

ORDINANCE NO. 20-1216-A

AN ORDINANCE CREATING A FRANCHISE FOR THE OPERATION AND MAINTENANCE OF A CABLE SYSTEM IN THE CALLOWAY COUNTY, KENTUCKY, SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OF FRANCHISE AND PROVIDING FOR THE REGULATION AND USE OF SAID SYSTEM

NOW, THEREFORE, BE IT ORDAINED, BY THE FISCAL COURT OF CALLOWAY COUNTY, COMMONWEALTH OF KENTUCKY, AS FOLLOWS:

That this Ordinance be and hereby is adopted as the "Cable Television Ordinance" for Calloway County, Kentucky (hereinafter referred to as "Ordinance").

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1. DEFINITIONS

For the purpose of this Ordinance the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is mandatory and "may" is permissive. Words not defined shall be given their common and ordinary meaning.

A. "Basic Service," "Cable Service," and "Cable System" shall be defined as that term is defined in the Cable Act.

B. "Cable Act" means the Cable Communications Policy Act of 1984 (Public Law No. 98-549), and the Cable Television Consumer Protection and Competition Act of 1992 (Public Law No. 102-385) as amended by the Telecommunications Act of 1996 (Public Law No. 104-104), together with current federal legislation governing Cable Television Systems and their operation in the United States and any subsequent amendments thereto.

C. "Cable Channel" or "Channel" means a portion of the electromagnetic spectrum which is used in a Cable System and which is capable of delivering a television channel.

D. "County" is the County Calloway, Kentucky, a Kentucky County government.

E. "Grantee" is the party to which a Franchise under this Ordinance is granted by the County acting through its Fiscal Court, or its successor, transferee or assignee.

F. "Effective Date" shall mean the date upon which the County shall have adopted the Franchise set forth in this document.

G. "FCC" shall mean the Federal Communications Commission and any legally appointed, designated or elected agent or successor.

H. "Franchise" means the non-exclusive rights granted pursuant to this Ordinance to construct, operate, and maintain a Cable System along the Streets within the County.

I. "Gross Revenues" shall mean all revenues, as determined in accordance with generally accepted accounting principles, actually received by Grantee from Subscribers residing within the Service Area for Cable Services purchased by such Subscribers on a regular, recurring monthly basis. Gross Revenues shall not include (1) any taxes, fees or assessments collected by Grantee from Subscribers for pass-through to a government agency, including the franchise fee and the FCC user fee; (2) bad debt; (3) credits, refunds and deposits paid to Subscribers; (4) any exclusions available under applicable State law.

J. "Installation" shall mean the connection between Cable System and Subscribers' premises.

K. "Normal Business Hours" means those hours during which most similar businesses in the community are open to serve customers. This will include some evening hours (at least one night per week) and/or some weekend hours.

L. "Normal Operating Conditions" means those service conditions that are within the control of Grantee. Those conditions which are *not* within the control of Grantee include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Those conditions which *are* ordinarily within the control of Grantee include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of the Cable System.

M. "Service Interruption" means the loss of picture or sound on one or more Channels.

N. "Service Area" means all areas within the County, having at least twenty (20) dwelling units per cable mile served in accordance with the provisions of this Ordinance. Density per cable mile shall be computed by dividing the number of residential dwelling units in the area by the length, in miles or fractions thereof, of the total amount of aerial cable necessary to make service available to the residential dwelling units in such area in accordance with Grantee's Cable System design parameters. The cable length shall be measured from the closest technologically feasible tie-in point of access that is actively delivering Cable Service, provided that extension is technically feasible from that point of access and located within the public rights-of-way. The total cable length shall exclude the drop cable necessary to serve individual Subscriber premises.

O. "Street" shall mean the surface of and the space above and below any public street, road, highway, freeway, lane, path, public way or place, sidewalk, alley, court, boulevard, parkway, drive or easement now or hereafter held by the County for the purpose of public travel and shall include other easements or rights-of-way, including those dedicated for compatible uses, as shall be now held or hereafter held by the County.

P. "Subscriber" means a member of the general public who receives Cable Service distributed by a Cable System and does not further distribute it.

2. RIGHTS AND PRIVILEGES OF GRANTEE

The nonexclusive Franchise granted by the County pursuant to this Ordinance shall grant to Grantee the right and privilege to erect, construct, operate, maintain and repair in, upon, along, across, above, over and under the Streets any poles, wires, cable, underground conduits, manholes, and other television conductors and fixtures necessary for the maintenance and operation of a Cable System. This Ordinance is not intended to and does not create any rights or benefits on behalf of any person other than the parties to this Ordinance.

3. GRANTING OF FRANCHISE

Upon adoption the granting of a Franchise pursuant to this Ordinance, Grantee shall be bound by all the terms and conditions contained herein.

4. FRANCHISE TERRITORY

The Franchise is for the present territorial limits of the County and for any area henceforth added to those territorial limits during the term of the Franchise.

5. DURATION AND ACCEPTANCE OF FRANCHISE

Any Franchise granted pursuant to this Ordinance shall take effect when legally adopted by the County according to Kentucky law. Such acceptance and agreement shall be in writing, duly executed and sworn to, by, or on behalf of Grantee before a notary public or other officer authorized by law to administer oaths. The Franchise and the rights, privileges and authority hereby granted to Grantee shall take effect and be in force from and after final passage thereof, as provided by law, and shall continue in force and effect for a term of seven (7) years.

6. POLICE POWERS

In accepting this Franchise, Grantee acknowledges that its rights hereunder are subject to the police power of the County to adopt and enforce general ordinances necessary to the safety and welfare of the public; it agrees to comply with all generally applicable and non-discriminatory laws and ordinances enacted by the County pursuant to such power. Any conflict between the provisions of this Ordinance and any other present or future lawful exercise of the County’s police powers shall be resolved in favor of the former, unless any such exercise is necessary due to an emergency constituting a danger to health, safety, property, or general welfare or such exercise is mandated by Federal or state law.

7. CABLE FRANCHISE REQUIRED

No Cable System shall be allowed to be constructed upon, occupy, or use the Streets of the County, or be allowed to operate without a Cable System Franchise.

8. NOTICES

The County and Grantee shall provide the other party with the name and address of the contact person designated to receive notices, filings, reports, records, documents, and other correspondence. All notices shall be delivered to each party’s contact person by (a) certified mail, return receipt requested, (b) personal service with a signed receipt of delivery, or (c) overnight with receipt verification. All other filings, reports, records, documents, and other correspondence may be delivered by any permissible means including, but not limited to: facsimile transmission (“faxing”); electronic mail (“email”) personal service; or overnight mail or package delivery. The delivery of all notices, reports, records, and other correspondence shall be deemed to have occurred at the time of receipt (unless otherwise designated by state law). The contact persons and their respective addresses for receipt of notice under this Section 8 are as follows:

GRANTEE: Grantee’s representative and address shall be included with its bid for the County’s Franchise.

COUNTY: Calloway County, Kentucky
Office of the Judge-Executive
101 South Fifth Street
Murray, KY 42071

9. LIABILITY AND INSURANCE

A. Grantee shall maintain throughout the term of the Franchise insurance in amounts at least as follows, provided that such coverage does not include events arising from the acts or omissions or negligence of the additional insured:

Workers' Compensation	Statutory Limits
Commercial General Liability	\$1,000,000 per occurrence, (of which limits may be satisfied by an umbrella liability policy) \$2,000,000 General Aggregate (of which limits may be satisfied by an umbrella liability policy)
Auto Liability including coverage on all owned, non-owned hired autos	\$1,000,000 per occurrence Combined Single Limit (of which limits may be satisfied by an umbrella liability policy)
Umbrella Liability	\$5,000,000 per occurrence

B. The County shall be added as an additional insured, arising out of work performed by Grantee, to the above Commercial General Liability, Auto Liability and Umbrella Liability insurance coverage.

C. The insurance policy obtained by Grantee in compliance with this section shall be issued by a Grantee or companies duly licensed to do business in the Commonwealth of Kentucky, carrying a rating by Best's, or some other nationally recognized rating service, of not less than A- rating. Upon the County's request, copies of certificates of insurance for all policies required hereunder shall be filed and maintained with the County during the term of the Franchise and may be changed from time to time to reflect changing liability limits.

D. Neither the provisions of this section nor any damages recovered by the County thereunder, shall be construed to limit the liability of Grantee under any franchise issued hereunder or for damages.

E. Grantee shall furnish the County with current certificates of insurance evidencing such coverage within 30 days of the County's acceptance of Grantee's bid.

10. INDEMNIFICATION

A. Grantee shall, at its sole cost and expense, fully indemnify, defend and hold harmless the County and the County's officers, boards, and all members, commissions and employees against any and all claims, suits, actions, liability and judgments for damages and liabilities assumed by the County in connection therewith to persons or property in any way:

1. Arising out of or through the negligent acts or omissions of Grantee, its servants, agents or employees in the construction or operation of the Cable System;
2. Arising out of any claim based solely on the acts or omissions of Grantee for invasion of the right of privacy, for defamation of any person, firm, or corporation, or the violation, infringement or dilution of any copyright, trademark, trade name, service mark or patent, (excluding claims arising out of or relating to County programming); and
3. Arising out of Grantee's failure to comply with the provisions of any federal, state or generally applicable local statute, ordinance or regulation applicable to Grantee in its business hereunder.

- B. The foregoing indemnity is conditioned upon the County giving Grantee written notice of its obligation to indemnify the County at least ten (10) calendar prior to the deadline for responding to the claim or action, and if no such deadline exists, within thirty (30) days of the County's receipt of the claim or action. Nothing herein shall be deemed to prevent the County from cooperating with Grantee and participating in the defense of any litigation by their own counsel at their sole expense.
- C. Notwithstanding the foregoing, Grantee shall not be obligated to indemnify the County for any damages, liability or claims resulting from the willful misconduct or negligence of the County or from the County's use of the Cable System.

11. NO WAIVER

Grantee shall not be excused from complying with any of the terms and conditions of this Ordinance by any failure of the County upon any one or more occurrences to insist upon or to seek compliance with any such terms or conditions.

12. RIGHTS OF INDIVIDUALS

- A. Grantee shall not deny service, deny access, or otherwise discriminate against Subscribers, Channel users, or general citizens in the County on the basis of race, color, religion, or national origin or any other basis precluded by federal, state and local laws and regulations.
- B. Grantee shall adhere to the equal employment opportunity requirements of the FCC and state statutes and, with respect to its cable operations in the County, local regulations, currently in force and as amended from time to time.
- C. Grantee shall operate the Cable System in a manner that protects against invasions of any Subscriber's privacy, in accordance with 47 U.S.C. § 551.

13. PUBLIC NOTICE

In addition to any notice requirements set forth in Section 8 of this Ordinance, minimum public notice of any public hearing relating to the Franchise shall be given by County by means of

publication at least once in a local newspaper of general circulation, in compliance with Kentucky Revised Statute Chapter 424.

14. SEVERABILITY

If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof.

15. TIME IS OF THE ESSENCE TO THIS ORDINANCE

Whenever the Ordinance shall set forth any time for an act to be performed by or on behalf of Grantee, such time shall be deemed of the essence and any failure of Grantee to perform within the time allotted shall always be sufficient grounds for the County to invoke an appropriate penalty, including possible revocation of the Franchise.

16. COMPLIANCE WITH STATE AND FEDERAL LAWS

Notwithstanding any other provision of this Ordinance to the contrary, Grantee shall at all times comply with all laws and regulations of the state and federal government or any administrative agencies thereof.

17. RELIEF FROM THE FRANCHISE

A. Written Petition. Grantee may file a written petition, at any time, with the County seeking relief from one (1) or more provisions of the Franchise. The relief requested may specifically include the delay in implementation of one (1) or more provisions of the Franchise. Grantee's filing of a petition pursuant to this Section shall in no way limit its rights under applicable law including, without limitations, Section 625 of the Cable Act.

B. Competitor Subject to Regulation by the County. If at any time during the existence of this Franchise, a competing multi-channel video programming distributor that has been provided a franchise or other type of authorization by the County to use the Streets of the County is granted more favorable term(s) than those established for Grantee under this Franchise (including but not limited to lesser Channel capacity, less onerous reporting requirements, less onerous customer notification requirements, less restrictive billing practices, less onerous customer service requirements, less onerous complimentary service requirements, or lower percentage or method of calculation of franchise fee), then such term(s) shall also be extended to Grantee, upon the written request of Grantee, so that no provider of multi-channel video service shall receive an unfair competitive advantage.

18. DESCRIPTION OF CABLE SYSTEM

- A. Grantee will operate a Cable System that, as of the Effective Date, is capable of providing over two hundred (200) Channels of digital content, as well as high-definition (HD) programming, digital video recorder (DVR) and video-on-demand (VOD) services.
- B. Grantee will keep the County advised of its major upgrades or projects for the Cable System.

19. SERVICE AVAILABILITY AND RECORD REQUEST

- A. Grantee shall provide Cable Service throughout the Service Area pursuant to the provisions of this Franchise and shall keep a record for at least three (3) years of all requests for Cable Service Extension received by Grantee pursuant to Section 20(C).
- B. Grantee shall submit the reports required by this Ordinance upon the County's written request. All filings and reports required of Grantee or any applicants by this Ordinance shall be made to the County.
- C. The County shall have the right to review Grantee's records pertaining to the County's regulation of Grantee's Cable System in the County, on thirty (30) days' written notice. Such review, unless mutually agreed upon, or judicially ordered, should occur within Grantee's Normal Business Hours.
- D. Grantee shall keep complete and accurate books and records of the key aspects of the Cable System's operation in the County for at least the preceding three (3) years in such a manner that all matters pertaining to the County can be easily produced and/or verified at the County's written request. Also, Grantee shall make available, on thirty (30) days' advance written notice, those records that pertain to its operation of the Cable System that may be required by any other Federal or state agency having jurisdiction over cable operators, provided, however, that with respect to the obligation to maintain financial records, Grantee shall only be required to maintain the financial records required by federal law.
- E. A listing of all publicly available petitions, applications, communications, reports and all other documents submitted by Grantee to the FCC or any other federal or state regulatory commission or agency that relate to Grantee's operation of the Cable System in the County shall be made available to the County, upon written request.

20. CABLE SYSTEM STANDARD/NON-STANDARD INSTALLATIONS AND EXTENSIONS

- A. Grantee must extend and make Cable Service available within the Service Area pursuant to the terms of this Ordinance.
- B. Grantee shall install Cable Service to potential Subscribers in the Service Area requesting a Cable Service installation requiring less than or equal to a one hundred fifty (150) foot aerial drop from the closest technologically feasible tie-in point that is actively delivering Cable Service as of the

date of such request (a "Standard Installation"). If the distance to such closest technologically feasible tie-in point is in excess of one hundred and fifty (150) feet, then potential Subscribers shall be responsible for any non-Standard Installation charges.

C. Upon receipt of a request for Cable Service from a potential residential Subscriber(s) in an unserved portion of the Service Area, and a written commitment from such Subscriber(s) (or payment in advance if required by Grantee) to pay any applicable non-Standard Installation charges associated with providing Cable Service (if applicable), Grantee must extend the Cable System to the Street adjoining the potential Subscriber's property, provided that the area has at least 20 dwelling units per cable mile or equivalent thereof for any portion of a mile, as measured from Grantee's closest technologically feasible tie-in point to its trunk line or distribution cable that is actively delivering Cable Service as of the date of such request for Cable Service.

D. In areas not meeting the density requirement for mandatory extension as set forth in subsection C, Grantee must nonetheless extend Cable Service if a potential Subscriber(s) are willing to pay the actual cost of extension. Grantee shall provide, upon the written request of such potential Subscriber(s) desiring Cable Service, a written estimate of the costs required to extend Cable Service to said potential Subscriber(s). Grantee may require advance payment or assurance of payment satisfactory to Grantee. Subscribers shall also be responsible for any Standard or non-Standard Installation charges to extend the Cable System from the tap to the residence as set forth in subsection B above.

E. Notwithstanding the foregoing, Grantee shall have the right, but not the obligation, to extend the Cable System into (1) any portion of the Service Area where another operator is providing Cable Service and (2) any annexed area which is not contiguous to the present Service Area.

21. CONSTRUCTION AND TECHNICAL STANDARDS

A. Grantee's methods of construction, installation, maintenance, and repair of the Cable System shall comply and be consistent with good engineering practices for Cable Systems of similar size and design, and be consistent with all laws, ordinances, construction standards, governmental requirements, and FCC technical standards, which standards are incorporated by reference herein. In addition, Grantee shall provide the County, upon request, with a written report of the results of Grantee's annual proof of performance tests conducted pursuant to FCC standards and requirements, if such tests are required by applicable law.

B. Construction, installation and maintenance of the Cable System shall be performed in an orderly and workmanlike manner. All new cables and wires shall be installed, where possible, parallel with electric and telephone lines. Multiple cable configurations shall be arranged in parallel and bundled with due respect for engineering considerations.

C. Grantee shall contact the County to obtain all applicable permitting requirement. Grantee shall at all times comply with:

- i. National Electrical Safety Code (National Bureau of Standards);
- ii. Applicable FCC or other federal, state and generally applicable local regulations including County Public Works policies; and

iii. Generally applicable County permitting requirements.

D. Any antenna structure used in the Cable System shall comply with the applicable standards and requirements of the U.S. Department of Transportation for the construction, marking, and lighting of antenna structures.

E. All working facilities, conditions and procedures used during construction, installation and maintenance of the Cable System shall comply with the applicable standards of the Occupational Safety and Health Administration.

F. RF leakage shall be checked and maintained in conformance with FCC Rules and Regulations.

G. Grantee shall maintain equipment capable of providing standby power for headend for a minimum of two hours.

H. In areas where the existing utilities are above-ground, Grantee may similarly locate its facilities above ground. In all areas of the County where the cables, wires, and other facilities (including but not limited to telephone and power), of all public utilities are placed underground, Grantee shall place its cables, wires, or other facilities underground to the maximum extent that existing technology reasonably permits and to the same extent as the other utilities. In the event telephone, electric or other utilities are directly or indirectly reimbursed by the County for the placement of cable underground, Grantee shall be reimbursed upon the same terms and conditions as any telephone, electric or other utilities.

I. When using easements, Grantee shall compensate property owners for damage caused by the installation, construction, operation, or removal of Cable System as required by the Cable Act. *See* 47 U.S.C. § 541(a)(2)(c).

22. USE OF STREETS

A. Interference with Persons and Improvements. The Cable System shall be located, erected and maintained so that none of its facilities shall unreasonably endanger or interfere with the lives of any persons, or with the safety and use of the property, safety of other persons, or interfere with any improvements the County may deem proper to make, or unnecessarily hinder or obstruct the free use of the Streets.

B. Minimum Interference with Streets. All transmission and distribution structures, lines and equipment erected by Grantee within the County shall be so located as to cause minimum interference with the proper use of Streets and to cause minimum interference with the rights or reasonable convenience of property owners who adjoin any of the said Streets.

C. Restoration of Streets to Prior Condition. In case of any damage or disturbance of the Streets, Grantee shall, at its own cost and expense, restore all paving sidewalk, driveway, landscaping, or surface of any Street disturbed, to a comparable condition as before said work was commenced and in accordance with the County's generally applicable standards for such work.

D. Erection, Removal, and Common Uses of Poles.

i. No poles or other wire-holding structures shall be erected by Grantee without the generally required prior approval of the County with regard to location, height, type and any other pertinent aspect. However, no location of any pole or wire-holding structure of Grantee shall be a vested interest and Grantee shall remove or modify such poles or structures at its own expense whenever the County determines that such removal or modification would enhance the public convenience.

ii. Where poles or other wire-holding structures already exist for use in serving the County are available for use by Grantee, but Grantee does not make arrangements for such use, the County may require Grantee to use such poles and structures if the County determines that such use would enhance the public convenience and where such use by Grantee is technically and economically feasible.

E. Relocation of the Facilities. In the event that, at any time during the term of the Franchise the County shall lawfully elect to alter or change the grade of any Street for purposes of a public improvement, Grantee, upon reasonable notice by the proper government unit, shall remove or relocate as necessary its poles, wires, cables, underground conduits, manholes and other fixtures at its own expense; provided however if the County compensates any other entity for removing or relocating its poles, wires, cables, underground conduits, manholes or other fixtures, then Grantee shall be similarly compensated.

F. Cooperation with Building Movers. Grantee shall, on the request of any person holding a building-moving permit issued by the County, temporarily raise or lower its wires to permit the moving of buildings. The person requesting such raising or lowering shall bear the expense of such temporary removal, raising or lowering of wires, and Grantee shall have the authority to require such payment in advance. Grantee shall be given not less than ten (10) business days' advance notice to arrange for such temporary wire changes.

G. Tree Trimming. Grantee shall be entitled to trim any portion of any tree within any right of way, after first giving notice to all affected property owners. Any trimming, removal or other disturbance of trees shall conform to all generally applicable laws or ordinances unless said conformance would unduly affect the health or safety of the public, Grantee's employees or the integrity of its property in emergency circumstances.

23. OPERATIONAL STANDARDS

A. Grantee shall put, keep and maintain all parts of the Cable System in good condition throughout the entire Franchise period.

B. Grantee shall render efficient service, make repairs promptly, and interrupt Cable Service only for good cause and for the shortest time reasonable.

C. Grantee shall not allow its cable or other operations to interfere with television reception of persons not served by Grantee, nor shall the Cable System interfere with, obstruct or hinder in any manner, the operation of the various utilities serving the residents within the confines of the County.

D. Grantee shall continue, through the term of the Franchise, to maintain the technical standards and quality of service set forth in this Ordinance. Should the County find, by resolution, that Grantee has failed to maintain these technical standards and quality of service, and such failure continues for three (3) months following such resolution, the failure will constitute a breach of a condition for which the procedures and remedies set forth in Section 33 of this Ordinance are applicable.

E. Grantee shall provide the County, upon request, with a written report of the results of Grantee's annual proof of performance tests conducted pursuant to FCC standards and requirements if such tests are required by applicable law.

24. CONTINUITY OF SERVICE MANDATORY

A. It shall be the right of all Subscribers to continue to receive Cable Service insofar as their financial and other obligations to Grantee are honored. Grantee, therefore, shall at all times maintain all parts of the Cable System in good condition and repair so as to provide that service on an uninterrupted basis. In the event that the County gives notice of its intent to terminate or to not renew this Franchise, Grantee shall ensure that all Subscribers receive continuous, uninterrupted Cable Service except when the interruption occurs as a result of an event of force majeure as provided in Section 34 of this Ordinance.

B. In the event of a change of Grantee, or in the event a new Grantee acquires the Cable System, Grantee shall cooperate with the County and new Grantee to maintain continuity of service to all Subscribers.

C. Except in the case of a force majeure, in the event that Grantee fails to operate the Cable System for seven (7) consecutive days without the approval of the Count, the County may, at its option, operate the Cable System or designate an operator until such time as Grantee resumes operation of the Cable System or a permanent alternative operator is selected. If the County is required to fulfill this obligation for Grantee, Grantee shall reimburse the County for all reasonable costs, expenses or damages incurred by the County that result from Grantee's failure to perform.

25. COMPLAINT PROCEDURE

A. The County shall have primary responsibility for the continuing administration of the Franchise and implementation of complaint procedures.

B. Grantee shall be reachable by a local, toll-free telephone call to receive complaints regarding quality of Cable Service, equipment malfunctions and similar matters. Grantee shall provide the means to accept complaints via telephone twenty-four (24) hours a day, seven days a week. Grantee shall respond to any complaints regarding Cable Service within twenty-four (24) hours and shall reasonably attempt to resolve them within two (2) business days of receipt of said complaint, subject to the Subscriber's scheduling convenience.

C. Upon request, Grantee shall within thirty (30) days of the request, compile a log of Subscriber complaints, subject to any limitations imposed by state or federal law, including any Subscriber privacy limitations, and make the log available to the County for review and inspection. The purpose of the log is to assist the County in assessing (in the aggregate) the type, degree, and resolution of complaints. Grantee shall have no obligation to retain any information required for purposes of preparing the log required by this section for more than three (3) years. However, the County shall not have the right of access, review, or inspection of any Subscriber complaint logs or any information contained within the Subscriber complaint logs that are otherwise protected from access, review, or inspection by state or federal law.

D. As Subscribers are connected or reconnected to the Cable System, Grantee shall, by appropriate means, such as a card or brochure, furnish information concerning the procedures for making inquiries or complaints, including the address and local telephone number to which such inquiries or complaints should be addressed.

26. GRANTEE RULES AND REGULATIONS

Grantee shall have the authority to promulgate such rules, regulations, terms and conditions governing the conduct of its business as shall be reasonably necessary to enable it to exercise its rights and perform its obligations under this franchise, and to ensure uninterrupted Cable Service to its Subscribers.

27. PAYMENT OF FRANCHISE FEES

A. As of the effective date of this Franchise, the County receives distributions in accordance with Kentucky Revised Statutes ("KRS") 136.600 to 136.660 ("KRS Distributions"). Grantee shall only be obligated to comply with Section 27.B through Section 27.H of this Franchise if the County has the legal right to opt to collect franchise fees instead of the KRS Distributions. If the County has the legal right to opt to collect franchise fees instead of the KRS Distributions, Grantee agrees that the payment period for the first franchise fee payable under this Franchise shall commence ninety (90) days after the County provides notice to Grantee and the Kentucky Department of Revenue that the County has opted to collect franchise fees instead of the KRS Distributions.

B. Grantee shall pay franchise fees to the County in an amount equal to five percent (5%) of Grantee's annual Gross Revenues. The percentage of franchise fee and the method of calculation shall be equal when compared to the percentage or method of calculation of the franchise fee in any other cable franchise or authorization to provide video service granted by County. In the event any other cable franchise or authorization to provide video service provides for a lesser franchise fee than this Franchise, Grantee's obligation to pay a franchise fee under this Section 27 shall be reduced by an equivalent amount.

C. Franchise fee payments due the County under this section shall be calculated on an annual basis. Grantee agrees to pay franchise fees to the County on a quarterly basis, within forty-five (45) days of the close of each calendar quarter.

D. Upon written request from the County, Grantee will furnish a statement of the quarterly franchise fee payment, reflecting the Gross Revenues on which the payment is based.

E. Grantee may pass franchise fees through to Subscribers as a line item on Subscriber bills or otherwise as Grantee chooses, consistent with federal law.

F. Upon reasonable notice, the County shall have the right during Normal Business Hours to inspect Grantee's records relevant to the payment of franchise fees and the right to audit or otherwise review and re-compute any amounts determined to be payable under this Ordinance; provided, however, that any such audit or review shall be completed within twelve (12) months following the end of each calendar year covered by the audit or review. Any additional amount due to the County as a result of an audit or review shall be paid within the thirty (30) days following written notice to Grantee, which notice shall include a copy of the audit report and invoices specifying all amounts sought by the County in additional franchise fees. Notwithstanding the foregoing, Grantee may withhold any amounts found underpaid by the audit or review that are challenged in writing by Grantee within the 30-day period following the written notice of the results of the audit or review until such matter is finally resolved, provided that Grantee shall make appropriate personnel available within 30 days of any challenge to the result of an audit or review to meet with representatives of the County to discuss the findings of the audit or review. Following such a meeting of Grantee and the County, Grantee shall pay any challenged amount to the County, unless the County or Grantee seeks a judicial resolution of the dispute or Grantee and the County agree to extend the time period.

G. No auditor engaged by the County, shall be compensated on a success-based formula, e.g., payment based on a percentage of an underpayment, if any.

H. Notwithstanding the foregoing, the County is not prohibited from collecting valid fees or taxes as set forth in KRS 136.660(3). Nothing herein shall be deemed a waiver of any right of Grantee to challenge the imposition of any fee as inconsistent with applicable law.

28. ANNEXATION

The County shall promptly provide written notice to Grantee of its annexation of any territory which is being provided Cable Service by Grantee or its affiliates. Such annexed area will be subject to the provisions of this Franchise upon sixty (60) days' written notice from the County. The County shall also notify Grantee in writing of all new street address assignments or changes within the Service Area. Grantee shall, within ninety (90) days after receipt of the annexation notice, pay the County franchise fees on revenue received from the operation of the Cable System to provide Cable Services in any area annexed by the County if the County has provided a written annexation notice that includes the addresses that will be moved into the Service Area in an Excel format or in a format that will allow Grantee to change its billing system. If the annexation notice does not include the addresses that will be moved into the Service Area, Grantee shall pay franchise fees within ninety (90) days after it receives the annexed addresses as set forth above. All notices due under this section shall be sent by certified mail, return receipt requested to the addresses set forth in Section 8 with a copy to the Director of Government Affairs. In any audit of franchise fees due under this Franchise, Grantee shall not be liable for franchise fees on annexed areas unless and until Grantee has received notification and information that meets the standards set forth in this section.

29. TRANSFER OF FRANCHISE OR CONTROL OF GRANTEE

A. Transfer of Franchise. Except as provided in Section 29.G. below, neither this Franchise nor any rights, interest or obligations of Grantee to this Franchise shall in any event be sold, assigned, transferred, leased, subleased, or disposed of (including, but not limited to, by forced or voluntary sale, sale or lease of all or substantially all of the assets) in whole, or in part, nor shall title thereto, either legal or equitable, or any right or interest therein, pass to or vest in any person or entity either by act of Grantee or by act of any person or entity holding control of or any interest in Grantee or the Cable System (each such event, a "Transfer"), without the prior approval by the County, in compliance with this Section 29 and applicable state and federal laws.

B. Transfer of Control of Grantee. Except as provided in Section 29.G. below, no change in control of or any controlling interest in Grantee shall occur after the Effective Date of this Franchise, by any act of Grantee, by act of any person or entity holding control of Grantee, by operation of law or otherwise, without the prior approval by the County, in compliance with this Section 29 and applicable state and federal laws. For purposes of this Section 29, the word "Control" or "Controlling Interest" means actual working control in whatever manner exercised. For purposes of this Section 29, the definition of "Transfer" shall include a change of control as described in this Section 29.B.

C. Default. Every Transfer without the prior approval of the County shall constitute a default of this Franchise. In the event of such a default, the County shall proceed according to the procedure set forth in this Franchise, and any applicable state or federal law.

D. Application for Approval. Grantee shall petition in writing for the County's written approval for a proposed Transfer. In making such petition, Grantee shall file the appropriate form mandated by federal law or, in the absence of such law, a similar replacement regulation of the County. The petition shall detail the terms of the Transfer and all applicable qualifications of the assignee or transferee required by such form.

E. Consent Factors. The County will not unreasonably withhold its approval of any Transfer. In making such a determination, the County shall consider the following: provided, however, that the County will respond within one hundred and twenty (120) days or such other period as applicable law may require:

1. technical qualifications, experience and expertise of the proposed assignee or transferee;
2. legal qualifications of the proposed assignee or transferee; and
3. financial qualifications of the proposed assignee or transferee.

F. Deemed Approval. If the County does not respond or fails to render a final decision within one-hundred and twenty (120) days (or such other period as applicable law shall require) of receipt of Grantee's petition for approval, said petition shall be deemed to have been approved unless Grantee and the County agree to an extension of time.

G. Consent Not Required. Notwithstanding the foregoing, no consent of the County shall be required for Grantee (1) to hypothecate, pledge, mortgage or assign all or any part of the Cable System, or any right or interest therein for financing purposes, or (2) to Transfer the Franchise or any interest in the Cable System or Grantee to any entity controlling, controlled by or under the same common control as Grantee.

30. REPORTS

A. Upon written request, Grantee shall provide the County copy of Grantee's or Grantee's parent company's Form 10-K for the preceding twelve (12) month period. This report shall be certified as correct by an authorized officer of Grantee.

B. Grantee shall submit, upon written request, a report to the County, within 90 days after the close of its fiscal year, which contains for the previous year:

- i. Subject to section 631 of the Cable Act, a summary of written Subscriber complaints, identifying complaints by number and category, and their disposition; and, where complaints involve recurrent Cable System problems, the nature of each problem and what steps have been taken to correct them;
- ii. Information indicating the number of Subscribers;
- iii. A current copy of the Subscriber Cable Service agreement; a current list of all rates, charges, and available Cable Services; and a current Channel list;
- iv. Information regarding the number of homes passed and the number of cable plant miles constructed;
- v. A list of all publicly available reports and petitions filed by Grantee with the FCC and state regulatory agencies; and
- vi. A compliance report certifying that the Cable System complies with federal signal leakage tests and all other federally mandated tests. If said tests reveal noncompliance, the nature of noncompliance shall be specified.

31. PARENTAL CONTROL CAPABILITY

Grantee shall provide Subscribers with the capability to control the reception of any video and/or audio Channel on the Cable System pursuant to Section 641 of the Cable Act.

32. PERFORMANCE EVALUATION SESSIONS

A. The County and Grantee may hold scheduled performance evaluation sessions within thirty (30) days of the third, sixth and ninth anniversary dates of Grantee's award of the Franchise and as may be required by federal and state law.

B. Special evaluation sessions may be held at any time during the term of the Franchise at the request of the County or Grantee.

C. All evaluation sessions shall be open to the public and announced in a newspaper of general circulation in accordance with KRS Chapter 424.

D. Topics that may be discussed at any scheduled or special evaluation session include but are not limited to: application of new technologies; Cable System performance; Cable Services provided; Subscriber complaints; privacy issues; amendments to this Ordinance; judicial and FCC rulings; and line extension policies.

E. Members of the general public may add topics to be discussed at the evaluation session either by working through the negotiating parties or by presenting a petition meeting the following requirements. If such a petition bears the valid signatures of fifty (50) or more residents of the Service Area, eighteen (18) years of age or older, and the proposed topic or topics are within the scope of the County's authority under this Ordinance or the Cable Act, the proposed topic or topics shall be added to the list of topics to be discussed at the evaluation session.

33. DEFAULT OF FRANCHISE; REVOCATION, TERMINATION AND CANCELLATION OF FRANCHISE

A. Material Violations. When any event, act or omission on the part of Grantee occurs which represents a violation of a material provision of this Franchise and the interests of the County or Subscribers are negatively affected, then such event, act or omission may be considered a breach of this Franchise. A material violation includes, but is not limited to, the following:

- i. Grantee has knowingly, or with the knowledge of an officer of Grantee, made a material, false statement; or
- ii. Failure to make the required payments or failure to file the required reports as provided under this Franchise; unless Grantee is lawfully contesting the legality or applicability of such payments or reports; or
- iii. A transfer of the Franchise or transfer of control of Grantee without the prior consent of the County where such consent is required by the terms of this Franchise; or
- iv. Grantee knowingly and consistently violates any FCC order, ruling or regulation concerning technical or performance standards;
- v. Grantee knowingly and repeatedly violates a material provision of the Franchise; or
- vi. Failure to restore Cable Service after one hundred twenty-six (126) hours of interrupted Cable Service, except when approval of such interruption is obtained from the County or when the interruption occurs as a result of an event of Force Majeure as provided in this Franchise.

B. The County agrees that it will enforce the terms of this Ordinance and other cable franchise ordinances on a competitively neutral basis. For purposes of establishing the date at which a fine may be imposed, the date of violation will be the date that the event can clearly be established or, if it cannot be so established, the date Grantee receives notice of the violation from the County. For purposes of giving rise to the opportunity to cure, the date of violation will be the date Grantee receives notice of the violation from the County and not the date of the event.

C. In the event that the County determines that the Grantee has violated any material provision of this Ordinance, any material rule or regulation promulgated pursuant hereto, any applicable federal, state or local law, or any material term of an agreement or ordinance awarding a Franchise, and except if such violation is due to a circumstance set forth in Section 34, the County shall make a written demand on the Grantee that it comply with the law or said agreement or ordinance. Grantee shall have thirty (30) days subsequent to receipt of the notice to cure the violation. If the violation is of such a nature so as to require more than thirty (30) days to cure, Grantee must initiate reasonable steps to remedy such default and notify the County of the steps being taken and the projected date that they will be completed.

D. Due Process Hearing. In the event Grantee fails to correct the enumerated condition within the time set forth above, the County shall notify Grantee of the time and place of a due process administrative hearing to be conducted by the County which shall be held not less than thirty (30) days thereafter.

E. Procedures and Damages. At the time of the public due process hearing, Grantee may present information on the current status of the alleged breach of the franchise and question witnesses. If the situation has been resolved, or steps are being taken to resolve the situation, Grantee may present such information at the hearing. The hearing shall be on the record and a written transcript shall be made available to Grantee, the cost of which shall be borne by Grantee. Upon the conclusion of the hearing, the County may determine that Grantee has cured any violation and thereby dismiss the matter or may determine from the evidence presented therein that there was a continuing violation subsequent to the correction period which could have been prevented by Grantee. The County shall notify Grantee, in writing, of any finding that Grantee failed to cure a noticed violation within the time provided above, including the basis for its decision. Grantee may appeal such determination to an appropriate court. Grantee may continue to operate the Cable System until all legal appeals procedures have been exhausted. Nothing in this Franchise, including the enforcement provisions set forth in this Section 33, shall prevent Grantee from filing at any time a legal action in any permissible court or tribunal seeking a declaration or enforcement of Grantee's rights or obligations under the Franchise.

F. Termination. The County, for material violations of the Franchise and after first granting Grantee a due process hearing to contest any alleged violations of the Franchise, may revoke, terminate or cancel any Franchise granted pursuant to the Ordinance by repealing the agreement by which it was granted. The County shall give Grantee notice of its intent to terminate the Franchise, which shall set forth the exact nature of the noncompliance. Grantee shall have sixty (60) days from such notice to either object in writing and to state its reasons for such objection and provide any explanation or to cure the alleged noncompliance. If the County has not received a satisfactory response from Grantee, it may then seek to revoke the Franchise at a public hearing. Grantee shall be given at least thirty (30) days prior written notice of such public hearing, specifying the time and

place of such hearing and stating its intent to revoke the Franchise. The public hearing shall be conducted in accordance with the requirements of Section 33(E) above.

G. Notwithstanding the above provisions, both the County and Grantee reserve all of their respective rights under federal law or regulation.

34. FORCE MAJEURE

Grantee shall not be deemed in default of provisions of the Franchise where performance was rendered impossible by act of war, riots, civil disturbances, pandemics, labor, strikes, floods, pandemics, or other circumstances beyond the reasonable control of Grantee, and the Franchise shall not be revoked or Grantee penalized for such non-compliance; provided that Grantee takes prompt steps to bring itself back into compliance and to comply as soon as possible under the circumstances with its Franchise obligations without unduly endangering the health or safety of Grantee's employees or the integrity of its property, or without unduly endangering the health or safety of the public. Notwithstanding the foregoing, neither mere economic hardship nor any misfeasance or malfeasance of Grantee or its directors, officers or employees shall constitute a force majeure event under this Ordinance. Grantee shall provide written notice to the County of the applicability of this Section within a reasonable period of time after its discovery of the same.

35. CUSTOMER SERVICE PERFORMANCE

A. Grantee shall comply with the FCC's customer service standards set forth in Exhibit A.

B. Grantee shall continue to provide the following:

i. at least one opportunity for Subscribers to exchange equipment in the County without charge. By way of example, "in the County" in this context may include mail delivery of new equipment to a Subscriber's home along with "drop ship" packaging from a local shipping store such as FedEx or UPS for returning the old equipment;

ii. a 24-hour, toll-free customer service telephone number with company personnel capable of handling complaints and inquiries 7-days per week; or

iii. at least one location in the County, which may be provided through a third party agent, that is capable of receiving payments from Grantee's Subscribers.

C. As Subscribers are connected or reconnected to the Cable System, Grantee shall, by appropriate means, such as a card or brochure, furnish information concerning the procedures for making inquiries or complaints, including the address and local telephone number to which such inquiries or complaints should be addressed.

36. CONTINUED USE OF INDIVIDUAL ANTENNAS PROTECTED

No person shall be required to receive Cable Service or to physically connect to the Cable System.

37. PERMITS AND LICENSES

Grantee shall obtain all generally applicable, legally required permits before commencing any work requiring a permit, including the opening or disturbance of any Street within the Service Area. The County shall cooperate with Grantee in granting any permits required, providing such grant and subsequent construction by Grantee shall not unduly interfere with the use of such Streets. Grantee shall adhere to all building and zoning codes currently or hereafter applicable to all public utility companies and other entities operating in the County.

38. EMERGENCY ALERT SYSTEM

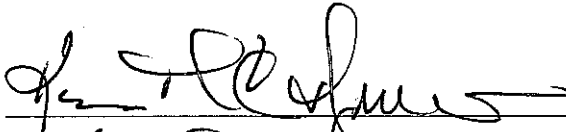
Grantee shall comply with the Emergency Alert System ("EAS") regulations of the FCC. The EAS shall meet all federal and state requirements.

39. PUBLICATION COSTS

Subject to applicable law, Grantee shall reimburse the County for the reasonable, documented cost of publication of the franchise ordinances and advertisements.

Passed and Approved on first reading this 18th day of NW., 2020

Passed and approved on second reading and publication this 16th day of Dec., 2020

Approved: 

Approved: 

EXHIBIT A
Customer Service Standards
47 C.F.R. § 76.309(c)

(1) Office hours and telephone availability -

(i) Franchisee will maintain a local, toll-free or collect call telephone access line which will be available to its Subscribers 24 hours a day, seven days a week.

(A) Trained company representatives will be available to respond to customer telephone inquiries during normal business hours.

(B) After normal business hours, the access line may be answered by a service or an automated response system, including an answering machine. Inquiries received after normal business hours must be responded to by a trained company representative on the next business day.

(ii) Under normal operating conditions, telephone answer time by a customer representative, including wait time, shall not exceed thirty (30) seconds when the connection is made. If the call needs to be transferred, transfer time shall not exceed thirty (30) seconds. These standards shall be met no less than ninety (90) percent of the time under normal operating conditions, measured on a quarterly basis.

(iii) Franchisee will not be required to acquire equipment or perform surveys to measure compliance with the telephone answering standards above unless an historical record of complaints indicates a clear failure to comply.

(iv) Under normal operating conditions, the customer will receive a busy signal less than three (3) percent of the time.

(v) Customer service center and bill payment locations will be open at least during normal business hours and will be conveniently located.

(2) Installations, outages and service calls. Under normal operating conditions, each of the following four standards will be met no less than ninety-five (95) percent of the time measured on a quarterly basis:

(i) Standard installations will be performed within seven (7) business days after an order has been placed. "Standard" installations are those that are located up to 125 feet from the existing distribution system.

(ii) Excluding conditions beyond the control of the operator, the cable operator will begin working on "service interruptions" promptly and in no event later than 24 hours after the interruption becomes known. The cable operator must begin actions to correct other service problems the next business day after notification of the service problem.

(iii) The "appointment window" alternatives for installations, service calls, and other installation activities will be either a specific time or, at maximum, a 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.)

(iv) An operator may not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment.

(v) If a cable operator representative is running late for an appointment with a customer and will not be able to keep the appointment as scheduled, the customer will be contacted. The appointment will be rescheduled, as necessary, at a time which is convenient for the customer.

(3) Communications between Franchisee and Subscribers -

(i) Refunds - Refund checks will 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 the equipment supplied by Franchisee if service is terminated.

(ii) Credits - Credits for service will be issued no later than the customer's next billing cycle following the determination that a credit is warranted.

(4) Definitions -

(i) **Normal business hours** - The term "normal business hours" means those hours during which most similar businesses in the community are open to serve customers. In all cases, "normal business hours" must include some evening hours at least one night per week and/or some weekend hours.

(ii) **Normal operating conditions** - The term "normal operating conditions" means those service conditions which are within the control of the cable operator. Those conditions which are *not* within the control of the cable operator include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Those conditions which *are* ordinarily within the control of the cable operator include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of the cable system.

(iii) **Service interruption** - The term "service interruption" means the loss of picture or sound on one or more cable channels.