1934, the Congress established procedures and standards in order to, among other purposes, provide for the orderly renewal of cable television franchises, encourage the growth and development of cable systems, assure that cable communications companies provide and are encouraged to provide the widest possible diversity of services to the public, assure that access to cable service is not denied to any Person (as defined in Appendix A) because of the income of such Person, and restore the right of local franchising authorities to regulate cable television rates and to engage in other regulatory activities; and

WHEREAS, Company agrees to be bound by the terms and conditions of this Franchise Agreement as set forth herein and Chapter 74 of the Henderson County Code of Ordinances as amended;

WHEREAS, the Franchising Authority and the Company have negotiated the terms and conditions of this Franchise Agreement and the Franchising Authority finds those terms and conditions to be acceptable, in the public interest and consistent with the requirements of the County of Henderson Code of Ordinances; and

WHEREAS, the Franchising Authority intends to exercise the full scope of its governmental powers, including both its police power and contracting authority, to promote the public interest and to protect the health, safety and welfare of its citizens;

NOW, THEREFORE, in consideration of the foregoing clauses, which clauses are hereby made a part of this Agreement, the mutual covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby covenant and agree as follows:

## SECTION 1 GRANT OF AUTHORITY

- 1.1 Grant of Franchise. The Company is hereby granted a nonexclusive franchise (the "Franchise") to occupy and use the Streets, rights-of-ways and public ways within the Franchise Area, consisting of the entire geographic area within the cable franchise jurisdiction of Franchising Authority, in order to construct, operate, maintain, upgrade, repair and remove the System, and provide Services through the System, subject to the terms and conditions of this Agreement. This Franchise shall not be construed as any limitation upon the right of the Franchising Authority to grant to other persons rights, privileges, or authorities similar to the rights, privileges, and authorities herein set forth, to occupy and use the Streets, rights-of-ways and public ways within the Franchise Area. The Franchising Authority specifically reserves the right to grant at any time during the term of this Franchise Agreement or renewal thereof, if any, such additional Franchise Agreements for a cable communications system as it deems appropriate,
- 1.2 The Franchise and the right it grants to use and occupy the Public Rights-of-Way shall not be exclusive, and the Franchising Authority reserves the right to grant other franchises for similar uses or for other uses of the Public Rights-of-Way, or any portions thereof, to any Person, or to make any such use itself, at any time, with or without a franchise, subject to applicable state law, as such law may be subsequently amended from time to time.
- 1.3 Term of Franchise. The Franchise shall commence upon the Effective Date (as defined in Appendix A) and shall expire five (5) years after the Effective Date, unless the Franchise is renewed, pursuant to Section F-14 or the Franchise is sooner terminated pursuant to this Agreement.
- 1.4 Renewal. Any renewal of this Franchise shall be performed in accordance with Section 626 of the Cable Act.
- 1.5 Reservation of Authority. Nothing in this Agreement shall (i) abrogate the right of the Franchising Authority to perform any public works or public improvements of any description, (ii) be construed as a waiver of any codes or ordinances of the Franchising Authority or of the Franchising Authority's right to require the Company or any Person utilizing the System to secure the appropriate permits or authorizations for such use, or (iii) be construed as a waiver or release of the rights of the Franchising Authority in and to the Streets. In the event that all or part of the Streets within the Franchise Area are eliminated, discontinued and closed, the Franchise shall cease with respect to such Streets upon the effective date of the final action of the Franchising Authority with respect thereto.
- 1.6 Police Powers and Conflicts with Franchise. In accepting this Franchise, the Company acknowledges that its rights hereunder are subject to the police power of the Franchising Authority to adopt and enforce general franchises necessary to the safety and welfare of the public; and it agrees to comply with all applicable general laws and franchises enacted by the Franchising Authority pursuant to such power. Subject to its lawful police powers, the Franchising Authority may not, by franchise or otherwise, alter any of the Company's material rights, benefits, obligations or duties as specified in this Franchise. In the event of a conflict between any ordinance and this Franchise, the Franchise shall control,

provided, however, that the Company agrees that it is subject to the lawful police power of the Franchising Authority.

1.7 Local Office. Company shall establish and maintain a business office within Henderson County North Carolina which shall, at a minimum, be open to receive payments and customer equipment for the hours specified below. In this business office, Company shall provide adequately trained Service personnel, Customer Service personnel, telephone service, including a locally listed telephone number, and other equipment, as needed within the Area, to ensure timely, efficient and effective service to customers and for the purposes of receiving, addressing, and correcting inquiries, requests and complaints concerning all aspects of construction, installation, operation, and maintenance of the system and for the payment of customer service charges. This business office shall maintain normal operating hours as follows excluding National Holidays.

1.7.1 Business Hours: 8:30 AM-5:30 PM Monday-Friday  
9:00 AM-1:00 PM Saturday

1.7.2 Service Hours: 8:00 AM-7:00 PM Monday-Friday  
9:00 AM-1:00 PM Saturday

1.7.3 Local Customer Service Hours :  
7:00 AM –7:00 PM Monday - Saturday  
On call-24 hours per day, seven days a week

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1.7.5 During normal operating hours, upon customer request, Company will provide immediate access to local Supervisory Staff having authority to address and resolve customer complaints.

1.7.6 FCC Standards. If Company does not meet the busy standards in two (2) consecutive quarters the Company shall add a minimum of one telephone line or make other changes in order to satisfy the telephone busy standards. Company shall provide to the Franchising Authority periodic management data, including data from any service centers used by the Company related to compliance with the FCC's Standards for Customer Service. At such time as Company does not meet the FCC and/or the Ordinance requirements for repair for one quarter, Company shall take corrective action to ensure that such standards are met during the next quarter. At such time as the FCC no longer promulgates Consumer Service Standards the FCC standards in effect on the effective date of this Franchise will be in force.

1.7.7 Outages. For service interruptions of over four (4) hours and up to fourteen (14) days, the Company shall provide, upon request, a credit of one thirtieth (1/30) of one month's fees for affected services for each 24-hour period service is interrupted for four (4) or more hours. For service interruptions of over fourteen (14) days, the Company shall provide a credit of one month's fees for affected services. This provision shall not apply if the service interruption is the result of a cable system upgrade or rebuild. The Company shall provide written notice to subscribers' annually of the availability of credits for outages.

1.7.8 Repair Calls. Company shall offer subscribers repair service appointments in four-hour windows. Company will conduct repair calls as specified in Appendix E.

## **SECTION 2 THE SYSTEM**

### **2.1 The System and Its Operations**

- 2.1.1 **General Obligation.** The Company shall construct, operate, maintain, and upgrade the System to 860 MHz capacity within 12 months of final acceptance of this Agreement. The system shall comply with and be in accordance with the schedule and the other characteristics set forth in Appendix B.
- 2.1.2 The Company shall make Cable Service distributed over the Cable System available to every dwelling unit within the Service Area reaching the minimum density of at least twenty (20) dwelling units per mile at its published rates for Installation. For purposes of this calculation, density shall be determined by dividing total homes passed by any multiple of mileage to maximize the number of new potential dwelling units, at the sole discretion of the Franchising Authority. The Company may elect to provide Cable Service to areas not meeting the above standards. The construction requirements in this section do not apply to areas that are currently being served by another franchised cable operator.
- 2.1.3 **Service to New or Previously Unserved Single Family Dwellings.** The Company shall offer Cable Service to all new homes or previously unserved single dwellings located within 300 feet of Company's feeder cable at its published rates for standard Installation.
- 2.1.4 **Service to New Subdivisions.** Company shall make cable service available to dwelling units within the Franchising Authority where the dwelling unit is in an area which Company has completed construction of its facilities, where the minimum density is twenty (20) dwelling units per cable mile or greater, and provided such dwelling units are located within three hundred (300) feet of Company's distribution system and provided that Company can access the subdivision without paying an entrance fee or private right-of-way fee. A dwelling unit in a new subdivision shall be considered a dwelling unit if a dwelling unit foundation has been erected and electric or telephone facilities have been installed to provision electric or telephone service to said dwelling unit. Company shall extend such service within six (6) months of a request by a resident of the development.
- 2.1.5 On the request of subscriber(s) desiring service, Company shall prepare, at its cost, a technical evaluation and cost analysis to determine the cost of the plant extension required to provide service to the Subscriber from the closest point on the Cable System, consistent with Company's design criteria and the FCC's technical standards.
- 2.1.6 If a request for extension of service into an area requires the construction of cable plant, which does not pass at least twenty (20) potential subscribers per mile, Company and subscribers will each bear their proportionate share of construction costs. For example, if there are ten (10) dwelling units per mile, Company's share will equal  $10/20^{\text{th}}$  or one-half (1/2) of the cost of construction.

The remaining cost will be shared equally by each subscriber. This line extension formula shall also be applied to any portion of a mile, meeting proportionate density requirements. For example, if there are ten (10) dwelling units per one half mile, the Company shall construct the plant. The cost-sharing plan described above would be utilized if there were less than the proportionate share of dwelling units. Company shall have the right to determine the payment terms (including Payment in advance) for any Subscriber provided Cable Service under the foregoing cost-sharing plan.

- 2.1.7 The plant extension shall be measured from the nearest point of access to the then-existing Cable System pursuant to subsection 2.1.6 above. Such point of access shall be the nearest point that is located within the public streets or other public property. For the purpose of determining construction costs, the total strand or conduit shall exclude the drop cable necessary to serve individual subscriber premises. After completion of the project, should additional customers request and receive cable television service, the pro-rata shares shall be recalculated. Any new subscriber shall pay the new pro-rata share and all prior contributing subscribers shall receive appropriate refunds.
- 2.1.8 Commercial Service. Company shall continue to make available Cable Service to commercial businesses already lawfully receiving such services as of the commencement date of this Agreement, assuming such commercial businesses are current with Company billings, and shall, upon request, make service available to all commercial/industrial/institutional establishments served aerially which are located within 300 feet of the activated feeder cable at Company's standard installation rate expense. For non-standard installations served underground or for aerial extensions beyond 300 feet, Company shall, upon request, make service available on the basis of a cost-sharing arrangement as described hereinbefore in Subsection 2.1.6 including cost of material, labor, and easements. Company shall have the right to determine the payment terms (including payment in advance) for any subscriber provided Cable Service under the foregoing cost-sharing plan.
- 2.1.9 Service to Annexed Areas. Company shall offer Cable Service to any area described in any annexation passed after the Effective Date of this Franchise, within one (1) year after the effective date of such annexation, except that Cable Service shall not be required if similar existing Cable Service is in place or if the density of homes is less than that required in Section 2.
- 2.1.10 Additional Service. Company may elect to offer Cable Service to areas not meeting the above standards. The Company may impose an additional charge in excess of its regular installation charge for any Cable Service Installation requiring a service drop in excess of the above standards. This additional charge shall be computed on a time plus materials basis to be calculated on that portion of the Installation that is above and beyond 300 feet.
- 2.1.11 Testing Procedures; Technical Performance. Throughout the term of this Agreement, the Company shall operate and maintain the System in accordance with the testing procedures and the technical performance standards of the FCC in effect from time to time.



## 2.2 Requirements With Respect to Work on the System.

2.2.1 General Requirements. The Company shall comply with the terms set forth in Appendix C in connection with all work involved in the construction, operation, maintenance, repair, upgrade, and removal of the System, in addition to any other requirements or procedures reasonably specified by the Franchising Authority. All work involved in the construction, operation, maintenance, repair, upgrade, and removal of the System shall be performed in a safe, thorough and reliable manner using materials of good and durable quality. If, at any time, it is reasonably determined by the Franchising Authority or any other agency or authority of competent jurisdiction that any part of the System, including, without limitation, any means used to distribute Signals over or within the System, is harmful to the health or safety of any Person, then the Company shall, at its own cost and expense, promptly correct all such conditions.

2.2.2 Underground Installation. All installations shall be underground in those Areas where public utilities providing either telephone or electric service are underground at the time of installation. In Areas where either telephone or electric utility facilities are above ground at the time of installation, Company may install its service above ground, provided that at such time as those facilities are required to be placed underground by the Franchising Authority or are placed underground, the Company shall likewise place its services underground without additional cost to the Franchising Authority or the individual subscribers so served within the Area. Unless otherwise specified under local code, Company's Cable System, including drops, shall be placed underground at least twelve (12) inches deep. Where not otherwise required to be placed underground at least twelve (12) inches deep, the Company's system shall be located underground at the request of the adjacent property owner, provided that the excess cost over the aerial location shall be borne by the property owner making the request. All cable passing under streets or roadways shall be installed in conduit.

2.2.3 No Liability to Company or Affiliated Persons. Except for acts of willful misconduct or gross negligence, neither the Franchising Authority nor its officers, employees, agents, attorneys, consultants or independent contractors shall have any liability to the Company or any Affiliated Person for any liability as a result of or in connection with the protection, breaking through, movement, removal, alteration, or relocation of any part of the System by or on behalf of the Company or the Franchising Authority in connection with any emergency, public work, public improvement, alteration of any municipal structure, any change in the grade or line of any Street, or the elimination, discontinuation, and closing of any Street, as provided in this Agreement.

## **SECTION 3 SERVICE OBLIGATIONS**

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3.2 Programming Services. The Company shall offer to all Subscribers a diversity of video programming services.

3.3 No Discrimination. To the extent required by the Cable Act, neither the Company nor any Affiliated Person shall discriminate or permit discrimination between or among any Persons in the availability of Services. Further, the Company and each Affiliated Person shall ensure that access to any Service is not denied to any group of potential Subscribers because of the income of the residents of the area in which such group resides. It shall be the right of all Persons to receive continuously all available Services insofar as financial and other obligations to the Company are satisfied.

3.4 Service to Governmental and Institutional Facilities. The Company shall provide one free basic and expanded basic (i.e., analog broadcast programming, excluding all pay-per-view and premium channels) Cable Service hook up, including associated drop wiring, to all governmental and institutional facilities located in the Franchise Area within 300 feet of Company's energized feeder cable:

3.5 Service to Governmental and Institutional Facilities.

3.5.1 Within thirty (30) days following the Effective Date, Company shall provide one cable drop Basic Service and Expanded Basic Service, and any necessary converter to receive such Services, to public, parochial and private accredited schools, (but not including home schools,) libraries and Franchising Authority administration buildings located in the Franchise Area at no cost to the Franchising Authority. During the Term of this Agreement, upon written request of the Franchising Authority, the Company shall provide the connection and Services described in this section 3.5.1 to Franchising Authority buildings and state accredited public schools and libraries within the Franchise Area which are within 300 feet of the Cable System distribution plant.

3.5.2 Internet Access. Company shall provide one connection for Internet access and one (1) cable modem at no cost to the Franchising Authority to each of the Franchising Authority buildings located in the Franchise Area... Such service shall be made available to the Franchising Authority subject to the same service standards and restrictions as specified in Company's service agreement with residential customers. The Franchising Authority agrees to reimburse the Company for any reasonable costs that exceed standard installation of the cable modem in each facility. The Franchising Authority also agrees that it shall not operate a server off of the aforementioned cable modem connection.

3.5.3 Area Access Channels Required on Subscriber Network.

The Company shall reserve and maintain a minimum of five 6 MHz channels in the Area with upstream and down stream capability for the purpose of providing Area Access Channel programming as described in this and subsequent paragraphs.

The "Franchising Authority" as it is used in this Section 3.5 shall mean the combined Franchise Authorities of Henderson County, Fletcher, Hendersonville, Flat Rock, Laurel Park and Mills River, which shall hereinafter in Section 3.5 be referred to as the "Access Authority".

Access Authority may at its sole discretion assign day-to-day management authority of said Area Access Channels to an Area Access Channels Manager (AACM).

a. Public Education

AACM may, at the direction of the Access Authority, maintain a Studio and Channels Master Control facility for the Area public educational use at a location on Blue Ridge Community College's Henderson County campus. The Company shall provide and

maintain a 6 MHz channel for the carriage of educational programming from the BRCC facility back to the Company's headend. A corresponding, full-time channel shall also be required on the downstream portion of the subscriber network along with all associated processing equipment to make these circuits completely functional.

b. Government

Company shall provide and maintain a 6 MHz channel for the carriage of Area Government Programming from a location to be determined by Access Authority back to BRCC's Master Control facility. A corresponding, full-time channel shall also be required on the downstream portion of the subscriber network along with all associated processing equipment to make these circuits completely functional.

c. Additional Access Channels up to a total of five 6MHz channels for the Area shall be made available whenever the existing channel or channels are found to be in use with original non-repetitive programming for at least seven hours per day, five days per week over a continuous six-week period.

d. Origination capability is to be provided by the Company at no expense to the Access Authority or Subscribers and shall consist of all cable, demodulators, and signal processing equipment necessary to permit transportation of live or digital video programming from the previously described locations to the headend. Such capability shall be immediately available as of the effective date of this Agreement.

e. Area Access Channels made available to Access Authority shall be in addition to any capacity provided Access Authority for other purposes.

f. The Company shall provide Area Access Channels on the lowest level of service throughout the life of the Franchise, or if there is no basic tier (*e.g.*, if a basic tier is not required by federal law and federal law does not prohibit the Access Authority from requiring a basic tier and the Access Authority imposes the same requirements on all Cable Service providers in the Access Authority over which the Access Authority has jurisdiction to do so), the Company shall provide the Area Access Channels as part of the Cable Service provided to any Subscriber, at no additional charge, and so that the channels are viewable by the Subscriber without the need for additional equipment. If Channels are selected through a menu system, the Area Access Channels shall be displayed as prominently as commercial programming choices offered by Company.

g. At such time as the Access Authority authorizes conversion of an analog Area Access Channel to digital format on the System, the Access Authority may request and the Company shall within six months migrate such Area Access Channel to digital format, and Company shall install such headend equipment as is necessary to cablecast in high definition format Area Access Channel programming produced in such format.

h. As the System migrates from analog to digital capability, the bandwidth represented by the total combined MHz capacity of the five 6 MHz channels reserved for Area Access Programming will remain available for Area Access Channel Programming regardless of the number of digital channels into which the analog capacity may translate.

i. Area Access channel assignments shall be the same throughout the System. Area Access channel assignments shall not be changed unless there is good cause and the Access

Authority consents to the change. Such consent to a channel assignment change shall not be unreasonably withheld. Any such reassignment must be to a Channel of technical quality at least equivalent to that of other Channels on the System excluding analog Channel 19. In the event of such a reassignment, Company shall pay the costs of all equipment reasonably required due to the reassignment, and shall provide notices to educate viewers as to the reassignment. The Company shall cover all cost of producing all new Channel ID's, logos, set pieces, and promotional materials for the new channel location incurred by the Educational or Governmental Channels. In the event Company makes any change in the Cable System and related equipment, or facilities or in its signal delivery technology, which would have a material adverse impact on the transmission or signal quality of Area Access Channel programming, the Company shall at its own expense take all necessary steps to ensure that, at a minimum, such quality is maintained at no less than the previous level.

j. Upon the conversion of the entire Cable System to digital transmission, the Company shall provide the Access Authority with Area Access Channel capacity for video programming that may be accessed by Subscribers through use of standard digital equipment compatible with the Company's Cable System using the Company's "on demand" capabilities. The Company shall provide storage capacity for up to at least twenty-five hours of on-demand Area Access Channel programming at any given time. The Access Authority and the Company may by mutual agreement arrange for additional capacity on terms to be determined at the time of agreement. If the Access Authority wishes to store additional programming on its own servers or facilities, the Company shall cooperate with the Access Authority in making such additional programming available through the same on-demand methods. Within thirty days after providing such capability, the Company shall provide the Access Authority with a real-time encoder that may be used to digitize Area Access Channel programming for use in this on-demand arrangement.

k. If Company makes changes to its Cable System that require additional equipment to deliver the Area Access Channel programming to Subscribers, Company shall make such equipment available.

l. The Access Authority agrees that its Area Access Channels and capacity are not to be used for any for-profit, commercial purposes by the Access Authority or third parties. Use of such channels or capacity is not "for profit" or "commercial" solely because an access programmer or Area Access Channel Manager has more revenues than expenses, or because the activity in which it is engaged is provided on a for-profit basis by private entities in other communities or the Access Authority. Nothing prevents the Access Authority from authorizing sponsorship of Area Access Channel programming in accordance with PBS and/or NPR guidelines or authorizing charges to users or viewers to pay for services such as fees for video class instruction or charges to recover the cost of special use equipment, or as they may be required to charge under applicable law.

#### 3.5.3.1 Capital Grant for Access Equipment and Facilities

a. The Company shall match all Area Access Authority capital support for Area Access Channel equipment and facilities over a two (2) year period beginning with the effective date of this agreement up to an amount by Company not to exceed \$335,000.

- b. Commencing in year (4), Company shall annually match all Area Access Authority capital support for Area Access Channel equipment and facilities in an amount by Company up to and not exceeding \$37,500 for the life of this agreement.
- c. Any additional annual grant provided for under Section 3.5.3.1.(b) shall be conditioned first upon a presentation of a future capital needs budget, and shall continue annually, provided however that if additional annual grants provided for under Section 3.5.3.1.(b) are not used within thirty-six (36) months, then all accumulated grants shall be returned to the grantors.
- d. Any grants provided for pursuant in Section 3.5.3.1 shall not be deducted from any franchise fee payments now due or owing to the Access Authority and such funds may not be included as line items on subscriber bills.

#### 3.5.3.2 Return Feed From Facilities

a. The Company shall connect the following Area Access Channel origination sites by dedicated fiber-optic upstream feeds to the headend, including both the fiber itself and all terminal equipment necessary for transmission of the signals for each access channel to be originated there in accordance with the schedule as Exhibit B.

(i) Master control room at Blue Ridge Community College.

(ii) Single connection point within one Access Authority facility as may be designated by Access Authority.

b. The dedicated connections required by this Paragraph 3.5.3.2 shall be designed and built to include all equipment, including but not limited to laser transmitters, receivers, modulators, and processors, drops and wiring, so that each such center can send signals to the headend on at least two channels initially and up to three additional channels if additional downstream channels are activated for Area Access Channel use; and so that each facilities can remotely and without assistance from the Company or access to its headend (i) receive signals from distant locations; (ii) route signals originated at that center or at other locations onto any of the access channels on the regular subscriber network; and (iii) otherwise control the signals to allow for smooth breaks, transitions, insertion of station IDs and other material. Company shall bear the cost of acquiring and maintaining all fiber and equipment necessary to meet this requirement, except that either the Access Authority or the owners of the sites shall be responsible for acquiring and maintaining the production equipment at the studio (as distinct from the headend) side of the connections for the locations listed in this Paragraph.

c. Company shall ensure that programming received via the upstream feeds is retransmitted as sent by the Area Access Channel programmer, without changing the attributes of the signal in such a way as to effectively degrade the output. The facilities and equipment provided would not be adequate if there would be more deterioration on channels set aside for Area Access Channel programming than on other channels on the cable system. Company specifically agrees to not use analog Channel 19 for Area Access Programming or any other channel whose frequency is known to be affected by external frequencies. Deterioration refers to any signal problem reflected in FCC technical standards, including, but not limited to, ghost images, digital noise, quantizing distortion, and other interference, distortions, degradation of chroma and luminance, and imperfections.

d. The company will provide a remote feed back to the BRCC master control facility for all access program origination sites.

#### 3.5.3.3 Management of Channels

a. The Access Authority may at any time designate one (1) or more entities, including a non-profit access management corporation, to perform any or all of the following functions:

(i) to manage any Area Access Channel;

(ii) to establish policies for the use of Area Access Channels and facilities; and/or

(iii) to manage any necessary scheduling or allocation of capacity.

3.6 Emergency Override. Throughout the term of the Franchise, the System will be equipped such that, in the event of an emergency, as determined by the Franchising Authority in accordance with federal law, audio Signals being distributed over the System shall be subject to interruption for the delivery of appropriate Signals necessitated by such emergency. The emergency override system will be operated in accordance with all rules and regulations issued by the Franchising Authority as permitted by applicable federal law.

#### 3.7 System Upgrade to State of the Art System.

3.7.1 Company agrees to and shall upgrade the current cable system in all Areas to a rating at least 860 MHz as described in Appendix B herein. The upgraded system shall be constructed to include standby power at the head end and at all optical transmitters node sites and optical receive node site. The upgraded system shall also include stand by power on all active components of the Hybrid Fiber Coaxial (HFC) network.

3.7.2 Company shall offer subscribers within the franchise area the same or superior broad categories of Cable Services, which are made available in any other cable system owned by Company.

3.7.2.1 Time for Rebuild and Upgrade. Company shall complete the rebuild required by this Agreement (including any customer equipment change-outs) no later than twelve months (12) months after the effective date of the Franchise.

3.7.3 Company shall continuously upgrade its System throughout the term of this agreement to be compatible with Current Technology.

3.7.4 At least sixty (60) days prior to the date any Rebuild is scheduled to commence, the Company shall present a Cable System design and Construction plan and timeline, which shall include at least the Design maps and fiber tree maps for the Cable System. The Cable System design will be shown on maps of industry standard scale using standard symbols, and shall depict all electronic and physical features of the cable plant. The Franchising Authority's review (or any action it takes with respect to the plan) shall not relieve Company of any of its obligations or increase the Company's obligations under this Franchise.

- 3.7.5 The Company shall perform all tests necessary to demonstrate compliance with the requirements of the Franchise and other performance standards established by law or regulation. All tests shall be conducted in accordance with federal rules. The Company shall perform at least the following tests: Preconstruction quality control on cable and equipment. The Company shall employ accepted industry procedures to assure the selection of quality system components. No component shall be used if it fails to meet manufacturer's specifications. The Company shall perform quality tests on the existing system components which will be reused in the Subscriber system Rebuild, including trunk, distribution, and drop cable, and any passive devices, such as taps and directional couplers, to ensure that each is capable of meeting required FCC technical standards.
- 3.7.6 The Company must respond to requests for information regarding its system and plans for the system as the Franchising Authority may from time to time issue, including requests for information regarding its plans for Upgrade, Rebuild, or system Construction. Such information and plans, if marked as confidential and proprietary when provided to the Franchising Authority, will be treated by the Franchising Authority as such to the maximum extent allowed by applicable law.
- 3.7.7 The Company shall perform acceptance tests on the Cable System at the conclusion of the Construction to demonstrate compliance with 47 C.F.R. 76 subpart K and to assure that the Cable System has been built in a manner consistent with this Franchise Agreement. The Franchising Authority will be permitted to witness the tests. Upon request, Company shall submit the test results to the Franchising Authority for review.
- 3.7.8 The Company shall select test points at various points within the system on an annual basis. The Company shall perform Proof of Performance Tests at these locations in conformance with testing required by 47 C.F.R. 76 subpart K through the life of the Franchise, and at other points where Cable System user complaints indicate tests are warranted.
- 3.7.9 The Franchising Authority may conduct inspections of the Company's Cable System during and after Construction. The Franchising Authority shall have the right to inspect the Cable System, Subscriber installations, and the Company's equipment used in the maintenance of that Cable System at any time to determine compliance with the Franchise Agreement, Enabling Ordinance, and applicable Federal, State and local laws. The Franchising Authority shall provide five (5) business days written notice to the Company of such inspection, which need not include the specific locations to be inspected. Any testing of the system necessary to accomplish such inspections shall only be performed in the presence of an authorized employee of the Company and only after reasonable advance notice to the Company. The Company shall schedule maintenance whenever possible so that activities likely to result in an interruption of service are performed during periods of minimum Subscriber use of the Cable System. The Company shall make best efforts to minimize interruptions of service consistent with reasonable and customary construction practices.

3.8. Analog Conversion. In the event that Company elects to convert the System to a 100% digital network and cease the provision of analog channels, then Company agrees to continue to provide analog service to customers throughout the conversion process, ensuring that the last converted customer will have had analog service available until that customer is converted to digital.

#### **SECTION 4 FEES AND CHARGES**

4.1 Rates, Fees and Charges. All rates, fees, charges, deposits and associated terms and conditions to be imposed by the Company for any Cable Service as of the Effective Date are published at least once annually. Thirty (30) days prior to any new or modified rate, fee, charge, deposit or associated term or condition, the Company will submit to the Franchising Authority a revised rate schedule reflecting the modification. Submission of a Company rate card which reflects all current rates, fees, charges, deposits and associated terms and conditions will satisfy the requirements of this section.

4.2 Prohibition Against Discrimination in Fees and Charges. To the extent required by the Cable Act, the Company:

(i) shall not discriminate or permit discrimination between or among any Persons in the rates, terms and conditions for any Cable Service, except as set forth below;

(ii) shall provide Cable Service to each resident at the same rates charged to all other residential Subscribers;

(iii) shall not require the subscription to any tier other than the Basic Service tier as a condition of access to video programming offered on a per channel or per program basis;

(iv) shall not discriminate between Subscribers to the Basic Service tier and other Subscribers with regard to the rates charged for video programming offered on a per Channel or per program basis.

The foregoing requirements shall not prevent the use of different charges for residential Subscribers than for nonresidential Subscribers; short-term sales promotions and other short-term discounts or reduced charges; reasonable discounts or reduced charges to senior citizens or other economically disadvantaged groups; or bulk rate arrangements

4.3 Franchising Authority's Regulation of Fees and Charges. Subject to the Company's rights under the Cable Act, the Franchising Authority reserves the right to regulate the rates, fees, charges, deposits and associated terms and conditions for any Service provided pursuant to this Agreement to the fullest extent permitted by applicable law. Should the FCC or federal law allow for the regulation of rates, then upon such change, the Franchising Authority reserves the right to adopt such rule or law change immediately. The Franchising Authority may establish rules and regulations in connection therewith from time to time. In connection with such regulation, the Franchising Authority shall comply with FCC rules and provide the public with an opportunity to comment.



**SECTION 5**  
**CONSUMER PROTECTION AND CUSTOMER SERVICE;**  
**SUBSCRIBER BILLS; AND PRIVACY PROTECTION**

5.1 Company shall adhere to the Customer Service Standards as provided for in Exhibit E attached hereto.

**SECTION 6**  
**COMPENSATION AND OTHER PAYMENTS**

6.1 Compensation to the Franchising Authority. As compensation for the Franchise, the Company shall pay, or cause to be paid, to the Franchising Authority the amounts set forth in this Section 6.1.

6.1.1 Franchise Fees -- Amount. The Company shall pay to the Franchising Authority a franchise fee in the amount of five percent (5%) of the Company's annual Gross Revenue derived from the provision of Cable Services in connection with the operation of the CATV system. As used herein and as further clarification, the definition of "Gross Revenue" from the provision of Cable Services shall not include:

1. Charges billed to subscribers but not collected;
2. Subscriber deposits on equipment furnished by the Company;
3. Subscriber refunds; or
4. Services not considered to be "Cable Services" as that term is defined by the federal Cable Act (47 U.S.C. §522(6)), including any amendments thereto.

6.1.2 Franchise Fees -- Payment. All such payments of franchise fees shall be made on a quarterly basis and shall be remitted simultaneously with the submission of the Company's quarterly report required pursuant to Section 6.1.3.

6.1.3 Company to Submit Franchise Fee Report. The Company shall submit to the Franchising Authority a report not later than thirty (30) days after the last day of each March, June, September, and December throughout the term of this Agreement setting forth the Gross Revenue for the quarter ending on said last day. Each report shall contain the Subscriber count and a descriptive and comprehensive breakout of Gross Revenue by Subscriber and non-Subscriber revenue category and shall be on the form provided in Appendix G as amended by the Franchising Authority from time to time or in a similar format approved in writing by the Responsible Franchising Official.

6.1.4 Franchise Fee Payments Subject to Audit; Remedy for Underpayment. No acceptance of any franchise fee payment by the Franchising Authority shall be construed as an accord and satisfaction that the amount paid is in fact the correct amount or a release of any claim that the Franchising Authority may have for further or additional sums payable under this Agreement, and all amounts paid shall be subject to audit and recomputation by the Franchising Authority from the commencement of this franchise. If, as a result of such audit or any other review, the Franchising Authority determines that the Company has underpaid its fees in any quarter by one percent (1%) in addition to making full payment of the relevant obligation, the Company shall reimburse the Franchising Authority for all of the reasonable

costs associated with the audit or review, including all reasonable out-of-pocket costs for attorneys, accountants, and other consultants.

6.2 Payments Not To Be Set Off Against Taxes or Vice Versa. The parties agree that the compensation and other payments to be made pursuant to this Section 6 and any other provision of this Agreement are not a tax and are not in the nature of a tax and are in addition to any and all taxes of general applicability which the Company shall be required to pay to the Franchising Authority.

6.3 Interest on Late Payments. If any payment required by this Agreement is not actually received by the Franchising Authority on or before the applicable date fixed in this Agreement or by the Franchising Authority, the Company shall pay interest thereon, from the due date to the date paid at a rate of one percent (1%) per month, compounded daily, for the period of delinquency.

6.4 Continuing Obligation. In the event the Company continues to operate all or any part of the System as a cable system providing Cable Service after the term of this Agreement, then the Company shall continue to comply with all applicable provisions of this Agreement, including, without limitation, all compensation and other payment provisions of this Agreement, throughout the period of such continued operation, provided that any such continued operation shall in no way be construed as a renewal or other extension of this Agreement or the Franchise.

6.5 Subscriber Coding Accuracy. Company shall, on a quarterly basis, reconcile its database to accurately code all customer accounts to the correct Local Franchising Authority. All such reconciliations shall be shared with each affected Local Franchising Authority and Company shall correctly remit any outstanding franchise fees and shall not deduct any overpayments due to Company's past incorrect coding errors. In the event that the Franchise Authority conducts an audit and determines that Company has failed to properly code any customer accounts, then in addition to remitting any underpayments with interest as provided for in this Agreement, Company shall also pay for the cost of the audit.

## **SECTION 7 OVERSIGHT AND REGULATION**

7.1 Franchising Authority's Right of Oversight. The Franchising Authority shall have the right to oversee, regulate, and periodically inspect the construction, operation, maintenance and upgrade of the System, and all parts thereof, in accordance with the provisions of this Agreement and applicable law, including the Franchising Authority's police power.

7.2 Reports. At the request of the Franchising Authority, the Company shall promptly submit to the Franchising Authority such information as the Franchising Authority may request regarding the Company, its compliance with any term or condition of this Agreement, with respect to the System or its operation, any Service distributed over the System, or any activity or function associated with the production or distribution of any Service over the System.

7.3 Company To Maintain Books, Records and Files

7.3.1 Books and Records. Throughout the term of the Agreement, the Company shall maintain at its principal place of business, or at an office in the Franchise territory in which the Franchise Area resides, or make available upon request of the Franchising Authority in the Franchise Area within thirty (30) business days, complete and accurate books of account and records regarding the Company's ownership and operation of the System and the provision of Services over the System, in a manner reasonably acceptable to the Franchising Authority, including without limitation, books of account and records adequate to enable the Company to demonstrate that it is, and throughout the term of this Agreement has been, in compliance with this Agreement. All such documents pertaining to financial matters which may be the subject of an audit by the Franchising Authority shall be retained by the Company for a minimum of two (2) years following termination of this Agreement.

7.3.2 File for Public Inspection. Throughout the term of this Agreement, the Company shall maintain, or make available, in a file available for public inspection during normal business hours, in the area in which the Franchise is located, those documents required pursuant to the FCC's rules and regulations.

7.3.3 Performance Evaluation. Upon the Franchising Authority's request, but not prior to one year after the franchise origination date and not more frequently than every year, the Company shall prepare a status presentation, to provide information to the Franchising Authority regarding system performance, customer service satisfaction, and future system and programming planning. If on evaluating the status presentation contents, the Franchising Authority determines that additional information is needed to complete the evaluation, the Company shall provide additional relevant data.

7.3.4 Annual Sessions. The Franchising Authority and the Company shall, upon thirty (30) days written notice from the Franchising Authority to the Company and at the discretion of the Franchising Authority, hold scheduled performance evaluation sessions annually. All such evaluation sessions shall be open to the public.

7.3.5 Special Sessions. Special evaluation sessions may be held at any time during the term of the Franchise at the request of the Franchising Authority, upon written notice by the Franchising Authority. Thirty (30) days written notice must be given to Company prior to the date of a special evaluation session, which notice shall provide a description of the subject matter to be discussed.

7.3.6 Topics for Review. Topics which may be discussed at any scheduled or special evaluation session may include, but not be limited to, system performance and construction, Company compliance with this Chapter and the Franchise, customer service and complaint response, subscriber privacy, services provided, programming offered, service rate structures, if applicable, Franchise Fees, penalties, free or discounted services, applications of new technologies, judicial and FCC filings, and line extensions.

7.3.7 Cooperation by Company. During the review and evaluation by the Franchising Authority, the Company shall fully cooperate with the Franchising Authority and shall provide such information and documents as the Franchising Authority may reasonably request to perform its review.

7.3.8 Response to Inquiries. The Franchising Authority may, at any time, make written inquiries, concerning the management and affairs of the Cable System. Company shall respond to such inquiries in a timely fashion.

7.3.9 Should the Franchise Authority determine that, based on the presentation and expressed community concerns, unsatisfactory or deficient quality or quantity of cable service or customer service is being provided, then the Company and the Franchising Authority shall enter into good faith negotiations to consider and determine a course of action to correct and improve service.

#### 7.4 Franchising Authority's Rights of Inspection and Audit

7.4.1 Right of Inspection -- General. Upon notice to the Company, the Franchising Authority or its designated representatives, shall have the right to examine, at the Company's offices or at such other place of business designated by the Company and located within the area all books and records pertaining to the Company's or any Affiliated Person's ownership or operation of the System or to the Company's provision of Services over the System. Further, during normal business hours and upon notice to the Company, the Franchising Authority or its designated representatives may inspect and examine any other aspect of the System, including facilities and equipment thereof.

7.4.2 Franchising Authority May Conduct Compliance Audit and Hearings. The Franchising Authority may conduct a full compliance audit and hold public hearings at any time during the term of the Franchise, provided it gives the Company written notice ten (10) days in advance of the commencement of such audits and associated hearings.

### **SECTION 8 RESTRICTIONS AGAINST ASSIGNMENTS AND OTHER TRANSFERS**

8.1 Transfer of Franchise or Interest Therein. Neither the Company nor any other Person may transfer the Franchise or any of the Company's rights or obligations in or regarding the System or the Franchise without the prior written consent of the Franchising Authority.

8.2 Transfer of Control. Subject to applicable federal law, no change in Control of the Company, the System or the Franchise shall occur after the Effective Date, by act of the Company or any Affiliated Person, by act of any Person holding Control of the Company, the System or the Franchise, by operation of law, or otherwise, without the prior written consent of the Franchising Authority, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, the prior consent of the Franchising Authority shall not be required with respect to solely intra-corporate reorganizations between or among entities wholly owned and wholly Controlled by Mediacom Communications Corp. to the extent such transaction does not involve a change in the management, day to day operations, or financial condition of the Company provided the Franchising Authority shall receive thirty (30) days advance written notice of such intra-corporate reorganization and additional information as may be reasonably required to confirm that the transfer is an intra-corporate reorganization.

8.3 Procedures. Any request for approval shall be handled by the Franchising Authority in accordance with its customary rules and procedures. In connection with any request for approval, the Company shall submit to the Franchising Authority such information as the Franchising Authority may reasonably request.

## **SECTION 9 SPECIFIC RIGHTS AND REMEDIES**

9.1 Not Exclusive. The Company agrees that the Franchising Authority shall have the specific rights and remedies set forth in this Section 9. These rights and remedies are in addition to any and all other rights or remedies, now or hereafter available to the Franchising Authority to enforce the provisions of this Agreement, and will not be deemed waived by the exercise of any other right or remedy. The exercise of any such right or remedy by the Franchising Authority shall not release the Company from its obligations or any liability under this Agreement, except as expressly provided for in this Agreement or as necessary to avoid duplicative recovery from or payments by the Company.

### 9.2 Events of Default

9.2.1 Grounds. The Company agrees that an Event of Default shall include, but shall not be limited to, any of the following acts or failures to act by the Company or any Affiliated Person:

(i) Any substantial failure to comply with any material provision of this Agreement that is not cured within thirty (30) days after notice pursuant to this Section 9;

(ii) The occurrence of any event which may reasonably lead to the foreclosure or other similar judicial or nonjudicial sale of all or any material part of the System;

(iii) The condemnation by a public authority other than the Franchising Authority, or sale or dedication under threat or in lieu of condemnation, of all or any part of the System, the effect of which would materially frustrate or impede the ability of the Company to carry out its obligations, and the purposes of this Agreement;

(iv) In the event that the Company shall suspend, discontinue, or abandon its business;

(v) If there shall occur any denial, forfeiture or revocation by any federal, state or local governmental authority of any authorization required by law to operate the System or the expiration without renewal of any such authorization, and such events either individually or in the aggregate, materially disrupt the System or its operation;

(vi) A persistent failure by the Company or its Guarantor(s), as applicable, to substantially comply with the material provisions, terms or conditions of this Agreement or with any material and lawful rules, regulations, and orders of the Franchising Authority after having received notice of a failure to comply; or

(vii) The Company fails to comply with any of the actions described in Sections 8.1 and 8.2, which require prior express written consent of the Franchising Authority.

(viii) The Company becomes insolvent, unable or unwilling to pay its lawfully determined debts, or is adjudged a bankrupt.

9.2.2 Franchising Authority Action Upon Occurrence of Event of Default. Upon the occurrence of an Event of Default, then, in accordance with the procedures provided in Section 9.2.3, the Franchising Authority may, at any time during the term of this Agreement:

(i) Seek from the Company money damages directly caused by such Event of Default;  
and/or

(ii) Revoke the Franchise by termination of this Agreement pursuant to this Section 9. Upon the occurrence of an Event of Default under Section 9.2.1(vii), the court's determination shall be deemed a final determination by the Franchising Authority under Section 9.2.3 and in addition to pursuing any of the actions set forth in this Section 9.2.2, the Franchising Authority may issue a directive to correct such conditions, consistent with this Agreement and the determination of the court, without following the procedural requirements of Section 9.2.3.

9.2.3 Breach Procedures. The Franchising Authority shall exercise the rights provided in Section 9.2.2 in accordance with the procedures set forth below:

(i) The Responsible Franchising Official shall notify the Company, in writing, of an alleged Event of Default, which notice shall specify the alleged Event of Default with reasonable particularity. The Company shall, within fifteen (15) days after receipt of such notice or such longer period of time as the Responsible Franchising Official may specify in such notice, either cure such alleged Event of Default or, in a written response to the Responsible Franchising Official, either present facts and arguments in refutation or excuse of such alleged Event of Default or state that such alleged Event of Default will be cured and set forth the method and time schedule for accomplishing such cure.

(ii) The Responsible Franchising Official shall determine (A) whether an Event of Default has occurred; (B) whether such Event of Default is excusable; and (C) whether such Event of Default has been cured or will be cured by the Company.

(iii) If the Responsible Franchising Official determines that an Event of Default has occurred and that such Event of Default is not excusable and has not been or will not be cured by the Company in a manner and in accordance with a schedule reasonably satisfactory to the Responsible Franchising Official, then the Responsible Franchising Official shall prepare a written report which may recommend the action to be taken by the Franchising Authority's governing body. The Franchising Authority shall provide notice and a copy of such report to the Company. The Company shall have the right to submit within fifteen (15) days of receipt of such report additional written evidence and information to the Franchising Authority in support of its position. In the event that the Franchising Authority's governing body determines that such Event of Default has not occurred, or that such Event of Default either has been or will be cured in a manner and in accordance with a schedule reasonably satisfactory to the Franchising Authority's governing body, or that such Event of Default is excusable, such determination shall conclude the investigation. Otherwise, the Franchising Authority shall after at least ten (10) days written notice, conduct a hearing at which the Company shall have the right to present written and oral evidence and to cross-examine witnesses and evidence relied upon by the Responsible Franchising Authority.

(iv) If after the hearing described in the preceding paragraph the Franchising Authority's governing body determines that such Event of Default has occurred, and that such Event of Default has not been and will not be cured in a manner and in accordance with a schedule reasonably satisfactory to the Franchising Authority's governing body, and that such Event of Default is not excusable, then the Franchising Authority may take any of the actions provided in Section 9.2.2.

9.3 Termination. In the event of any termination of this Agreement, whether by expiration, revocation or otherwise, the Company agrees to cooperate with the Franchising Authority or third party or to take other reasonable steps to maintain continuity in the distribution of services to subscribers over the System for a period of up to three (3) months.

9.4 Company's Obligations. In the event of any acquisition, transfer or Abandonment of the System, the Company shall promptly supply the Franchising Authority or third person with all records necessary to reflect the change in ownership and to operate and maintain the System.

## **SECTION 10 INSURANCE AND INDEMNITY AND BONDS**

### 10.1 Insurance

#### 10.1.1 Specifications.

(a) Liability Insurance. Throughout the term of this Agreement, the Company shall, at its own cost and expense, maintain a liability insurance policy or policies that are in an acceptable form to the Franchising Authority, together with evidence acceptable to the Franchising Authority demonstrating that the premiums for said policy or policies have been paid. Such policy or policies shall be issued by companies duly licensed to do business in the State of North Carolina and acceptable to the Franchising Authority. Such companies must carry a rating by Best of not less than "A". Such policy or policies shall insure (i) the Company and (ii) the Franchising Authority and its officers, boards, commissions, councils, elected officials, agents and employees (through appropriate endorsements if necessary) against each and every form of liability of the Company referred to in this Agreement in the minimum combined amount of One Million Dollars (\$1,000,000) for bodily injury and property damage. The foregoing minimum limitation shall not prohibit the Company from obtaining a liability insurance policy or policies in excess of such limitations, provided that the Franchising Authority, its officers, boards, commissions, councils, elected officials, agents and employees shall be named as additional insured to the full extent of any limitation contained in any such policy or policies obtained by the Company.

(b) Workers' Compensation. The Company shall ensure its compliance with the North Carolina Workers' Compensation Act and in that regard shall secure insurance to cover its obligations with respect to workers' compensation claims, or take other appropriate steps, which insurance and steps shall be in form and substance reasonably satisfactory to the Franchising Authority. The Company shall indemnify and hold harmless the Franchising Authority from any workers' compensation claims to which the Company may become subject during the term of this Agreement.

10.1.2 Maintenance. The liability insurance policies required by this Section 10.1.1 shall be maintained by the Company throughout the term of this Agreement and such other period of time during which the Company operates or is engaged in the removal of the System. Each such liability insurance policy shall contain the following endorsement: "It is hereby understood and agreed that this policy may not be canceled nor the intention not to renew be stated until sixty (60) days after receipt by the Franchising Authority, by registered mail, of a written notice of such intent to cancel or not to renew." Within forty-five (45) days after receipt by the Franchising Authority of said notice, and in no event later than fifteen (15) days

prior to said cancellation, the Company shall obtain and furnish to the Franchising Authority replacement insurance policies in a form reasonably acceptable to the Franchising Authority.

10.1.3 Increased Insurance Coverage. In the event of any changed circumstances following the Effective Date, if the Franchising Authority wishes to alter the minimum limitation of the liability insurance policy or policies required in this Section 10.1, then the Franchising Authority and the Company shall negotiate such alteration in good faith.

10.1.4 Liability Not Limited. The legal liability of the Company and any Affiliated Person to the Franchising Authority and any Person for any of the matters which are the subject of the liability insurance policies required by this Section 10.1, including, without limitation, the Company's indemnification obligations set forth in this Agreement, shall not be limited by such insurance policies nor by the recovery of any amounts thereunder, except to the extent necessary to avoid duplicative recovery from or payment by the Company.

## 10.2 Liability and Indemnity

10.2.1 No Liability for Damages. In accordance with Section 635A of the Cable Act (47 U.S.C. §555a), and except as to injunctive and declaratory relief, the Franchising Authority, its officers, employees, agents, attorneys, consultants and independent contractors shall have no liability to the Company, arising from the regulation of cable service or from a decision of approval or disapproval with respect to a grant, renewal, transfer, or amendment of a franchise. Any relief to the extent such relief is required by any other provision of Federal, State, or local law, shall be limited to injunctive relief and declaratory relief.

10.2.2 Indemnification of the Franchising Authority. The Company shall: (i) except as to intentional wrongful acts and gross negligence, defend, indemnify, and hold harmless the Franchising Authority, its officers, employees, agents, attorneys, consultants and independent contractors from and against all liabilities, special, incidental, consequential, punitive, and all other damage, cost, and expense (including reasonable attorneys' fees) arising out of or in connection with: (a) the award of this Franchise; (b) the construction, operation, maintenance, repair, upgrade or removal of, or any other action or event with respect to, the System or any activity or function associated with the production or distribution of any Service over the System; or (c) the distribution of any Service over the System; and (ii) cooperate with the Franchising Authority, by providing such non-financial assistance as may be requested by the Franchising Authority, in connection with any claim arising out of or in connection with the selection of Companies for, or the negotiation or award of, this Agreement. The Company shall have the right to defend or settle, at its own expense, any action or suit brought against the Franchising Authority for which Company is responsible hereunder. The Franchising Authority shall notify Company promptly in writing of any such claim, action or suit and shall cooperate with the Company in every reasonable way to facilitate the defense of any such claim.

10.3 Bond. Within thirty (30) days of acceptance of this franchise, Company shall furnish to the Franchising Authority a performance bond, which shall comply with the terms and provisions of the Cable Ordinance and this Agreement, which shall be in the minimum amount of \$350,000, while any system upgrade is in progress. Upon completion of the upgrade in the area, Company shall furnish to the Franchising Authority a performance bond, which shall comply with the terms and provisions of the Cable Ordinance and this Agreement, which shall be in the minimum amount of \$100,000



## **SECTION 11 MISCELLANEOUS**

11.1 Controlling Authorities. This Agreement is made with the understanding that its provisions are controlled by the Cable Act, other federal laws, state laws, and all applicable local laws, ordinances, and regulations.

11.2 Appendices. The Appendices to this Agreement, attached hereto, and all portions thereof and exhibits thereto, are, except as otherwise specified in such Appendices, incorporated herein by reference and expressly made a part of this Agreement.

11.3 Nonexclusive Franchise. The Franchise is nonexclusive. Nothing in this Agreement shall affect the right of the Franchising Authority to grant to any Person, or to itself, a franchise, consent, or right to occupy and use the Streets, or any part thereof, for the construction, operation, or maintenance of all or any part of a Cable System within the Franchise Area or for any other purpose.

11.4 Enforceability of Agreement; No Opposition. By execution of this Agreement, the Company acknowledges the validity of the terms and conditions of this Agreement under applicable law in existence on the Effective Date, and pledges it will not assert in any manner at any time or in any forum that this Agreement, the Franchise, or the processes and procedures pursuant to which this Agreement was entered into and the Franchise was granted are not consistent with the applicable law in existence on the Effective Date.

11.5 Entire Agreement. This Agreement, including all Appendices and Chapter 74 of the Henderson County Code of Ordinances embodies the entire understanding and agreement of the Franchising Authority and the Company with respect to the subject matter hereof and merges and supersedes all prior representations, agreements, and understandings, whether oral or written, between the Franchising Authority and the Company with respect to the subject matter hereof, including, without limitation, all prior drafts of this Agreement and any Appendix to this Agreement and any and all written or oral statements or representations by any official, employee, agent, attorney, consultant or independent contractor of the Franchising Authority or the Company. All ordinances or parts of ordinances or other agreements between the Company and the Franchising Authority that are in conflict with the provisions of this agreement are hereby declared invalid and superseded by the terms of this agreement.

11.6 Notices. All notices, reports, or demands required to be given to or served on the Franchising Authority and/or Company shall be in writing and shall be deemed to have been given when delivered personally to the persons designated below, or when seventy-two (72) hours have elapsed after being deposited in the United States mail in a sealed envelope, with registered or certified mail postage prepaid thereon, or on the next business day if sent by express mail or overnight air courier addressed to the party to which notice is being given, as:

**THE FRANCHISING AUTHORITY:**

County Manager  
Henderson County  
100 North King Street  
Hendersonville, NC 28792

COMPANY:

Mediacom Southeast LLC  
Legal Department: Bruce Gluckman  
100 Crystal Run Road  
Middletown, NY 10941

WITH A COPY TO:

Mediacom Southeast LLC  
Attn: Maggie Blythe, Senior Manager, Government Relations  
719 Old Spartanburg Hwy.  
Hendersonville, NC 28792

11.7 Additional Representations and Warranties. In addition to the representations, warranties, and covenants of the Company to the Franchising Authority set forth elsewhere herein, the Company represents and warrants to the Franchising Authority and covenants and agrees (which representations, warranties, covenants and agreements shall not be affected or waived by any inspection or examination made by or on behalf of the Franchising Authority) that, as of the Effective Date:

11.7.1 Organization, Standing and Authorization. The Company is a corporation duly organized, validly existing and in good standing under the laws of the State of North Carolina and is duly authorized to do business in the State of North Carolina and in the Franchise Area.

11.7.2 Compliance with Law. The Company is in substantial compliance with all laws, ordinances, decrees and governmental rules and regulations applicable to the System and has obtained all government licenses, permits, and authorizations necessary for the operation and maintenance of the System.

11.8 Maintenance of System in Good Working Order. Until the termination of this Agreement and the satisfaction in full by the Company of its obligations under this Agreement, in consideration of the Franchise, the Company agrees that it will maintain all of the material properties, assets and equipment of the System, and all such items added in connection with any upgrade, in good repair and proper working order and condition throughout the term of this Agreement.

11.9 Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted transferees and assigns. All of the provisions of this Agreement apply to the Company, its successors, and assigns.

11.10 No Waiver; Cumulative Remedies. No failure on the part of the Franchising Authority or the Company to exercise, and no delay in exercising, any right or remedy hereunder including, without limitation, the rights and remedies set forth in Section 9 of this Agreement, shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or remedy preclude any other right or remedy, all subject to the conditions and limitations established in this Agreement. The rights and remedies provided herein including, without limitation, the rights and remedies set forth in Section 9 of this Agreement, are cumulative and not exclusive of any remedies provided by law, and nothing contained in this Agreement shall impair any of the rights or remedies of the Franchising Authority under applicable law, subject in each case to the terms and conditions of this Agreement.

11.11 Severability. If any section, subsection, sentence, clause, phrase, or other portion of this Agreement is, for any reason, declared invalid, in whole or in part, by any court, agency, commission, legislative body, or other authority of competent jurisdiction, such portion shall be deemed a separate,

distinct, and independent portion. Such declaration shall not affect the validity of the remaining portions hereof, which other portions shall continue in full force and effect.

11.12 No Agency. The Company shall conduct the work to be performed pursuant to this Agreement as an independent contractor and not as an agent of the Franchising Authority.

11.13 Governing Law. This Agreement shall be deemed to be executed in County of Henderson, State of North Carolina, and shall be governed in all respects, including validity, interpretation and effect, and construed in accordance with, the laws of the State of North Carolina, as applicable to contracts entered into and to be performed entirely within that State.

11.14 Survival. All representations and warranties contained in this Agreement shall survive the term of the Agreement.

11.15 Claims Under Agreement. The Franchising Authority and the Company, agree that, except to the extent inconsistent with Section 635 of the Cable Act (47 U.S.C. §555), any and all claims asserted by or against the Franchising Authority arising under this Agreement or related thereto shall be heard and determined either in a court of the United States ("Federal Court") located in North Carolina or in a court of the State of North Carolina of appropriate jurisdiction. To effectuate this Agreement and intent, the Company agrees that if the Franchising Authority initiates any action against the Company in Federal Court or in a State court, service of process may be made on the Company either in person, wherever such Company may be found, or by registered mail addressed to the Company at its office designated for receipt of notices by the terms of this Agreement, or to such other address as the Company may provide to the Franchising Authority in writing.

11.16 Modification. Except as otherwise provided in this Agreement, any Appendix to this Agreement, or applicable law, no provision of this Agreement nor any Appendix to this Agreement, shall be amended or otherwise modified, in whole or in part, except by an instrument, in writing, duly executed by the Franchising Authority and the Company, which amendment shall be authorized on behalf of the Franchising Authority through the adoption of an appropriate resolution or order by the Franchising Authority, as required by applicable law.

11.17 Theft of Cable Services. It shall be unlawful for any person to make or use any unauthorized construction, whether physically, electronically, acoustically, inductively or otherwise with any part of the Company's cable television system for the purpose of enabling himself or others to receive or use any television signal, radio signal, program, picture or sound without payment to Company; and it shall further be unlawful for any person without the consent of Company to tamper willfully with, remove or injure any cables, wires or equipment used for distribution of such signals. Company agrees to make information and reports concerning theft of services available to the Franchising Authority upon request. The Cable Act has established maximum penalties of One Thousand Dollars (\$1,000) and six (6) months in jail for theft of cable services for private use. The Cable Act has established maximum penalties of Twenty-Five Thousand Dollars (\$25,000.00) and one (1) year for theft of cable service for commercial use or financial gain. The criminal penalties imposed by the Cable Act are not exclusive and do not abrogate criminal penalties or other sanctions authorized by state or local law, or local ordinance.

IN WITNESS WHEREOF, the party of the first part, by its \_\_\_\_\_, thereunto duly authorized by the appropriate governing body of said Franchising Authority, has caused the corporate name of said

Franchising Authority to be hereunto signed and the corporate seal of said Franchising Authority to be hereunto affixed and the Company, the party of the second part, by its officers thereunto duly authorized, has caused its name to be hereunto signed and its seal to be hereunto affixed as of the date and year first above written.

This \_\_\_\_\_ day of \_\_\_\_\_, 2005.

**HENDERSON COUNTY, NC**

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

Name:

Title:

(Seal)

Attest:

**MEDIACOM SOUTHEAST LLC**

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

Name:

Title:

(Seal)Attest:

## **APPENDIX A**

### **DEFINED TERMS**

*For purposes of the Agreement to which this Appendix A is appended, the following terms, phrases, words, and their derivations shall have the meanings set forth herein, unless the context clearly indicates that another meaning is intended.*

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**"Abandonment"** means: (i) the cessation, by act or failure to act of the Company of the provision of all, or substantially all, of the Services then being provided over the System to Subscribers or the Franchising Authority for twenty-four (24) or more consecutive hours, except if due to an event beyond the control of the Company; or (ii) the completion of any action described in Section 8.1 or 8.2 of the Agreement without the prior written consent of the Franchising Authority.

**"Affiliated Person"** means any Person who owns or Controls, is owned or Controlled by, or is under common ownership or Control with, the Company; provided that "Affiliated Person" shall in no event mean the Franchising Authority or the entity, if any, administering some or all of the PEG access Channels.

**"Access Channel"** means any channel on a cable system set aside by the Company for non-commercial public, local educational, and/or local governmental use and provided as part of the basic tier of service.

**"Agreement"** means the Agreement to which this Appendix A is appended, together with all Appendices attached thereto and all amendments or modifications thereto.

**"Area"** means the entire incorporated and unincorporated portions within the County as it is now constituted or may in the future be constituted.

**"Basic Service"** means any service tier which includes the retransmission of local television broadcast signals and any equipment or installation used in connection with Basic Service.

**"Cable Act"** means the Cable Communications Policy Act of 1984, 47 U.S.C. §§521-611 (1991) and any amendments thereto and the Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, 106 Stat. 1460 (1992), codified at 47 U.S.C. §§151-611 (1993) and any amendments thereto, both of which, among other things, are amendments to the Communications Act of 1934, 47 U.S.C. §§ 151-611 (1991).

**"Communications System"** means any facility, consisting of a set of closed transmission paths and associated signal generation, reception and control equipment, a function of which is to provide Cable Services and Non-cable Services by receiving through any means, including, without limitation, coaxial

cable, optical fiber, antenna, or satellite or microwave transmission, and distributing video, audio, voice, or data Signals, whether originating within the Franchise Area or elsewhere. The foregoing definition of "Communications System" shall not be deemed to circumscribe the valid authority of any governmental body, including the Franchising Authority, to regulate the activities of any other communications system or provider of communications services.

"**Cable Service**" means: (i) the one-way transmission to Subscribers of video programming or other programming service and (ii) Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service, as such term is defined in the Cable Act, including any amendments thereto.

"**Channel**" means a band of frequencies in the electromagnetic spectrum, or any other means of transmission (including, without limitation, optical fibers or any other means now available or that may become available), which is capable of carrying a video Signal, an audio Signal, a voice Signal, or a data Signal.

"**Company**" means Mediacom Southeast LLC, dba Mediacom., a corporation duly organized and validly existing under the laws of the State of North Carolina, whose principal place of business is located at 719 Old Spartanburg Hwy., Hendersonville, NC 28792

"**Control**" or "**Controlling Interest**" means actual working control in whatever manner exercised, including, without limitation, working control through ownership, management, debt instruments, or negative control, as the case may be, of the System, the Franchise or the Company.

"**Current Technology**" – means that technology that Company has deployed to at least 50% of its customers nationwide after the effective date of this Agreement.

"**Effective Date**" means the date upon which this Franchise and the rights, privileges and authority hereby granted shall take effect and be in force during the term of Franchise, as provided by law, and this Agreement. Such date shall be determined by and begin on the date the Company files with the Franchising Authority its unconditional acceptance of this Franchise and promise to comply with and abide by all its provisions, terms and conditions, provided that such unconditional acceptance is filed by the Company within ninety (90) days after the date on which the Franchising Authority approves this Agreement. Such acceptance and promise shall be in writing duly executed and sworn to, by or on behalf of the Company before a Notary Public or other officer authorized by law to administer oaths.

"**FCC**" means the Federal Communications Commission, its designee, or any successor thereto.

"**Franchise Area**" means all of that geographic area within the cable franchise jurisdiction of County of Henderson, as is more specifically described in Exhibit A, attached hereto.

"**Franchising Authority**" means County of Henderson, or, as appropriate in the case of specific provisions of this Agreement, any board, bureau, authority, agency, commission, department of, or any other entity of or acting on behalf of, Franchising Authority or any officer, official, employee, or agent thereof, any designee of any of the foregoing, or any successor thereto.

"**Gross Revenue**" shall mean any and all cash, credits, property or other consideration of any kind or nature derived from the operation of the Company's Cable System by the Company, its Affiliates, or any other entity that is a cable operator of the System to provide Cable Services, except where such revenues must be excluded pursuant to federal or state law. This definition shall be construed

so as to include all gross revenues to the maximum extent permitted by federal and state law, except to the extent specifically excluded herein and encompasses revenues that may develop in the future, whether or not anticipated. If a statutory change in federal law allows the Franchise Authority to receive greater franchise fees than under federal law as of the Effective Date, that change shall automatically be reflected in the franchise fees due under this Agreement, beginning as of the effective date of the change in federal law; provided that the Franchise Authority imposes the same fee requirement upon any other similarly situated multichannel video provider over which the Franchise Authority has jurisdiction to impose such fees.

Gross Revenues include, by way of illustration and not limitation, fees for any cable service; installation, disconnection, reconnection, and change-in-service fees; leased channel fees; late fees and administrative fees; fees, payments, launch fees, marketing support, or other payments or consideration received from programmers for carriage of programming on the System; revenues from rentals or sales of Converters or other equipment; studio rental, production equipment, and personnel fees; advertising revenues (including any commissions received by a third party); barter; revenues from program guides; and revenues from home shopping and bank-at-home channels.

Gross Revenues shall not include any taxes on services furnished by the Company which are imposed directly on any Subscriber or user by the state, Franchising Authority, or other governmental unit and which are collected by the Company on behalf of said governmental unit. A Franchise fee is not such a tax, and franchise fee expenses may not be deducted in determining the amount of the fee due to the Franchising Authority.

**"Normal Operating Conditions"** means an operating environment unaffected by unforeseen acts of God in the Area. Normal Operating Conditions shall not apply to planned system maintenance and outages caused by power company outages.

**"Pay Service"** means any Cable Service offered on a per Channel or per program basis.

**"Person"** means any natural person or any association, firm, partnership, joint venture, corporation, or other legally recognized entity, whether for-profit or not-for-profit, but shall not mean the Franchising Authority.

**"Responsible Franchising Official"** means the body, organization or official to whom the applicable rights or obligations have been delegated by the Franchising Authority pursuant to applicable law.

**"Service"** means any Cable Service including any Basic Service, or any other related service, including the provision of any equipment and any installation of equipment or facilities used in association with any Cable Service and monthly use thereof, whether originated by the Company or any other Person, which is offered to any Person in conjunction with, or distributed over, the System.

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

**"Signal"** means any transmission of radio frequency energy or of optical information.

**"Streets"** means the surface of, and the space above and below, any and all streets, avenues, highways, boulevards, concourses, driveways, bridges, tunnels, parks, parkways, waterways, docks, bulkheads, wharves, piers, public grounds and public places or waters within and belonging to the Franchising Authority and any other property within the Franchise Area to the extent to which there exist public easements or public rights of way.

**"Subscriber"** means any Person lawfully receiving any Cable Service provided by the Company by means of or in connection with the System, whether or not a fee is paid for such Service.

**"Subscriber Network"** means that portion of the System over which Services are provided primarily to residential Subscribers.

**"System"** means the Communications System as defined in this Agreement



## **APPENDIX B**

### ***SYSTEM CHARACTERISTICS***

#### **APPENDIX B SYSTEM CHARACTERISTICS**

A. System Characteristics and Activated Channels. The Company agrees that in consideration of the Franchising Authority's renewal of the Franchise, it will provide, no later than six (6) months from the Effective Date of this Agreement, a 860 MHz, two way System utilizing hybrid fiber coaxial ("HFC") architecture with an activated return path, providing a minimum of one hundred (100) activated video Channels providing a diverse selection of programming options to its Subscribers. The Company acknowledges that failure to complete such upgrade within the allotted eighteen (18) month time period shall constitute an Event of Default as defined in Section 9.2, and furthermore that such an Event of Default shall entitle the Franchising Authority to the actions accorded it in Section 9.2.2.

B. System Technical Standards. Throughout the term of this Agreement, the System shall be designed, maintained and operated such that quality and reliability of the Subscriber System Signal will be in compliance with Section 624A (Consumer Electronics Equipment Compatibility Standards) of the Cable Act as may be amended from time to time. In addition, the System headend and all system line amplifiers shall be designed and built to withstand power failures of up to two (2) hours in length.

C. Further Expansions. Company shall offer to Subscribers within the Area all Services and features satisfying the requirements of Section 3.7.3. Such Services and features shall be made available within sixty (60) days of their deployment to 50% of Company's customers nationwide.

## APPENDIX C

### ***GENERAL REQUIREMENTS FOR WORK ON THE SYSTEM***

#### *Licenses and Permits*

The Company shall have the sole responsibility for diligently obtaining, at its own cost and expense, all permits, licenses, or other forms of approval or authorization necessary to construct, operate, maintain, repair or upgrade the System, or any part thereof, prior to commencement of any such activity.

#### *New Grades or Lines*

If the grades or lines of any Street within the Franchise Area are changed pursuant to the lawful exercise of the jurisdiction and police power of the Franchising Authority at any time during the term of the Agreement, then the Company shall, at its own cost and expense and upon the request of the Franchising Authority, protect or promptly alter or relocate the System, or any part thereof, so as to conform with such new grades or lines. In the event that the Company refuses or neglects to so protect, alter, or relocate all or part of the System, the Franchising Authority shall have the right to break through, remove, alter, or relocate all or any part of the System without any liability to the Company and the Company shall pay to the Franchising Authority the costs incurred in connection with such breaking through, removal, alteration, or relocation.

#### *Protect Structures*

In connection with the construction, operation, maintenance, repair, upgrade, or removal of the System, the Company shall, at its own cost and expense, protect any and all existing structures belonging to the Franchising Authority and all designated landmarks. The Company shall obtain the prior approval of the Franchising Authority before altering any water main, sewerage or drainage system, or any other Franchising Authority structure in the Streets or roads because of the presence of the System in the Streets or roads. Any such alteration shall be made by the Company, at its sole cost and expense, and in a manner prescribed by the Franchising Authority. The Company agrees that it shall be liable, at its own cost and expense, to replace or repair and restore to serviceable condition, in a manner as may be specified by the Franchising Authority, any Street, road, or any Franchising Authority structure involved in the construction, operation, maintenance, repair, upgrade or removal of the System that may become disturbed or damaged as a result of any work thereon by or on behalf of the Company pursuant to the Agreement.

### *No Obstruction*

In connection with the construction, operation, upgrade, or removal of the System, the Company shall not obstruct traffic to, from, or within the Franchise Area without the prior consent of the appropriate authorities.

### *Movement of Wires*

The Company shall, upon prior written notice by the Franchising Authority or any Person holding a permit to move any structure, temporarily move its wires to permit the moving of said structure. The Company may impose a reasonable charge on any Person other than the Franchising Authority for any such movement of its wires.

### *Safety Precautions*

The Company shall, at its own cost and expense, undertake all necessary and appropriate efforts to prevent accidents at its work sites, including the placing and maintenance of proper guards, fences, barricades, watchmen, and suitable and sufficient lighting.

### *Moving Wires*

The Franchising Authority may, at any time, in case of fire, disaster, or other emergency, as determined by the Franchising Authority, in its sole discretion, cut or move any of the wires, cables, amplifiers, appliances, or other parts of the System, in which event the Franchising Authority shall not incur any liability to the Company, any Affiliated Person or any other Person. When possible, the Company shall be consulted prior to any such cutting or movement of its wires and be given the opportunity to perform such work itself. All costs to repair or replace such wires, cables, amplifiers, appliances or other parts of the System shall be borne by the Company.

**APPENDIX D**

***LEFT BLANK INTENTIONALLY***

## APPENDIX E

### *CUSTOMER SERVICE STANDARDS*

- E.1 Customer Service Standards. Company shall at all times comply with the more stringent of the provisions of the customer service and consumer protection provisions of a Cable Ordinance if applicable, this Franchise Agreement, and those from time to time adopted by the FCC. This requirement is in addition to the specific provisions of subsequent sections of Exhibit A.
- E.2 Undergrounding. For new installations, excluding locations where all utilities are underground, if a subscriber requests underground Cable Service, Company may in addition to the installation charge, which would otherwise apply, charge the subscriber the differential between the cost of aerial and underground installation of the Drop to the subscriber. This provision shall not apply where undergrounding is required by ordinance or policy for all utilities
- E.3 Lockout Device. Company will make available a lockout device, which will enable the subscriber the ability to prohibit the viewing of a particular cable service during periods elected by the subscriber. It is understood that the parental lockout device is currently incorporated in the set top converter for which the company does require a monthly fee.
- E.4 Blocking. Upon request by a subscriber, and within a reasonable period of time, and in no event longer than thirty (30) days, Company shall entirely block such subscriber from receiving both the audio and visual signals of any channel with predominately adult oriented programming such as by (a) scrambling both the audio and visual portions of the signal, or (b) (if scrambling is insufficient to totally prevent reception or as requested by a subscriber) with devices such as a notch filter which prevent the frequencies containing a specific channel or channels from being transmitted into the subscriber's premises.
- E.5 Notification of Products and Services Offered.
  - E.5.1 Company shall provide written information on at least each of the following areas at the time of installation of service, at least annually to all subscribers, as required by the FCC, in a print Font size 12 or larger, easily readable by subscribers of all ages.
  - E.5.2 Products and Services Offered.
  - E.5.3 Prices (rates) and options for Cable Services and conditions of subscription to Cable Service. Prices shall include those for programming, equipment rental, program guides, installation, disconnection, late fees and optional services, fees, and charges charged by Company. Options and conditions to be included in written information shall include but not be limited to special rates and policies such as Company's part time resident policy and subscriber credits for service impairment.
  - E.5.4 Installation and Service Maintenance Policies.
  - E.5.5 Instructions on how to use Cable Services, including procedures and options for pay per view and premium channels.

- E.5.6 Channel positions of programming carried on the Cable System.
- E.5.7 Billing and complaint procedures, including the address and phone number of the person or position at Franchising Authority responsible for cable matters.
- E.5.8 The Company's address and phone number for the subscriber to initially contact Company with complaints and questions.
- E.5.9 Applicable privacy requirements as set forth in this Franchise Agreement, the Cable Ordinance, or otherwise provided for by the law.
- E.6 Notice of Changes: Subscribers and Franchising Authority shall be notified of any increases in rates, or changes in Cable Services or channel positions as soon as possible through announcements on the Cable System and in writing. Notice must be given to subscribers and the Franchising Authority a minimum of thirty (30) days in advance of such changes if the change is within the control of Company and as soon as possible if not within the control of Company, but no prior notice is required for 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, State, or franchising authority on the transaction between the Company and any subscriber. In addition, Company shall notify subscribers and Franchising Authority thirty (30) days in advance of any significant changes in the other information required by the preceding Section.
- E.7 Program Guide: Upon request, Company shall provide subscribers with a periodic (e.g. –monthly) written or electronic program guide listing the specific programs available, their times and (when applicable) ratings.
- E.8 Converters: Company shall make available for rental by subscribers the converter equipment necessary for subscribers (such as those with “non-cable ready” television sets) to receive the services offered by Company.
- E.9 Telephone Service Standards.
  - E.9.1 Company shall have a toll-free number available for use by subscribers toll-free twenty-four (24) hours per day, seven (7) day per week.
  - E.9.2 Company's numbers shall be listed, in the directory published by the local telephone company or companies.
  - E.9.3 Calls received after Normal Business Hours must be responded to by a representative on the next business day.
  - E.9.4 Under Normal Operating Conditions, the following telephone answer standards shall be met for Area subscribers on a monthly basis.
    - (i) Telephone answer time by a customer service representative, including wait time shall not exceed thirty (30) seconds 90% of the time under Normal Operation Conditions.
    - (ii) Telephone answer time by a customer service representative, including wait time shall not exceed sixty (60) seconds 95% of the time under Normal Operation Conditions.
    - (iii) Telephone answer time by a customer service representative, including wait time shall not exceed two hundred forty (240) seconds 98% of the time under Normal Operation Conditions.

- (iv) Telephone answer time by a customer service representative, including wait time shall not exceed three hundred (300) seconds 99% of the time under Normal Operation Conditions.
- (v) Telephone answer time by a customer service representative, including wait time shall not exceed ten (10) minutes 100% of the time under Normal Operation Conditions.

If the call needs to be transferred, transfer time shall not exceed thirty (30) seconds. These standards shall be met as outlined above under Normal Operating Conditions, measured on a monthly basis for all Area Subscribers.

- E.9.5 Under Normal Operating Conditions, all Area Subscriber shall receive a busy signal less than three percent (3%) of the time, measured on a monthly basis.
- E.9.6 Under Normal Operating Conditions, no more than three percent (3%) of Area subscriber's calls measured on a monthly basis shall be abandoned as a result of non-compliance with Section E.9.4 (i) above.
- E.10 Office/Home Delivery-Pick Up.  
Company shall maintain a toll-free telephone number which all subscribers in franchise Area can access twenty-four (24) hours per day, seven (7) days per week to register complaints or ask questions concerning Cable Service, billing matters or the Cable System. All performance provisions and damages for failure to perform shall apply to the requirements of the twenty four (24) hour office, service, or automated answering system regardless of name or description for such as may be adopted by Company during the term of this agreement..
- E.10.2 Box Return Policy. In the event that Company is unable to schedule a home service call at a mutually agreeable time with a customer for the purposes of returning Company owned equipment, which is required to be returned, and a local office is not within a 10 mile radius of the center of the franchise area, then Company shall either; 1) make arrangements to meet the customer at their place of business or 2) provide the customer with a self addressed, prepaid courier box, insured at the appropriate level, which the customer can use to return Company owned equipment.
- E.10.3. Telephone Answering Statistics. Company shall provide Franchising Authority on a monthly basis a report outlining Company's performance relating to Sections E.9.4, E.9.5 and E.9.6 above. Company may aggregate all calls received from Area subscribers for purposes of this report.
- E.11 Installations/Service Calls. The following shall apply to Area subscribers (current or new) requesting installations or service.
- E.12 Installation Standards. Under Normal Operating Conditions, installations located up to three hundred (300) aerial feet from the existing distribution Cable System shall be performed within seven (7) business days after an order has been placed no less than ninety-five percent (95%) of the time, measured on a quarterly basis. The preceding requirement shall not apply to commercial subscribers, installations requiring an underground drop, multiple dwellings served by a single drop, or inside "wall fish" installations.
- E.12.1 The "appointment window" alternatives for installations, service calls, and other installation activities will be either a specific time or, at maximum, a (4) four hour time block during normal business hours. (The operator may schedule service calls and other installation activities outside of normal business hours for the express convenience of the customer.)

- E.12.2 Company shall not cancel an appointment with a subscriber on the business day prior to the scheduled appointment.
- E.12.3 If Company's technician is running late for an appointment with a subscriber and will not be able to keep the appointment as scheduled, the subscriber shall promptly be contacted. The appointment shall be rescheduled, as necessary, at a time, which is convenient for the subscriber.
- E.12.4 In the event access to the subscriber's premises is not made available to Company's technician when the technician arrives during the established appointment window, the technician shall leave written notification stating the time of arrival and requesting that Company be contacted again to establish a new appointment window.
- E.12.5 Notwithstanding the foregoing, if Company's technician or service representative telephones the subscriber during or prior to the appointment window and is advised that the technician will not be given access to the subscriber's premises during the appointment window, then the technician shall not be obliged to travel to the subscriber's premises or to leave the written notification referred to above, and the burden shall again be upon the subscriber (or adult representatives of the subscriber) to contact Company to arrange for a new appointment.
- E.12.6 Except as otherwise provided above, Company shall be deemed to have responded to a service or installation request under the provisions of this section when a technician either arrives at the Subscribers home or place of System Outage to work on the request or is advised by telephone no access will be given.
- E.12.7 Installation Statistics. Company shall provide Franchising Authority on a monthly basis a report outlining Company's performance relating to Sections E.12.1 through E.12.7 above in a form acceptable to the Franchising Authority. Company may aggregate all installations performed in Area for purposes of this report.
- E.13 Service Interruptions.
- E..13.1 Under Normal Operating Conditions, Company shall meet the standard of Section E.11 and E.12.1 in Area no less than ninety-five percent (95%) of the time measured on a quarterly basis.
- E.13.2 Excluding conditions beyond Company's control, Company shall begin working on a Service Interruption promptly and in no event later than twenty-four (24) hours after the interruption becomes known to Company.
- E.13.3 Excluding conditions beyond Company's control, Company shall begin working on subscriber complaints involving impairment or degradation of signal quality (other than a Service Interruption) promptly and in no event later than forty-eight (48) hours after the problem becomes known to Company.
- E.13.4 Company shall be deemed to have begun work under the provisions of this section when a technician either arrives at the Subscribers home or place of System Outage to work on the problem in question.
- E.13.5 Repair Statistics. Company shall provide Franchising Authority on a monthly basis a report outlining Company's performance relating to Sections E.13.1 through E.13.5 above. Company may aggregate all repairs in Area for purposes of this report.



- E.13.6.1 Systems outages affecting more than 500 subscribers shall be acted upon within four hours after the Company becomes aware of the outage, including Saturdays, Sundays and legal holidays.
- E.14 Log of Complaints. Company shall maintain a written log, or an equivalent stored in computer memory and capable of access and sharing with Franchising Authority or reproduction in printed form, of all cable-related subscriber complaints, including those requiring a service call and those repairs corrected on the phone by Company. Such log shall at a minimum list the date and time of each such complaint, and describing the nature of the complaints and when and what actions were taken by Company and by Company's identified employee in response thereto. The log shall be kept at Company's office in or near Franchising Authority for a period of at least five (5) years and shall be available for inspection during regular business hours by Franchising Authority upon request.
- E.15 Payment Options.
- E.15.1 Company shall provide all individual, residential subscribers with an acceptable credit rating with the option of paying for Cable Service by (1) cash, (2) check, or at Company's option (3) an automatic payment plan, where the amount of the bill is automatically deducted from a checking account designated by the subscriber.
- E.16 Bills. Company shall comply with the following on Cable Service billing:
- E.16.1 Bills shall be issued monthly to each subscriber with a balance due or charge of service.
- E.16.2 Bills shall be clear, concise and understandable. Bills shall be fully itemized, with itemizations including, but not limited to, basic and premium service charges and equipment charges. Bills shall also clearly delineate all activity during the billing period, including optional charges, rebates, credits and late charges specifically indicating the due date by which a customer must pay their bill in order to avoid a late payment.
- E.16.3 In the case of a billing dispute, Company shall respond to any complaint from a subscriber within fifteen (15) days.
- E.17 Refunds and Credits: Refund checks or credits for Cable Service shall be issued promptly, but no later than either:
- E.17.1 The subscriber's next billing cycle following resolution of the request or thirty (30) days, whichever is earlier, or
- E.17.2 Credits for Cable Service or the return of equipment shall be issued no later than the subscriber's next billing cycle following a determination that a credit is warranted.
- E.17.3 Company shall annually provide all subscribers with Company owned subscriber premises equipment, descriptions of equipment's purpose and advise subscriber of any technological changes which may render the equipment unnecessary for the subscriber's service. Such description shall be in easily understood layman terminology and include steps the subscriber may take to return no longer needed equipment to Company

- E.18 Fire, Etc.-Free Replacement. If a subscriber's converter box or other cable-related Company owned customer premises equipment is destroyed by fire, flood, tornado, building collapse or otherwise such that the premises are not habitable, Company shall, upon receipt of the appropriate documentation substantiating the claim (i.e., incidence report from police, fire department, and/or insurance company), refund any deposit for such equipment and shall not charge the subscriber for replacement equipment but may seek reimbursement from applicable insurance policies. Notwithstanding the above, the Company may charge a subscriber to the extent of any insurance payment(s) to the subscriber covering the cost of the damaged or destroyed Company equipment does not fully cover Company's replacement cost of such equipment
- E.19 Late Payments for Cable Service.
- E.19.1 No late payment charges, however denominated, shall be added to a subscriber's bill less than twenty-one (21) calendar days after the mailing of the bill to the subscriber.
- E.19.2 No late payment charges, however denominated, shall be added to a subscriber's bill by reason of delay in payment other than those described in this Section E. All such charges shall be separately stated on the subscriber's bill and include the word "late", "amount due", "past due" or other words that inform a customer that their account is delinquent, in the description of them.
- E.19.3 Late payment charges imposed by Company upon subscribers shall be fair and shall be reasonably related to Company's cost of administering delinquent accounts.
- E.20 Disconnection.
- E.20.1 Company shall only disconnect a subscriber for failure to pay if at least thirty five (35) days have elapsed
- E.20.2 Company shall not disconnect a subscriber for failure to pay amounts that are legitimately in dispute during a billing dispute.
- E.20.3 Company may disconnect a subscriber at any time if Company in good faith believes the subscriber has tampered with or abused Company's equipment, that there is a signal leakage problem (or other non-compliance with FCC rules or other standards which poses a risk to lives or property) on the subscriber's premises, or that the subscriber is or may be engaged in theft of Cable Services.
- E.20.4 Company shall promptly stop billing at the time any subscriber so requests disconnection. No charge shall be imposed upon the subscriber for or related to disconnection of for any Cable Service delivered after the effective date of the disconnect request (unless there is a delay in returning Company equipment). If the subscriber fails to specify an effective date for disconnection, the effective date of disconnect shall be deemed to be the 7th business day following the date the disconnect request is received by Company.
- E.21 Privacy and Monitoring. Company shall not tap or monitor, or arrange for the tapping or monitoring, or permit any other person to tap or monitor, any cable, line, signal, input device, or subscriber facility for any purpose, without the written authorization of the affected subscriber except to the extent allowed by applicable law or pursuant to a valid court order. Such authorization shall be revocable at any time by the subscriber without penalty by delivering a written notice of revocation to Company; provided, however, that Company may conduct Cable

System-wide or individually addressed “sweeps” solely for the purpose of verifying Cable System integrity, checking for illegal taps or billing.

- E.22 Subscriber Information. Company shall not record or retain any information not allowed by 47 USC 551. Company shall destroy all subscriber information of a personally identifiable nature after a reasonable period of time, consistent with all applicable laws, except as authorized not to do so by the affected subscriber. Company shall not sell or otherwise provide to other persons, without the specific written authorization of the subscriber involved, or otherwise make available to any person or entity, lists of some or all of the names or addresses of subscribers except as allowed by applicable law.
- E.23 Complaints Referred by Franchising Authority or its designee. If Franchising Authority or its designee refers a Cable Service complaint from a subscriber to Company for resolution, then in five (5) business days of Company’s receipt of such referral it shall investigate (including attempting to contact the subscriber). Upon resolution of the complaint, Company shall respond to Franchising Authority and/or their designee, as to its resolution of same.
- E.24 Reports. Upon request, Company shall provide reports to Franchising Authority or Franchising Authority’s designee, no more than annually as follows:
  - E.24.1 In addition to any other reporting requirements in this Agreement or the Ordinance, the reports shall be in form and substance acceptable to Franchising Authority, showing on a consistent basis, fairly applied the matters set forth below so as to measure Company’s compliance with the customer service and technical standards of the referenced sections and such other matters, as Franchising Authority shall from time to time specify. Such reports shall show Company’s performance excluding periods of abnormal operating conditions, and if Company contends any such conditions occurred during the period in question, it shall also describe the nature and extent of conditions and show Company’s performance both including and excluding the time periods Company contends such conditions were in effect.
- E.25 FCC Technical Standards. Company shall operate the Cable System in accordance with the applicable technical specifications, rules and standards set forth in Part 76, Subpart K and Part 78 of the Federal Communications Commission’s rules, as such rules may be amended from time to time. The following shall apply to Company’s implementation of and compliance with the rules and regulations relating to cable television technical standards for signal quality, currently set forth 47 CFR § 76.601 and following, and subsequent amendments thereto:
  - E.25.1 Company will, upon request, provide Franchising Authority with a report of testing for compliance with such standards annually or upon request (but no more than twice a year). Such report shall state, in pertinent part, that the person doing the testing has been provided a copy of and reviewed the rules and regulations of the FCC, the FCC order(s) adopting such rules and regulations, and that such testing when done fairly, in full compliance with the FCC rules and regulations show full compliance with such rules and regulations; or in the alternative setting forth in detail all areas on non-compliance, the actual or likely scope and causes of such non-compliance, and Company’s professional recommendation of the best corrective measures to immediately correct the non-compliance.
  - E.25.2 Company shall establish the following procedure for resolving complaints from subscribers about the quality of the television signal delivered to them: All complaints shall go initially to Company. All matters not resolved by Company shall at Company’s or the subscriber’s option be referred to Franchising Authority, or Franchising Authority’s designee for it to resolve.

## APPENDIX F

### *Credits and Liquidated Damages*

- F.1 Damages. Company acknowledges that noncompliance with the customer service standards identified above will harm subscribers and Franchising Authority and the amounts of actual damages will be difficult or impossible to ascertain., Franchising Authority may therefore assess the following liquidated damages against Company for noncompliance with customer service standards set forth in this agreement and all of its subparts, provided however the liquidated damages shall not apply to subparts E.9.4, E.9.5 and E.9.6. The following liquidated damage amounts shall increase annually at the same percentage increase, if any, of Company's rate increases placed on the combined Basic and Expanded Basic levels of service.
- F.1.1 Failure to correct by Company within 30 days of written notice by Franchising Authority, first noncompliance of any standard- Two Hundred Fifty dollars (\$250) per occurrence.
- F.1.2 Failure to correct by Company within 30 days of written notice by Franchising Authority, second noncompliance of the aforementioned standard within any calendar quarter- Five Hundred Dollars (\$500) per occurrence.
- F.1.3 Failure to correct by Company within 30 days of written notice by Franchising Authority, third and subsequent noncompliance of the aforementioned standard within any calendar quarter- One Thousand Dollars (\$1,000) per occurrence.
- F.1.4 Nothing in Sections F.1.1 through F.1.3 shall limit the Franchising Authority from notifying Company of separate standards in noncompliance within any calendar quarter.
- F.2 Continuity of Service. Company shall continue to make available Cable Service to residents and commercial businesses already lawfully receiving such services as of the commencement date of this Agreement, assuming such residents and commercial businesses are lawful subscribers and are current in payment with Company billings.
- F.3 Credits. Grounds. As a result of the Company's failure to comply with the customer services standards, the Company shall provide to each affected Customer or potential Customer, as applicable, the following credits:
- F.4. For failure of the Company to arrive at the Customer's premises within the promised four (4) hour period for any installation, a credit equal to free standard installation.
- F.5. For failure of the Company to complete a standard installation of service within the scheduled time period, unless otherwise excused, a credit equal to free installation.
- F.6. For any Mediacom related reception problem, including any outage of audio and/or video on any channel or for any other service problem which remains un-repaired for more than twenty-four hours after either the Company received from the Customer a request for repair service and without a Subscriber's request in any case where the Company can identify the affected Subscribers (provided that, to the extent

access to the customer's premises is required to effect such repair, the customer has granted the Company such access) or the Company learns of such problem,. And upon request, a minimum credit in an amount equal to one thirtieth (1/30) time the total bill for Cable Service of each Customer for the preceding billing period, for each twenty-four (24) hour period during which such reception problem persists for at least four (4) hours.

F.7. For a failure of the Company to arrive to correct any outage or make any repair during the stated time period, and upon request, a credit of twenty (\$20) dollars.

F.8. For the improper termination of Cable Service to a customer, free reconnection and a credit in an amount equal to the total number of days such customer does not have service.

F.9. The Company agrees that each of the foregoing occurrences necessitating such credits shall result in injury to such customers, which injury will be difficult to ascertain and to prove. The Company agrees that each of the foregoing credits is a fair and reasonable compensation for such injury.

F.10. For purposes of calculating the amount of credit owed pursuant to Appendix F such period shall be deemed to have begun at the time the Company first learns of the outage.

F.11. With respect to any credit described in Appendix F, the Company shall provide a credit on each eligible customer's bill, upon request, within thirty (30) days after the outage or reception problem occurred.

F.12. Refund checks or credits shall be issued promptly, but no later than either (a) the customer's next billing cycle following resolution of the request or thirty (30) days, whichever is earlier, or (b) the return of any equipment supplied by the Company if the service is terminated.

F.13 Notwithstanding the liquidated damages amounts set forth above, the liquidated damages applicable to Company for non-compliance with Sections E.9.4, E.9.5 and E.9.6 of the customer service standards set forth in Appendix E shall be as follows:

- (i) No liquidated damages shall be assessed from \_\_\_\_\_ until \_\_\_\_\_ when Company shall be in compliance with all customer service standards as set forth in Appendix E .
- (ii) If, after \_\_\_\_\_ , Company fails in any calendar quarter to comply with any of the performance standards listed in Appendix E , Sections E.9.4, E.9.5, and E.9.6 Company shall incur liquidated damages in the amount of twenty-five cents multiplied times the number of active subscribers in the Franchise Area. These liquidated damages shall be paid by Company to the Franchise Authority within fifteen (15) calendar days after the end of every calendar quarter in which Company fails to meet the standards set forth in Appendix E Sections E.9.4, E.9.5, and E.9.6 .
- (iii) The following liquidated damage amounts shall increase annually at the same percentage increase, if any, of Company's rate increase(s) placed on the combined Basic and Expanded Basic levels of service. Such increases shall be effective on the annual anniversaries of the effective date of the franchise, commencing with the first anniversary

F.14 If Company does not meet the standards contained in Sections E.9.4, E.9.5 and E.9.6 of Appendix E for any three (3) months out of any twelve (12) month period, then the liquidated damages contained in Section F .13 (ii) above will double for the next twelve (12) month period. If Company does meet the standards contained in Sections E.9.4, E.9.5 and E.9.6 of Appendix E for the subsequent twelve (12) month period, then the liquidated damages contained in Section F .13 (ii) above will reduce to the level of the previous twelve month period for the next twelve (12) month period.

In addition to the foregoing provisions, if Company is not fully compliant with the customer service standards set forth in Appendix E in every quarter of the last two years of the term, the term shall cease, although the Company will be allowed to continue operations subject to this Agreement for one additional year from the end of the last calendar quarter.

If the Company is fully compliant with the customer service standards set forth in Appendix E in every quarter of the last two years of the initial term, Company may exercise an option to renew this Agreement for an additional five (5) years, provided such notice to renew is delivered within 30 days of the end of the term.

**APPENDIX G**

***FRANCHISE FEE REPORT***

I have this in an excel format that will be inserted in final version  
 (Please See "Franchise Fee Report Form" attached hereto.)

Community					Cable Services Revenue Detail													
Revenue	Jan	Feb	Mar	1st Qtr	Apr	May	Jun	2nd Qtr	Jul	Aug	Sep	3rd Qtr	Oct	Nov	Dec	4th Qtr	Annual Total	
Basic Cable																		
Installation Charge																		
Late Fees																		
Bulk Revenue																		
Expanded Basic																		
Digital Services																		
Pay Service																		
Pay Per View																		
Guide Revenue																		
Franchise Fee Rev.																		
FCC User Fees																		
Advertising Revenue																		
Home Shopping Rev																		
Channel Launch support																		
Inside Wiring																		
Other Revenue																		
Equipment Rental																		
Processing Fees																		
Late Fees																		
Revenue																		
Franchise Fees Paid																		
Ending Basic Subscriber																		
Ending Bulk Subscribers																		

SIGNATURE OF PREPARER DATE

**EXHIBIT A**

(Map of Franchise Area attached hereto)



## **EXHIBIT B**

### **Area Access Channel Origination Sites**

**11/14/05**

**SUMMARY V1.2 OF PROPOSED ACCESS CHANNEL PROVISION  
draft V7.1**

**(IMPORTANT - Mediacom has not commented on this proposed provision)**

Five (5) 6MHz Channels reserved for Access Channel Programming to be made available whenever the existing channel or channels are used 7 hours/day; 5 days/week with original, non-repetitive programming over a continuous 6 week period. (3.5.3) & (3.5.3 c.)

A 6MHz channel maintained between BRCC Master Control and Headend for Education Programming and a 6MHz channel between Franchising Authority location and BRCC Master Control for Government programming. Remote feed back to BRCC Master Control for designated Access Program Origination Sites.(3.5.3 a. & b.)

Total combined bandwidth capacity reserved for Access Channel Programming will remain the same following conversion to digital (3.5.3 h.)

Storage capacity for up to (25) hours of On Demand Access Channel Programming to be available at any given time (3.5.3 j)

Access Channel capacity to be non-profit with sponsorship in accordance with PBS/NPR guidelines OK (3.5.3 l.)

Channel 19 or other channels subject to interference may not be used for Access Channel Programming (3.5.3 i.)

Area Franchising Authority capital support for equipment and facilities over 2 years to be matched by Mediacom up to total of \$335,000. Beginning in year 4, annual Area Franchising Authority capital support to be matched by Mediacom up to a total of \$37,500 during life of the agreement (3.5.3.1)

Emergency Override provided for use by Franchising Authorities (3.6)

**10/28/05**

**SUMMARY OF PROPOSED KEY AGREEMENT PROVISIONS,  
PERFORMANCE REQUIREMENTS, AND LIQUIDATED  
DAMAGES draft (V7.0)**

**– ALSO SEE SUMMARY SUBSCRIBER’S BILL OF RIGHTS AND  
SUMMARY ACCESS CHANNEL PROVISIONS (drafts)**

**(IMPORTANT – following is based on Draft Franchise Renewal V7.0.  
*Mediacom has not commented on any of these proposed provisions.*)**

>Initial Term 5 Years with 5 Year Renewal if Company is fully compliant with Customer Service Standards during last Two Years of the Initial Term (1.3; F.14)

>Terms ends if Company not fully compliant with Standards (Appendix E) in every quarter of the last two years of the Term. (F.14)

>Franchise is Non Exclusive (11.3)

>Transfer of Franchise or Control requires written consent of the Franchising Authority (8.1; 8.2)

>Local Office staffed with trained Service Personnel, Customer Service Personnel, Telephone Service. (1.7; 1.7.1; 1.7.2; 1.7.3)

Business Hours 8:30AM – 5:30PM Monday – Friday

9:00AM – 1:00 PM Saturday

Service Hours 8:00 AM – 7:00PM Monday – Friday

9:00 AM – 1:00 PM Saturday

Local Customer Service Hours 7:00 AM – 7:00 PM Monday – Saturday

On call – 24 hours per day, seven days a week

>If Company fails to meet FCC phone busy standards in 2 consecutive quarters must add minimum of one phone line or make other changes to satisfy standards. (1.7.6)

>Escalating scale of requirements from 30 seconds telephone hold time to maximum hold time of 10 minutes (E.9 to E.9.6)

>Liquidated Damages – Telephone Standards (F.13)

>Failure to comply with telephone service standards will result in liquidated damages of \$.25 times the number of subscribers for the month.

>Damages amounts increasing at same rate as Company increases charges for the combined Basic and Expanded Basic levels of service.

>If Company fails to meet FCC requirements for repair for one Quarter it must take corrective action to meet standards the next Quarter. (1.7.6)

>Also see Liquidated Damages (Appendix F)

>Company to provide periodic management data showing its performance (1.7.6)

>Company to prepare and present an annual public report of system performance, customer service satisfaction, and future system and programming planning (7.3.3 –7.3.6)

- >Specific requirements are detailed for Subscriber Services and Subscriber Credits are due for Outages, Service Interruptions, and failed Service Calls. (Appendix F & Subscriber's Bill of Rights)
  - >Also, Company will offer subscribers the same or superior categories of Cable Services available in any other Cable System owned by the Company (3.7.2)
- >Liquidated Damages - General (F.1)
  - >Failure to correct within 30 days first noncompliance \$250 per occurrence; second noncompliance \$500 per occurrence; third and subsequent non-compliances \$1000 per occurrence. No limitation on numbers of notifications of separate standards within any calendar quarter.
  - >Damage amounts will increase at same rate as Company increases charges for the combined Basic and Expanded Basic levels of service.
  - >Failure to meet the standards any 3 months out of a 12 month period causes damages to double for the next 12 month period.
- >Quarterly Franchise Fee Report to include Subscriber count and comprehensive breakout of Gross Revenue by Subscriber and non-Subscriber revenue category. In addition to interest due on underpayments, any Quarterly underpayment of 1% or more results in reimbursement of Franchising Authority for all reasonable costs associated with the Audit (6.1.4)
  - >Gross Revenues defined as including all considerations of any kind derived from operation of Company's Cable System. (A-3)
- >System shall be upgraded to a minimum of 860 MHz within 12 months of acceptance of this Agreement (2.1.1)
  - >Company will continue to upgrade System to insure compatibility with Current Technology (3.7.3)
- >Service to be made available at published rates to all homes within Service Area having a density of at least 20 homes per mile (2.1.2)
- >Service to be extended to any home within 300' of Company's feeder cable (2.1.3)
- >One Free Expanded Basic Service hook-up and one Free Internet Access to all Governmental and Institutional Facilities including public, parochial, and private accredited schools within 300' of Company's feeder cable Franchising Authority agrees to not operate a server off the Internet Modem connection (3.4)
- >Company to provide Emergency Override to be operated by rules and regulations issued by Franchising Authority (3.6)
- >*ALSO INCLUDED ARE ALL REQUIREMENTS AND CREDITS DETAILED IN THE SUBSCRIBER'S BILL OF RIGHTS.*

**10/28/05**

**SUMMARY - PROPOSED SUBSCRIBER'S BILL OF RIGHTS V7.0  
(draft)**

**(IMPORTANT – following is based on Draft Franchise Renewal V7.0 and not yet commented on by Mediacom)**

Local Customer Service hours 7AM – 7PM Monday through Saturday with on-call 24hours/day 7 days/week (1.7.3)

Local Service Hours 8AM – 7PM Monday through Friday; 9AM – 1PM Saturday

Immediate access, upon request, to Supervisory Staff with authority to resolve complaints (1.7.5)

Credit for outages – upon request

Over 4 hours and up to 14 days credit of 1/30<sup>th</sup> of one month's fee for each 24 hours period service is interrupted for 4 or more hours (1.7.7)

Interruptions over 14 days credit for 1 month's fees (1.7.7)

Mediacom must begin working on Services Interruptions within 24 hours after notification (7 days/week – 365 days/yr) (E.13.2)

Mediacom must begin working on impairment or degradation of signal quality within 48 hours of notification (E.13.4)

Any Mediacom related reception problem - credit to all Subscribers (without Subscriber making request) of 1/30<sup>th</sup> prior billing period's total bill for each 24hr period (beyond initial 48 hour) during which problem persists for at least 4 hours. (F.6)

Mediacom must respond to outages involving more than 500 subscribers within 4 hours 24/7/365. (E13.4.1)

Subscribers may schedule repair calls by appointment for a specific time or in a 4 hour window (E.12.1)

Credit given equal to free standard installation for failure to meet agreed upon scheduled time period (F.3 – F.5)

Credit of \$20 for failure of Mediacom to make repair during the stated time period (F.7)

Service Extension free to dwelling within 300' of activated feeder cable (2.1.8)

Subscriber requested installations to be performed within 7 business days 95% of the time (E.12)

Underground service to dwelling to be buried at least 12" deep (2.2.2)

Mediacom must offer the same or superior Cable System Products and Services as available to their subscribers in other areas. (3.7.2) & (Appendix B Paragraph C)

Mediacom must continue providing analog service until the last customer is converted to digital (3.8)

Annually, Mediacom must present a public report of system performance, customer service satisfaction, and their planning for future system capability and programming (1.7.6, 7.3.3 – 7.3.6)

Blocking of individual channel within 30 days of subscriber request (E.4)

Annually in print Font size 12 or larger and in layman language, provide all Subscribers the following information (E5.3-E5.9):

- Products and Services offered

- Rates, Options, Conditions of Subscription including special rates and policies such as part time resident

- Installation and Service Policies

- Credits for service impairment and failure to perform

- How to use Cable Services

- Annual notification to subscribers renting/leasing Mediacom equipment which may no longer be needed (E.17.3)

- Free Replacement of rented/leased equipment destroyed by Fire, etc. (E.18)

Telephone Standard wait time to not exceed 30 seconds 90% of the time with escalating scale of requirements to a maximum wait time of 10 minutes and liquidated damages to Franchising Authorities for failure to meet these requirements (E.9 – E.9.6 & F.13)

Subscriber Complaints to Second Call Help Desk (as Agent for Franchising Authority) to be investigated by Mediacom within 5 business days (E.23)