



TOWN COUNCIL – AGENDA REQUEST FORM

THIS FORM WILL BECOME PART OF THE BACKGROUND INFORMATION USED BY THE COUNCIL AND PUBLIC

Please submit Agenda Request Form, **including back up information**, 8 days prior to the requested meeting date. **Public Hearing requests must be submitted 20 days prior to requested meeting date to meet publication deadlines** (exceptions may be authorized by the Town Manager, Chairman/Vice Chair).

MEETING INFORMATION

Date Submitted: August 7, 2018
Submitted by: Town Council Chairman Finlay
Rothhaus and Vice Chair Tom Koenig
Department:
Speakers: Media Services Coordinator Nicholas
Lavallee

Date of Meeting: August 16, 2018

Time Required: 20 minutes

Background Info. Supplied: Yes: No:

CATEGORY OF BUSINESS (PLEASE PLACE AN "X" IN THE APPROPRIATE BOX)

Appointment:	<input type="checkbox"/>	Recognition/Resignation/ Retirement:	<input type="checkbox"/>
Public Hearing:	<input type="checkbox"/>	Old Business:	<input type="checkbox"/>
New Business:	<input checked="" type="checkbox"/>	Consent Agenda:	<input type="checkbox"/>
Nonpublic:	<input type="checkbox"/>	Other:	<input type="checkbox"/>

TITLE OF ITEM

Cable Franchise Renewal Discussion

DESCRIPTION OF ITEM

Town Council will review and discuss cable television franchise renewal.

REFERENCE (IF KNOWN)

RSA:	Warrant Article:
Charter Article:	Town Meeting:
Other:	N/A

EQUIPMENT REQUIRED (PLEASE PLACE AN "X" IN THE APPROPRIATE BOX)

Projector:	<input type="checkbox"/>	Grant Requirements:	<input type="checkbox"/>
Easel:	<input type="checkbox"/>	Joint Meeting:	<input type="checkbox"/>
Special Seating:	<input type="checkbox"/>	Other:	<input type="checkbox"/>
Laptop:	<input type="checkbox"/>	None:	<input type="checkbox"/>

CONTACT INFORMATION

Name:	Finlay Rothhaus	Address	6 Baboosic Lake Road
Phone Number		Email Address	frothhaus@merrimacknh.gov

APPROVAL

Town Manager: Yes No: Chair/Vice Chair: Yes No:

Hold for Meeting Date: _____



Town of Merrimack, New Hampshire

6 Baboosic Lake Rd · Merrimack, NH 03054 · www.merrimacknh.gov

June 18, 2018

Cable Television Franchise Renewal Information

The current agreement is a non-exclusive, revocable cable television Renewal Franchise to the Franchisee (Comcast), a Delaware corporation established for such purpose, authorizing and permitting the Franchisee to construct, upgrade, install, operate and maintain a Cable Television System within the corporate limits of the Town of Merrimack.

The ten year agreement was made on January 8, 2009. End of term is January 2019.

Highlights of current Franchise Agreement:

- Cable services are available to all residents within the Town of Merrimack.
- Any potential subscriber located in Merrimack without service may request a line extension to enable cable TV services.
- Basic services for municipal buildings including police and fire.
- 3.75% franchise fee that is traditionally used to fund Merrimack Public, Education, and Government TV (PEG TV, Media Division).
- Franchisee must respond to service calls within 24 hours of the original call.

Timeline for the renewal process:

Bryan Christiansen, Comcast Senior Manager of Government and Regulatory Affairs, and I have met and discussed a time line for Merrimack's renewal. Neighboring communities, such as Bedford and Goffstown, are also up for renewal about the same time of Merrimack our needs and agreements are very similar.

Goffstown and Bedford have held hearings this year relative to their pending franchise renewal. As the franchising authority, Merrimack's Town Council should offer a public hearing to allow residents to provide input regarding the renewal of the franchise agreement.

The document is not exclusive to Comcast. Any cable company is welcome to provide cable services to Merrimack with the condition of operating under the franchise agreement.

The franchising authority can not set the cable company's rates. The agreement is limited to cable television services and does not include internet-based plans or services.

Our neighboring communities, including those who are members of the Alliance for Community Media, have requested that their PEG TV have a channel on the franchise's high definition tier, if and when available. The City of Manchester and Town of Bedford have added this request during negotiations, and included it in a side letter, outside of the franchise agreement itself.

Mr. Christiansen will be sending a document this week of a proposed draft renewal to use as a template for negotiating business terms unique to Merrimack's franchise agreement.

We should anticipate to finalize the agreement over the late summer or early fall, well in advance of the January expiration date.

Nicholas Lavallee
Media Services Coordinator
Town of Merrimack

CABLE TELEVISION FRANCHISE

GRANTED TO

**COMCAST OF CONNECTICUT/GEORGIA/MASSACHUSETTS/NEW
HAMPSHIRE/NEW YORK/NORTH
CAROLINA/VIRGINIA/VERMONT, LLC**

BY THE

TOWN COUNCIL

**TOWN OF MERRIMACK,
NEW HAMPSHIRE**

TERM: January 8, 2019 – January 7, 2029

DRAFT

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AGREEMENT

This Agreement, made this ___ day of Month, 2018, between the Town Council of the Town of Merrimack, NH as statutory Franchising Authority pursuant to RSA: 53-C, and Comcast of Connecticut/Georgia/Massachusetts/New Hampshire/New York/North Carolina/Virginia/Vermont, LLC (“Comcast”).

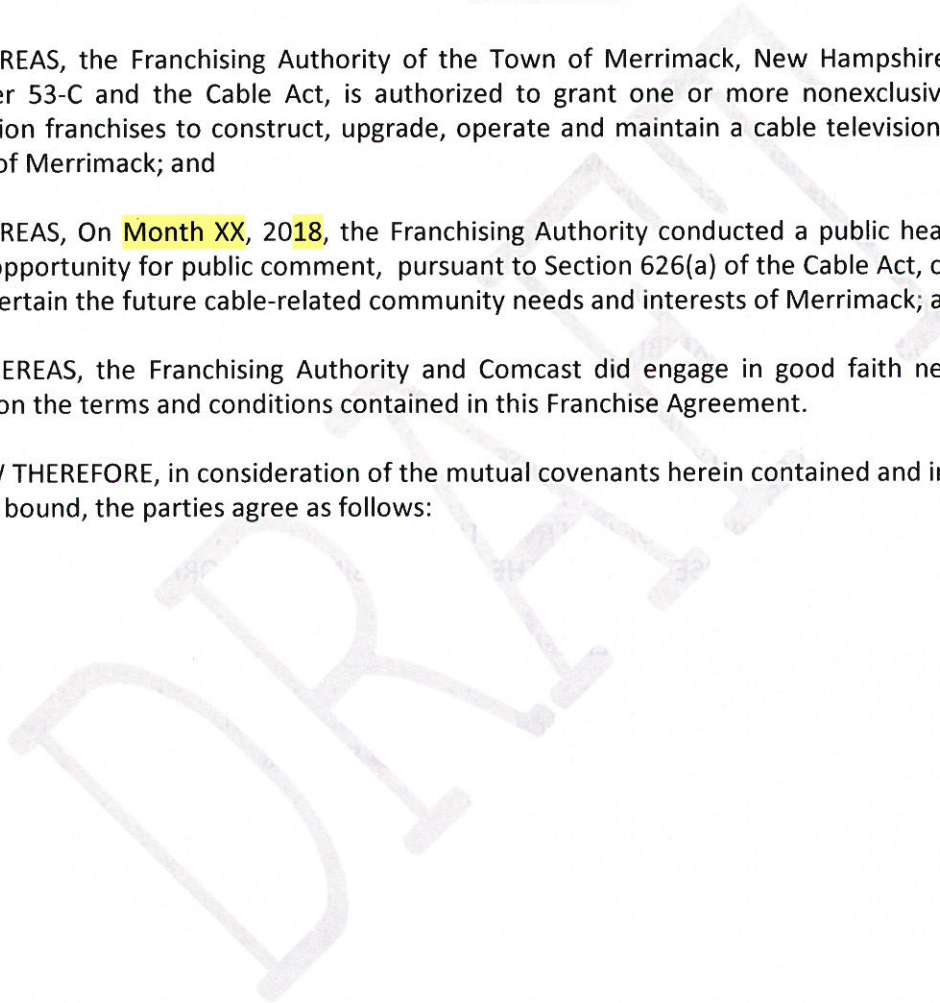
WITNESSETH

WHEREAS, the Franchising Authority of the Town of Merrimack, New Hampshire, pursuant to RSA Chapter 53-C and the Cable Act, is authorized to grant one or more nonexclusive, revocable cable television franchises to construct, upgrade, operate and maintain a cable television system within the Town of Merrimack; and

WHEREAS, On Month XX, 2018, the Franchising Authority conducted a public hearing and there has been opportunity for public comment, pursuant to Section 626(a) of the Cable Act, on Month XX, 2018, to ascertain the future cable-related community needs and interests of Merrimack; and

WHEREAS, the Franchising Authority and Comcast did engage in good faith negotiations and did agree on the terms and conditions contained in this Franchise Agreement.

NOW THEREFORE, in consideration of the mutual covenants herein contained and intending to be legally bound, the parties agree as follows:



ARTICLE 1

DEFINITIONS

Section 1.1-DEFINITIONS

For the purpose of this Franchise, the following words, terms, phrases and their derivations shall have the meanings given herein, unless the context clearly requires a different meaning. When not inconsistent with the context, the masculine pronoun includes the feminine pronoun, words used in the present tense include the future tense, words in the plural number include the singular number and words in the singular number include the plural number. The word shall is always mandatory and not merely directory.

(1) Access: The right or ability of any Merrimack resident and/or any Persons affiliated with a Merrimack non-commercial institution to use designated facilities, equipment and/or channels of the Cable Television System, subject to the conditions and procedures established for such use.

(2) Access Channel: A video channel which the Franchisee shall make available to the Franchising Authority and/or its designees, without charge, for the purpose of transmitting non-commercial programming by members of the public, Town departments and agencies, public schools, educational, institutional and similar organizations.

(3) Access Provider: The entity as may be designated from time to time by the Franchising Authority for the purpose of operating and managing Public, Educational and Governmental Access channel capability, facilities, training and programming for Merrimack Subscribers.

(4) Affiliate or Affiliated Person: When used in relation to any person, means another person who owns or controls, is owned or controlled by, or is under common ownership or control with, such person, excluding any entity related to the operations of NBC Universal.

(5) Basic Service: Any service tier which includes the retransmission of local television broadcast signals.

(6) Cable Act: Public Law No. 98-549, 98 Stat. 2779 (1984)(the Cable Communications Policy Act of 1984), as amended by Public Law No. 102-385, 106 Stat. 1460 (1992) (the Cable Television Consumer Protection and Competition Act of 1992), as further amended by Public Law No. 104-458, 110 Stat. 110 (1996) (the Telecommunications Act of 1996).

(7) Cable Service or Service: The one-way transmission to Subscribers of Video Programming or other Programming services, together with Subscriber interaction, if any, which is required for the selection or use of such Video Programming or other programming services, which the Franchisee may make available to Subscribers generally.

(8) Cable System or System: A facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes Video Programming and which is provided to multiple Subscribers within the Town, but such term does not include (A) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (B) a facility that serves subscribers without using any public right-of-way; (C) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Cable Act, except that such facility shall be considered a cable system (other than for purposes of section 621(c) of the Cable Act) to the extent such facility is used in the transmission of video programming directly to subscribers unless the extent of such use is solely to provide interactive on-demand services; or (D) an open video system that complies with Section 653 of the Communications Act, or (E) any facilities of any electric utility used solely for operating its electric utility systems.

(9) Commercial Subscriber: A commercial, non-residential Subscriber to Cable Television Service.

(10) Complaint: Complaint: Any written or verbal contact with the Franchisee in connection with subscription in which a Person expresses dissatisfaction with an act, omission, product or service that is (1) within the Franchisee's control, and (2) requires a corrective measure on the part of the Franchisee.

(11) Converter: Any device changing the frequency of a Signal. A Subscriber Converter may expand reception capacity and/or unscramble coded Signals distributed over the Cable System.

(12) Department of Public Works ("DPW"): The Department of Public Works of the Town of Merrimack, New Hampshire.

(13) Digital Terminal Adapter ("DTA") A set-top box deployed by the Franchisee that converts digital service to analog to support video to analog television sets. The DTA can also deliver digital video distribution to digital television sets via the cable input. The DTA does not support Video on Demand services, Digital Video Recorder (DVR) or Premium Services.

(14) Downstream Channel: A channel over which PEG Signals travel from the Cable System Headend to an authorized recipient of Programming.

(15) Drop: The cable that connects each home or building to the feeder line of the Cable System.

(16) Educational Access Channel: A specific channel(s) on the Cable System which is made available for use by, among others, educational institutions and/or educators wishing to present non-commercial educational programming and/or information to the public.

(17) Effective Date of Franchise (the "Effective Date"): September 8, 2018.

(18) FCC: The Federal Communications Commission, or any successor agency.

(19) Franchise: The non-exclusive Cable Television Franchise granted to the Franchisee by this instrument.

(20) Franchise Fee: The payments to be made by the Franchisee to the Town, which shall have the meaning as set forth in Section 622(g) of the Cable Act.

(21) Franchisee: Comcast of Connecticut/Georgia/Massachusetts/New Hampshire/New York/North Carolina/Virginia/Vermont, LLC, or any successor or transferee in accordance with the terms and conditions in this Franchise.

(22) Franchising Authority: The Town Council of the Town of Merrimack, New Hampshire.

(23) Government Access Channel: A specific channel(s) on the Cable System which is made available for use by the Franchising Authority and/or its designee(s) wishing to present non-commercial government Programming and/or information to the public.

(24) Gross Annual Revenues: All revenues derived by the Franchisee and/or its Affiliates, calculated in accordance with Generally Accepted Accounting Principles ("GAAP"), from the operation of the Cable System for the provision of Cable Service(s) over the Cable System including, without limitation: the distribution of any Service over the Cable System; Basic Service monthly fees and all other Service fees; any and all Cable Service fees and/or charges received from Subscribers; installation, reconnection, downgrade, upgrade and any similar fees; all digital Cable Service revenues; all Commercial Subscriber

revenues; all Pay Cable, Pay-Per-View revenues; any other services now or in the future deemed to be Cable Services for purposes of computing Gross Annual Revenues by a court or forum of appropriate jurisdiction; video-on-demand Cable Services; fees paid for channels designated for commercial use; Converter, remote control and other cable-related equipment rentals and/or leases and/or sales;. Gross Annual Revenues shall also include the gross revenue of any other Person which is received directly or indirectly from or in connection with the operation of the Cable System to the extent that said revenue is received, through a means which has the effect of avoiding payment of Franchise Fees to the Town that would otherwise be paid herein. It is the intention of the parties hereto that Gross Annual Revenues shall only include such revenue of such Affiliates and/or Persons relating to Signal carriage over the Cable System and not the gross revenues of any such Affiliate(s) and/or Person(s) itself, where unrelated to such Signal carriage. Gross Annual Revenues shall not include actual bad debt that is written off, consistent with GAAP; provided, however, that all or any part of any such actual bad debt that is written off, but subsequently collected, shall be included in Gross Annual Revenues in the period so collected. Gross Annual Revenues shall also include fees paid on Subscriber fees ("Fee on Fee") and home shopping revenues and advertising revenues on a pro-rata basis.

(25) Headend: The electronic center of the Cable System containing equipment that receives, amplifies, filters and converts incoming Signals for distribution over the Cable System.

(26) Hub or Hub Site: A sub-Headend, generally located within a cable television community, used for the purpose of either (i) Signal processing or switching, or (ii) placement of a fiber node, microwave link or transportation super trunk.

(27) Leased Channel or Leased Access: A video channel which the Franchisee shall make available pursuant to Section 612 of the Cable Act.

(28) Normal Business Hours: Those hours during which most similar businesses in the Town are open to serve customers. In all cases, Normal Business Hours shall include some evening hours at least one (1) night per week and/or some weekend hours.

(29) Origination Capability: An activated cable and connection to an Upstream Channel, which allows User(s) to transmit a Signal(s) upstream to a designated location.

(30) Outlet: An interior receptacle, generally mounted in a wall that connects a Subscriber's or User's equipment to the Cable System.

(31) Pay Cable or Pay Service(s): Programming delivered for a fee or charge to Subscribers on a per-channel or group-of-channels basis.

(32) Pay-Per-View: Programming delivered for a fee or charge to Subscribers on a per-program or per-event basis.

(33) PEG: The acronym for "public, educational and governmental," used in conjunction with Access Channels, support and facilities.

(34) Pedestal: An environmental protection unit used in housing Cable Television System equipment and/or amplifiers.

(35) Person: An individual, partnership, association, joint stock company, trust, corporation, or governmental entity.

(36) Prime Rate: The prime rate of interest at Bank of America, or its successor.

(37) Programming or Video Programming: Programming provided by, or generally considered comparable to programming provided by, a television broadcast station.

(38) Public Access Channel: A specific channel(s) on the Cable System which is made available for use by, among others, Merrimack individuals and/or organizations wishing to present non-commercial programming and/or information to the public.

(39) Public Way or Street: The surface of, as well as the spaces above and below, any and all public streets, avenues, highways, boulevards, concourses, driveways, bridges, tunnels, parks, parkways, waterways, bulkheads, piers, dedicated public utility easements, and public grounds or waters and all other publicly owned real property within or belonging to the Town, now or hereafter existing. Reference herein to "Public Way" or "Street" shall not be construed to be a representation or guarantee by the Town that its property rights are sufficient to permit its use for any purpose, or that the Franchisee shall gain or be permitted to exercise any rights to use property in the Town greater than those already possessed by the Town.

(40) Scrambling/encoding: The electronic distortion of a Signal(s) in order to render it unintelligible or unreceivable without the use of a Converter or other decoding device.

(41) Signal: Any transmission of electromagnetic or optical energy which carries information from one location to another.

(42) State: The State of New Hampshire.

(43) Subscriber: Any Person, firm, corporation or other entity in the Town who or which elects to subscribe to, for any purpose, a Service provided by the Franchisee by means of, or in connection with, the Cable System.

(44) Subscriber Network: The Cable System that is owned, operated and maintained by the Franchisee, over which Signals can be transmitted to Subscribers.

(45) Town: The Town of Merrimack, New Hampshire.

(46) Town Council: The Town Council of the Town of Merrimack, New Hampshire.

(47) Transfer: The disposal by the Franchisee, directly or indirectly, by gift, assignment, sale, merger, consolidation or otherwise, of ownership resulting in a change of control of the Cable System or of this Franchise, to a Person or a group of Persons.

(48) Trunk and Distribution System: That portion of the Cable System for the delivery of Signals, but not including Drops to Subscriber's residences.

(49) Upstream Channel: A channel over which PEG Signals travel from an authorized location to the System Headend.

(50) User: A Person utilizing the Cable System, including all related facilities for purposes of production and/or transmission of electronic or other Signals as opposed to utilization solely as a Subscriber.

ARTICLE 2

GRANT OF FRANCHISE

Section 2.1-GRANT OF FRANCHISE

Pursuant to the authority of RSA Chapter 53-C of the laws of the State of New Hampshire, and subject to the terms and conditions set forth herein, the Town Council of the Town of Merrimack, New Hampshire, as the Franchising Authority of the Town, hereby grants a non-exclusive Cable Television Franchise to the Franchisee, authorizing and permitting the Franchisee to upgrade, install, operate and maintain a Cable System within the corporate limits of the Town of Merrimack.

This Franchise is subject to the terms and conditions contained in Chapter 53-C of the Laws of New Hampshire; the Cable Act; the regulations of the FCC; and all Town, State and federal statutes and ordinances of general application, all as may be amended during the term of this Franchise.

Subject to the terms and conditions herein, the Franchising Authority hereby grants to the Franchisee, the right to construct, upgrade, install, operate and maintain a Cable System in, under, over, along, across or upon the streets, lanes, avenues, alleys, sidewalks, bridges, highways and other public places under the jurisdiction of the Town of Merrimack within the municipal boundaries and subsequent additions thereto, including property over which the Town has an easement or right-of-way, for the purpose of reception, transmission, collection, amplification, origination, distribution, and/or redistribution of Signals in accordance with the laws of the United States of America, the State of New Hampshire and the Town of Merrimack. In exercising rights pursuant to this Franchise, the Franchisee shall not endanger or interfere with the lives of Persons, interfere with any installations of the Town, any public utility serving the Town or any other Persons permitted to use Public Ways and places.

Grant of this Franchise does not establish priority for use over other present or future permit holders or the Town's own use of Public Way and places. Any references herein to "Public Way" or "Street" shall not be construed to be a representation or guarantee by the Town that its property rights are sufficient to permit its use for any purpose, or that the Franchisee shall gain or be permitted to exercise any rights to use property in the Town greater than those already possessed by the Town.

Section 2.2-TERM OF FRANCHISE

The term of this Franchise shall be for ten (10) years, commencing on January 8, 2019 and expiring on January 7, 2029, unless sooner terminated as provided herein.

Section 2.3-NON-EXCLUSIVITY OF THE FRANCHISE

(a) This Franchise shall not affect the right of the Franchising Authority to grant to any other Person a franchise or right to occupy or use the Public Ways or streets, or portions thereof, for the construction, installation, operation or maintenance of a Cable Television System within the Town of Merrimack; or the right of the Franchising Authority to permit the use of the Public Ways and places of the Town for any lawful purpose whatsoever. The Franchisee hereby acknowledges the Franchising Authority's right to make such grants and permit such uses.

(b) Pursuant to RSA Chapter 53-C: 3-b(I), the grant of any additional Cable Television franchise(s) shall not be on terms more favorable or less burdensome than those contained in this Franchise.

Section 2.4-POLICE AND REGULATORY POWERS

By executing this Franchise, the Franchisee acknowledges that its rights are subject to the powers of the Town to adopt and enforce generally applicable by-laws necessary to the safety and welfare of the public. The Franchisee shall comply with all generally applicable DPW regulations, and any generally applicable ordinances enacted by the Town. Any conflict between the terms of this Franchise and any

present or future lawful exercise of the Town's police and generally applicable regulatory powers shall be resolved by a court of appropriate jurisdiction.

Section 2.5-REMOVAL OR ABANDONMENT

Upon termination of this Franchise by passage of time or otherwise, and unless (1) the Franchisee renews its franchise for another term or (2) the Franchisee Transfers the Cable Television System to a transferee approved by the Franchising Authority, the Franchisee shall remove all of its supporting structures, poles, transmission and distribution systems, and all other appurtenances from the Public Ways and places and shall restore the areas, as close as possible, to their original condition. If such removal is not complete within six (6) months after such termination, the Franchising Authority may deem any property not removed as having been abandoned and may dispose of any such property in any way or manner it deems appropriate. Franchisee shall not be required to remove its Cable System or to sell the Cable System, or any portion thereof as a result of revocation, denial of renewal, or any other lawful action to forbid or disallow Franchisee from providing Cable Service, if the Cable System is actively being used to facilitate any other services not governed by the Cable Act.

Section 2.6-AMENDMENT BY MUTUAL AGREEMENT

This Franchise may only be amended by the mutual agreement of the Franchising Authority and the Franchisee, in writing, duly executed and signed by both parties, and attached hereto and made a part of this Franchise.

DRAFT

ARTICLE 3

TRANSFER AND ASSIGNMENT OF FRANCHISE

Section 3.1-TRANSFER OF THE FRANCHISE

(a) Subject to applicable law and compliance with the provisions in this Section 3.1, neither this Franchise, nor control thereof, nor any right thereto, shall be transferred, assigned or disposed of in any manner, voluntarily or involuntarily, directly or indirectly, or by transfer of control of any Person, company and/or other entity holding such Franchise to any other Person, company and/or other entity, without the prior written consent of the Franchising Authority, which consent shall not be unreasonably withheld or delayed. Such consent shall be given upon a written application therefor on forms prescribed by the FCC.

(b) The application for consent to a Transfer or assignment shall be signed by the Franchisee and by the proposed transferee or assignee or by their representatives, evidence of whose authority shall be submitted with the application.

(c) The Franchisee shall submit to the Franchising Authority an original and two (2) copies, unless otherwise directed, of its FCC Form 394 (or such other or successor form used to request consent to any such Transfer or assignment). The request for approval of Transfer or assignment shall also contain all reasonably appropriate documentation and such additional information as the Franchising Authority may reasonably require.

(d) The consent of the Franchising Authority shall be given only after a public hearing, if such a hearing is scheduled by the Franchising Authority, in writing, in a timely manner, or requested by the Franchisee, in writing, in a timely manner, to consider the written request for Transfer. The Franchising Authority shall complete review of the request for Transfer and make a decision thereto no later than one hundred twenty (120) days after receipt of the request for Transfer. If the Franchising Authority fails to render a final decision on such request within said 120 days, such request shall be deemed granted unless both parties hereto agree to an extension of time.

(e) For purposes of determining whether it shall consent to any such change of control and ownership, the Franchising Authority shall consider the legal, financial and technical qualifications of the prospective controlling or owning Person, and any other criteria allowable under State and/or federal law(s).

(f) Any proposed controlling or owning Person or transferee approved by the Franchising Authority shall be subject to all of the terms and conditions contained in this Franchise.

Section 3.2-EFFECT OF UNAUTHORIZED ACTION

(a) The taking of any action in violation of Section 3.1 herein shall be null and void, and shall be deemed a material breach of this Franchise.

(b) If the Franchising Authority denies its consent to any such action and a Transfer has nevertheless occurred, the Franchising Authority may revoke and terminate this Franchise.

(c) The grant or waiver of any one or more of such consents shall not render unnecessary any subsequent consent or consents, nor shall the grant of any such consent constitute a waiver of any other rights of the Town.

Section 3.3-NO WAIVER OF RIGHTS

The consent or approval of the Franchising Authority to any assignment, lease, Transfer or sublease of the Franchise granted to the Franchisee shall not constitute a waiver or release of the rights of the Town in and to the streets and Public Ways or any other rights of the Town under this Franchise, and any such Transfer shall, by its terms, be expressly subordinate to the terms and conditions of the Franchise.

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ARTICLE 4

SYSTEM DESIGN

Section 4.1-SUBSCRIBER NETWORK

(a) In accordance with the requirements of Article 5, the Franchisee shall construct, operate, maintain and make available to all residents of the Town a Subscriber Network of at least 750 MHz.

(b) The Franchisee shall transmit all of its Signals to Subscribers in stereo, provided that such Signals are delivered to the Franchisee in stereo.

(c) The system design of the Cable Television System shall conform to all applicable FCC technical specifications.

Section 4.2-EMERGENCY ALERT SYSTEM

The Subscriber Network shall be in compliance with the FCC's Emergency Alert System ("EAS") regulations and in accordance with applicable New Hampshire laws and/or regulations.

Section 4.3-PARENTAL CONTROL CAPATOWN

The Franchisee shall provide, upon request, Subscribers with the capability to control the reception of any channels being received on their television sets, at a cost, if any, pursuant to applicable law(s).

ARTICLE 5

**CONSTRUCTION, INSTALLATION, LINE EXTENSION
AND MAINTENANCE STANDARDS**

Section 5.1-SERVICE AVAILABILITY

(a) The Franchisee shall make its Cable System Service available to all residents of the Town, within fifteen (15) days of a request therefor, subject to paragraph (b) and Section 5.2 and Section 5.3 below and provided that the Franchisee is able to obtain any necessary easements and/or permits.

(b) Installation charges shall be non-discriminatory. A standard aerial installation charge shall be established by the Franchisee which shall apply to any residence located not more than two hundred feet (200') from the existing aerial Trunk and Distribution System and additions thereto. The Franchisee may charge residents located more than 200 aerial feet from the existing aerial Trunk and Distribution System, and additions thereto, time and materials charges. The Franchisee shall have up to, but not more than, ninety (90) days in order to survey, design and install non-standard installations that are more than 200 aerial feet from the existing Trunk and Distribution system.

(c) Underground installation shall be considered standard and therefore subject to standard underground installation rates within two hundred feet (200') of the existing Cable System plant, provided no Trunk and Distribution System construction is required and sub-surface is dirt or similar soft surface. Underground installations within two hundred feet (200') of the existing Cable System plant requiring Trunk and Distribution System construction or involving hard surface or requiring boring through rock or under sidewalks, streets, or flower bedding are considered non-standard installations and shall be provided at a rate based upon actual costs and a reasonable return on investment in addition to the standard installation charge. Installations more than two hundred feet (200') from existing Cable System plant requiring Trunk and Distribution System construction or involving hard (concrete, asphalt, etc.) surface shall be provided at a rate based upon actual costs and a reasonable return on investment in addition to the standard installation charge.

(d) Consistent with Section 5.1(b) above, the Cable Television System shall be extended automatically, at the Franchisee's sole cost and expense, to any and all areas of the Town's Public Ways containing thirty (30) dwelling units or more per aerial or underground mile of Cable System plant or fractional proportion thereof in non-underground housing development areas of the Town. The Franchisee shall apply for permits, if necessary, promptly. Said service shall be made available and fully activated to requesting dwelling units no later than sixty (60) days after all necessary permits are obtained, subject to weather, Force Majeure, and the performance of make ready.

(e) The Cable Television System shall be further extended to all areas in the Town that do not meet the requirements of Section 5.1(d) above upon the request of dwelling unit owners in such areas and based upon the following cost calculation: The cost of wiring such areas shall be calculated by taking the capital cost of extending such service divided by the number of dwelling units in such area minus the costs extending service to dwelling units in an area along the Public Ways that meets the thirty (30) dwelling units per aerial or underground mile of cable plant and/or fractional proportion thereof density requirement specified in subsection (a) above. The resulting cost shall equal the per dwelling unit contribution relating to line extension of cable service in that particular area of the Town, or

$$\frac{C}{LE} - \frac{CA}{P} = SC$$

- * C equals the cost of construction of new plant from existing Cable System plant;
- * LE equals the number of dwelling units requesting in the line extension area and who subsequently pay a contribution in aid;
- * CA equals the average cost of construction per mile in the primary service area;
- * P equals the thirty (30) dwelling units per aerial or underground mile of aerial plant; and
- * SC equals the per dwelling unit contribution in aid of construction in the line extension area.

(f) The Franchising Authority shall make its best efforts to provide the Franchisee with written notice of the issuance of building permits for planned housing developments in the Town requiring the undergrounding of Cable System plant. The Franchisee shall construct and install Cable System plant at Franchisee's cost and expense in any such new development provided that a minimum of twenty-five (25) homes therein are constructed and that the Franchisee is able to access open trenches for deployment of Cable System plant.

Section 5.2-LOCATION OF CABLE TELEVISION SYSTEM

The Franchisee shall operate and maintain the Cable Television System within the Town of Merrimack. Poles, towers and other obstructions shall be erected so as not to interfere with vehicular or pedestrian traffic over Public Ways and places. The erection and location of all poles, towers and any other obstructions shall be in accordance with applicable Town ordinances and regulations.

Section 5.3-UNDERGROUND FACILITIES

(a) In the areas of the Town having telephone lines and electric utility lines underground, whether required by law or not, all of the Franchisee's lines, cables and wires shall be underground. At such time as these facilities are placed underground by the telephone and electric utility companies or are required to be placed underground by the Town, the Franchisee shall likewise place its facilities underground at its sole cost and expense.

(b) Underground cable lines shall be placed beneath the pavement subgrade in compliance with applicable Town ordinances, rules, regulations and/or standards. It is the policy of the Town that existing poles for electric and communication purposes shall be utilized wherever possible and that underground installation is preferable to the placement of additional poles.

Section 5.4-TREE TRIMMING

In the installation of amplifiers, poles, other appliances or equipment and in stringing of cables and/or wires as authorized herein, the Franchisee shall avoid all unnecessary damage and/or injury to any and all shade trees in and along the streets, alleys, Public Ways and places, and private property in the Town. The Franchisee shall comply with all generally applicable rules and/or regulations established by the Franchising Authority or its designee during the term of this Franchise regarding tree and/or root trimming and/or pruning.

Section 5.5-RESTORATION TO PRIOR CONDITION

Whenever the Franchisee takes up or disturbs any pavement, sidewalk or other improvement of any Public Way or place, the same shall be replaced and the surface restored in as good condition as before entry as soon as practicable. If the Franchisee fails to make such restoration within a reasonable time, the Franchising Authority may fix a reasonable time for such restoration and repairs and shall notify the Franchisee in writing of the restoration and repairs required and the time fixed for performance thereof. Upon failure of the Franchisee to comply within the specified time period, the Franchising

Authority may cause proper restoration and repairs to be made and the reasonable expense of such work shall be paid by the Franchisee upon demand by the Franchising Authority.

Section 5.6-TEMPORARY RELOCATION

The Franchisee shall temporarily raise or lower its wires or other equipment upon the reasonable request of any Person holding a building moving permit issued by the Town. The expense of such raising or lowering shall be paid by the party requesting such move. The Franchisee shall be given reasonable notice necessary to maintain continuity of service.

Section 5.7-DISCONNECTION AND RELOCATION

The Franchisee shall, without charge to the Franchising Authority and/or the Town, protect, support, temporarily disconnect, relocate in the same street, or other Public Way and place, or remove from any street or any other Public Ways and places, any of its property as required by the Franchising Authority or its designee by reason of traffic conditions, public safety, street construction, change or establishment of street grade, or the construction of any public improvement or structure by any Town department acting in a governmental capacity.

Section 5.8-SAFETY STANDARDS

The Franchisee shall construct, upgrade, install, operate, maintain and remove the Cable Television System in conformance with Occupational Safety and Health Administration regulations, the National Electric Code, the National Electrical Safety Code, Bell Telephone Systems Code of Pole Line Construction (when applicable), the rules and regulations of the FCC, all applicable building codes and land use restrictions as the same exist or may be amended hereafter.

Section 5.9-PEDESTALS

In any cases in which Pedestals housing passive devices are to be utilized, in Town Public Ways or within the Town public lay-out, such equipment must be installed in accordance with applicable regulations of the Town; provided, however, that the Franchisee may place active devices (amplifiers, line extenders, power supplies, etc.) in a low-profile electronic control box at Town approved locations to be determined when the Franchisee applies for a permit. All such equipment shall be shown on the Cable System maps submitted to the Town in accordance with Section 5.12 below.

Section 5.10-PRIVATE PROPERTY

The Franchisee shall be subject to all generally applicable laws, by-laws and/or regulations regarding private property in the course of constructing, upgrading, installing, operating and maintaining the Cable Television System in the Town. The Franchisee shall promptly repair or replace all private property, real and personal, damaged or destroyed as a result of the construction, upgrade, installation, operation or maintenance of the Cable Television System without charge to the Franchising Authority or the affected Subscriber(s).

Section 5.11-RIGHT TO INSPECTION OF CONSTRUCTION

(a) The Franchising Authority and/or its designee(s) shall have the right to inspect all construction and installation work performed subject to the provisions of this Franchise in order to ensure compliance with the terms and conditions of this Franchise and all other applicable law. Any such inspection shall not interfere with the Franchisee's operations, except in emergency situations.

(b) Any inspections conducted by the Franchising Authority and/or its designee(s) shall be at the sole cost and expense of the Town and shall have the prior written approval of the Franchisee, which approval shall be given in a timely manner and which approval shall not be unreasonably denied or withheld. Unless otherwise mutually agreed upon, the Town shall give at least fourteen (14) days prior notification to the Franchisee of its intention to conduct any inspection. The Franchisee shall be afforded the opportunity to be present during all such inspections.

Section 5.12-CABLE SYSTEM MAPS

(a) Upon written request, the Franchise shall file with the Franchising Authority strand maps of the Cable System plant. Said strand maps shall include the routing of the Cable System, including all underground and aerial plant.

(b) Upon written request, the Franchisee shall make available to the Franchising Authority for inspection “as-built” maps of all Cable System plant at a mutually-agreeable location in Merrimack.

Section 5.13-COMMERCIAL ESTABLISHMENTS

The Franchisee shall make Cable Service(s) available to any commercial establishments in the Town provided that said establishment(s) agrees to pay for installation and monthly subscription costs as lawfully established by the Franchisee, in accordance with applicable law(s) and/or regulation(s).

Section 5.14-SERVICE INTERRUPTION

Except where there exists an emergency situation necessitating a more expeditious procedure, the Franchisee may interrupt service for the purpose of repairing or testing the Cable System, only during periods of minimal use and, if practical, only after a minimum of twenty-four (24) hour notice to all affected Subscribers.

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ARTICLE 6

SERVICES AND PROGRAMMING

Section 6.1-BASIC SERVICE

The Franchisee shall provide a Basic Service which shall include all Signals which are required to be carried by a Cable System serving the Town pursuant to applicable statute or regulation.

Section 6.2-PROGRAMMING

(a) Pursuant to Section 624 of the Cable Act, the Franchisee shall maintain the mix, quality and broad categories of Programming set forth in **Exhibit 1** attached hereto and made a part hereof.

(b) The Franchisee shall provide the Franchising Authority and all Subscribers with thirty (30) days advance written notice of any change in its Merrimack Programming line-up, if the change is within the control of the Franchisee.

Section 6.3-LEASED CHANNELS FOR COMMERCIAL USE

Pursuant to Section 612 (b)(1)(B) of the Cable Act, the Franchisee shall make available channel capacity for commercial use by Persons unaffiliated with the Franchisee.

Section 6.4-CABLE COMPATIBILITY

The Franchisee shall continue to maintain equipment compatibility in accordance with applicable law and regulation.

Section 6.5-CONTINUITY OF SERVICE

It shall be the right of all Subscribers to receive Service insofar as their financial and other obligations to the Franchisee are honored. The Franchisee shall ensure that all Subscribers receive continuous, uninterrupted Service, except for necessary Service interruptions. When necessary Service interruptions can be anticipated, the Franchisee shall notify Subscribers, if practical, in advance.

Section 6.6-FREE CONNECTIONS AND MONTHLY SERVICE TO PUBLIC BUILDINGS AND SCHOOLS

(a) The Franchisee shall, upon written request, provide and maintain one (1) standard aerial installation Subscriber Cable Drop of 200 feet, (1) Outlet and monthly Basic Service to public schools, public libraries and other public buildings along the Cable System Trunk and Distribution System included in **Exhibit 2**, attached hereto and made a part hereof, and any other public buildings and schools as designated by the Franchising Authority. The Franchisee shall coordinate the location of each Drop and Outlet with each of the aforementioned institutions newly receiving Service. There shall be no costs to the Town or any designated institution for the standard installation and provision of monthly Basic Service and related maintenance.

(b) The Franchisee shall supply one (1) Digital Transport Adapter for each Outlet, if necessary, without charge to the Town, for the reception of monthly Basic Service. The Franchisee shall maintain such Outlets and Converters for normal wear and tear, at its sole cost and expense; provided, however, that the Town shall be responsible for repairs and/or replacement necessitated by any acts of vandalism or theft.

(c) The Franchisee shall discuss the location of each Drop and/or Outlet with the proper officials in each of the buildings, schools and/or institutions entitled to such Drops and Outlets, prior to any such installation. The Franchisee shall provide installation of such Drops and/or Outlets within sixty (60) days of any such requests from the Franchising Authority, subject to Force Majeure. (d) The Franchisee shall supply the same nu listed in **Exhibit 2**, attached hereto, and up to three (3) Converters at each location not showing any DTA's.

ARTICLE 7

PUBLIC, EDUCATIONAL AND GOVERNMENTAL ACCESS CHANNELS AND CAPITAL FUNDING

Section 7.1-PEG ACCESS PROGRAMMING

The Franchising Authority and/or its designee(s) shall be responsible for the provision of PEG Access Programming to Subscribers in the Town.

Section 7.2-PEG ACCESS CHANNELS

(a) The Franchisee shall make available to the Franchising Authority and/or its designee(s) three (3) Downstream Channels for Merrimack PEG Access use, as follows:

(b) The Franchisee shall provide the three (3) activated Downstream Channels, as of the Effective Date, for PEG Access use in standard digital (“SD”) format in the Franchisee’s Basic Service, the Franchising Authority and/or its designee(s) shall be responsible for providing the PEG Access Channel Signal(s) in SD format to the demarcation point at the designated point of origination for the PEG Access Channel(s). The Franchisee shall distribute the PEG Access Channels Signal(s) on its Cable System in SD format without substantial alteration or deterioration. The Cable System shall be capable of transmitting color video signals received at the Headend in color, stereo audio signals received at the Headend in stereo and properly formatted closed captioned signals received at the Headend.

(c) In order to provide PEG Access Programming to subscribers, Franchisee and Franchising Authority shall utilize one of the following three methods of bringing PEG Access programming content onto the System:

1. from a Town identified and designated point of demarcation;
2. via direct connections provided by Franchisee from specified PEG origination locations as set forth below in Section 7.3; or

(d) Said PEG Access Channels shall be used to transmit PEG Access Programming to Subscribers at no cost to the Town and/or PEG Access Users.

(e) The Franchisee shall not move or otherwise relocate the channel location(s) of the PEG Access Channel(s), once established, without the advance, written notice to the Franchising Authority and/or its designee(s); such notice shall be at least thirty (30) days. The Franchisee shall use its best efforts, in good faith, to minimize any PEG Access Channel(s) relocations.

(f) The Franchising Authority and/or its designee(s) shall be responsible for the picture quality of PEG Access Programming at the input of the video transmitters that will be permanently located at each origination location listed below, which is the demarcation point between the video origination equipment owned, operated and maintained by the Franchisee and the Franchising Authority's and/or its designee(s) end-user equipment. The Franchisee may require access to said video transmitter(s) for the purpose of testing, maintaining, and/or adjusting output levels of the video transmitter; the Franchisee shall test and adjust the levels of such output as reasonably needed to ensure good picture quality. The Franchisee may request that the Franchising Authority and/or its designee(s) first test and determine if end-user equipment is the source of any apparent Signal problems.

Section 7.3-ORIGINATION POINTS

Merrimack Town Hall Complex, 6 Baboosic Lake Road
Merrimack High School, TV Studio - 38 McElwain Street
Merrimack Middle School – 31 Madeline Bennett Lane
Merrimack Public Library – 470 Daniel Webster Highway

Section 7.4-EQUIPMENT OWNERSHIP AND MAINTENANCE

The Town shall own and maintain (i) all PEG Access equipment in its possession, as of the Effective Date of this Franchise and (ii) all PEG Access equipment purchased with funding pursuant to this Franchise.

Section 7.5-PEG ACCESS CHANNEL(S) MAINTENANCE

The Franchisee shall monitor the PEG Access Channels for technical quality and shall ensure that they are maintained at standards commensurate with those which apply to the Cable System's commercial channels; provided, however, that the Franchisee is not responsible for the technical quality of PEG Access Programming. Upon written request, the Franchisee shall make available a copy of its most recent annual performance tests.

Section 7.6-CENSORSHIP

The Franchisee shall not engage in any program censorship or any other control of the content of the PEG Access Programming on the Cable System, except as otherwise required or permitted by applicable law.

Section 7.7-PEG ACCESSCABLECASTING

(a) In order that PEG Access Programming can be cablecast over the PEG Access Downstream Channels, all PEG Access Programming shall be encoded and then transmitted from the PEG Access Origination Locations specified herein to the Headend or Hub, where such PEG Access Programming shall be retransmitted in the downstream direction on one of the PEG Access Downstream Channel(s).

(b) It shall be the Franchisee's sole responsibility to ensure that said PEG Access Programming is properly switched electronically to the appropriate PEG Access Downstream Channel(s), in an efficient and timely manner. Any manual switching shall be the responsibility of the Franchising Authority and/or its designee(s). The Franchisee shall not charge the Franchising Authority and/or its designee(s) for such switching responsibility. The Franchisee and the Franchising Authority shall negotiate in good faith any difficulties that arise regarding cablecasting of PEG Access Programming.

(c) The Franchisee shall provide and maintain all other necessary switching and/or processing

equipment located in its Headend facility in order to switch upstream PEG Access Signals from the Town and/or its designee(s) to the designated Downstream PEG Access Channel(s). Nothing herein shall require the Franchisee to provide any other switching equipment or any other end-user equipment.

(d) In accordance with applicable law, the Franchisee reserves the right to pass-through or line-item costs associated with this Franchise, including the provision of PEG Access Programming to Subscribers.

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ARTICLE 8

FRANCHISE FEES

Section 8.1-FRANCHISE FEE PAYMENTS

- (a) The Franchisee shall provide an annual payment to the Access Provider, for PEG Access use, equal to three and three quarters percent (3.75%) of the Franchisee's Gross Annual Revenues. Said annual payments shall be used for, among other things, salary, operating and other related expenses connected with PEG Access programming and operations.
- (b) Said Franchise Fee payments shall be made to the Access Provider on a quarterly basis.
- (c) The first quarterly payment to the Franchise Authority shall be based on the period from January 8, 2019 through March 31, 2019 and shall constitute three and three quarters percent (3.75%) of the Franchisee's Gross Annual Revenues. Said first quarterly payment shall then be due and payable to the Franchise Authority no later than forty-five (45) days after the end of said quarterly period, or no later than May 15, 2019. The second quarterly payment to the Access Provider shall be based on the three (3) months from April 1, 2019 through June 30, 2019, and shall constitute three percent and three quarters (3.75%) of the Franchisee's Gross Annual Revenues. Said second payment shall then be due and payable to the Franchise Authority no later than August 15, 2019. Thereafter, the Franchisee's three and three quarters percent (3.75%) payments to the Franchise Authority shall continue to be made on the quarterly basis based on the above-referenced three (3) month accounting periods and subsequent forty-five (45) day due dates. The final payment shall be based on the period from January 1, 2029 through September 7, 2029, and shall constitute three and three quarters percent (3.75%) of the Franchisee's Gross Annual Revenues. Said final payment shall then be due and payable no later than forty-five (45) days after the end of said period.
- (d) The Franchisee shall not be liable for a total financial commitment pursuant to this Renewal Franchise in excess of five percent (5%) of its Gross Annual Revenues; provided, however, that said five percent (5%) shall include any other fees or payments required by applicable law; (iii) any interest due herein to the Town because of late payments. Pursuant to Section 622(f) of the Cable Act, the Franchise Fee may appear as a line-item on subscriber bills.
- (e) Consistent with Section 622(h) of the Cable Act, any Person, including a Leased Access User, who or which distributes any Service over the Cable System for which charges are assessed to Subscribers but not received by the Franchisee, shall pay the Town an amount equal to 1% of such Person's Gross Annual Revenues. If the Franchisee collects revenues for said Person, then the Franchisee shall collect said 1% payment on the Gross Annual Revenues of said Person and shall pay said amounts to the Town. If the Franchisee does not collect the revenues for a Person that distributes any Service over the System, then the Franchisee shall notify any such Person of this 1% payment requirement and shall notify the Town of such use of the Cable System by such Person(s).
- (f) In the event that the payments required herein are not tendered on or before the dates fixed herein, interest due on such payments accrue from the date due at two percent (2%) above the Prime Rate.

Section 8.2-OTHER PAYMENT OBLIGATIONS AND EXCLUSIONS

The Franchise Fee payments shall be in addition to and shall not constitute an offset or credit against any and all taxes or other fees or charges which the Franchisee or any Affiliated Person shall be required

to pay to the Town, or to any State or federal agency or authority, as required herein or by law; the payment of said taxes, fees or charges shall not constitute a credit or offset against the Franchise Fee payments all of which shall be separate and distinct obligations of the Franchisee and each Affiliated Person. The Franchisee herein agrees that no such taxes, fees or charges shall be used as offsets or credits against the Franchise Fee payments in accordance with applicable federal law.

Section 8.3-LATE PAYMENT

In the event that the fees herein required are not tendered on or before the dates fixed in Section 8.1 above, interest due on such fee shall accrue from the date due at the rate of two percent (2%) above the Prime Rate. Any payments to the Town pursuant to this Section 8.3 shall not be deemed to be part of the Franchise Fees to be paid to the Town pursuant to Section 8.1 hereof and shall be within the exclusion to the term "franchise fee" for requirements incidental to enforcing the franchise pursuant to Section 622(g)(2)(D) of the Cable Act.

Section 8.4-RECOMPUTATION

(a) Tender or acceptance of any payment required herein shall not be construed as an accord that the amount paid is correct, nor shall such acceptance of payment be construed as a release of any claim that the Town may have for additional sums including interest payable under this Section 8.4. All amounts paid shall be subject to audit and recomputation by the Franchising Authority and shall occur in no event later than two (2) years after each quarterly Franchise Fee is tendered with respect to such fiscal year.

(b) If the Franchising Authority has reason to believe that any such payment(s) are incorrect, the Franchising Authority shall notify the Franchisee of such belief in writing and the Franchisee shall have thirty (30) days from receipt of such written notification to provide the Franchising Authority with additional information documenting and verifying the accuracy of any such payment(s). In the event that the Franchising Authority does not believe that such documentation supports the accuracy of such payment(s), the Franchising Authority may conduct an audit of such payment(s). If, after such audit and recomputation, an additional fee is owed to the Franchising Authority, such fee shall be paid within thirty (30) days after such audit and recomputation. The interest on such additional fee shall be charged from the due date at the rate of two percent (2%) above the Prime Rate during the period that such additional amount is owed.

Section 8.5-AFFILIATES USE OF SYSTEM

Use of the Cable System by Affiliates shall be in compliance with applicable State and/or federal laws, and shall not detract from Services provided to Merrimack.

Section 8.6-METHOD OF PAYMENT

All Franchise Fee payments by the Franchisee to the Franchising Authority pursuant to this Franchise shall be made payable to the Town.

ARTICLE 9

RATES AND CHARGES

Section 9.1-RATE REGULATION

The Franchising Authority reserves the right to regulate the Franchisee's rates and charges to the extent allowable under applicable federal law.

Section 9.2-NOTIFICATION OF RATES AND CHARGES

(a) The Franchisee shall file with the Franchising Authority schedules which shall describe all Services offered by the Franchisee, all rates and charges of any kind, and all terms or conditions relating thereto. The Franchisee shall notify all Subscribers and the Franchising Authority of any impending rate increases no later than thirty (30) days prior to such increase(s) and provide each Subscriber with a schedule describing existing and proposed rates for each Service offered; provided, however, that this Section 9.2 shall not prohibit the Franchisee from offering or discontinuing promotional discounts upon less than thirty (30) day notice. No rates or charges shall be effective except as they appear on a schedule so filed.

(b) At the time of initial solicitation of Service, the Franchisee shall also provide each Subscriber with a detailed explanation of downgrade and upgrade policies and the manner in which Subscribers may terminate Cable Service. Subscribers shall have at least thirty (30) days from receipt of notification of any rate increase to either downgrade Service or terminate Service altogether without any additional charge.

(c) At least once a year during the term of this Franchise, the Franchisee shall distribute a written rate brochure to all Merrimack Subscribers, which brochure shall list the lowest cost of Cable Service.

Section 9.3-PUBLICATION AND NON-DISCRIMINATION

All rates for subscriber Services shall be published and non-discriminatory. A written schedule of all rates shall be available upon request during business hours at the Franchisee's business office. Nothing in this Franchise shall be construed to prohibit the reduction or waiver of charges in conjunction with promotional campaigns for the purpose of attracting or maintaining subscribers.

Section 9.4-CREDIT FOR SERVICE INTERRUPTION

Under Normal Operating Conditions, in the event that the Franchisee's Service to any Subscriber is interrupted for twenty-four (24) or more consecutive hours, provided that said interruption is not caused by the Subscriber, the Franchisee shall grant such Subscriber upon request a pro rata credit or rebate in compliance with applicable law(s).

ARTICLE 10

INSURANCE AND BONDS

Section 10.1-INSURANCE

From the Effective Date and at all other times during the term of the Franchise, including the time for removal of facilities provided for herein, the Franchisee shall obtain, pay all premiums for, and file with the Franchising Authority, on an annual basis, copies of the certificates of insurance for the following policies:

- (1) A comprehensive general liability policy naming the Franchising Authority, the Town, its officers, boards, committees, commissions, and employees as additional insured on a primary and noncontributory basis for all claims on account of injury to or death of a Person or Persons occasioned by the construction, installation, maintenance or operation of the Cable System or alleged to have been so occasioned, with a minimum liability of One Million Dollars (\$1,000,000.00) for injury or death or property damage in any one occurrence. The amount of such insurance for excess liability shall be Five Million Dollars (\$5,000,000.00) in umbrella form. Overall limits of liability may be met through any combination of primary and excess liability insurance policies.
- (2) Automobile liability insurance for owned automobiles, non-owned automobiles and/or rented automobiles in the amount of:
 - (a) One Million Dollars (\$1,000,000.00) combined single limit for bodily injury, consequent death and property damage per occurrence;
- (3) Worker's Compensation and Employer's Liability in the minimum amount of:
 - (a) Statutory limit for Worker's Compensation; and
- (4) The following conditions shall apply to the insurance policies required herein:
 - (a) Such insurance shall commence no later than the Effective Date of this Franchise.
 - (b) Such insurance shall be primary with respect to any insurance maintained by the Town and shall not call on the Town's insurance for contributions.
 - (c) Such insurance shall be obtained from brokers or carriers authorized to transact insurance business in New Hampshire.
 - (d) The Franchisee's failure to obtain to procure or maintain the required insurance shall constitute a material breach of this Franchise under which the Town may immediately suspend operations under this Franchise, subject to the provisions of Section 12.1 herein.

Section 10.2-PERFORMANCE BOND

(a) The Franchisee shall obtain and maintain at its sole cost and expense throughout the entire term of the Franchise a faithful performance bond running to the Town, with good and sufficient surety Franchised to do business in the State of New Hampshire in the sum of Fifty Thousand Dollars (\$50,000.00). Said bond shall be conditioned upon the faithful performance and discharge of all of the obligations imposed by the Franchise.

(b) The performance bond shall be effective throughout the term of the Franchise, including the time for removal of all of the facilities provided for herein, and shall be conditioned that in the event that the Franchisee shall fail to comply with any one or more provisions of the Franchise, or to comply with any order, permit or direction of any department, agency, commission, board, division or office of the Town having jurisdiction over its acts, or to pay any claims, liens or taxes due the Town which arise by reason of the construction, maintenance, operation or removal of the Cable Television System, the Town shall recover from the surety of such bond all damages suffered by the Town as a result thereof, pursuant to the provisions of Sections 12.1 and 12.2 infra.

(c) The performance bond shall be a continuing obligation of this Franchise. In the event that the Town recovers from the surety, the Franchisee shall take immediate steps to reinstate the performance bond to the \$100,000.00 required coverage herein. Neither this section, any bond accepted pursuant thereto or any damages recovered thereunder shall limit the liability of the Franchisee under the Franchise.

Section 10.3-REPORTING

The Franchisee shall submit to the Franchising Authority, or its designee(s), upon written request, copies of all current certificates regarding (i) all insurance policies as required herein, and (ii) the performance bond as required herein.

Section 10.4-INDEMNIFICATION

The Franchisee shall, at its sole cost and expense, indemnify and hold harmless the Franchising Authority, the Town, its officials, boards, commissions, committees, agents and/or employees against all claims for damage due to the actions of the Franchisee, its employees, officers or agents arising out of the construction, installation, maintenance, operation and/or removal of the Cable Television System under the Franchise, including without limitation, damage to Persons or property, both real and personal, caused by the construction, installation, operation, maintenance and/or removal of any structure, equipment, wire or cable installed. Indemnified expenses shall include all reasonable attorneys' fees and costs incurred up to such time that the Franchisee assumes defense of any action hereunder. The Franchising Authority shall give the Franchisee timely written notice of its obligation to indemnify and defend the Franchising Authority. Any settlement requiring Town remuneration must be with the advance, written consent of the Franchising Authority, which shall not be unreasonably denied

ARTICLE 11

ADMINISTRATION AND REGULATION

Section 11.1-REGULATORY AUTHORITY

The Franchising Authority and/or its designee(s) shall be responsible for the monitoring and oversight of the Cable Television System. The Franchising Authority shall enforce the Franchisee's compliance with the terms and conditions of this Franchise. The Franchising Authority shall notify the Franchisee in writing of any instance of non-compliance pursuant to Section 12.1 infra.

Section 11.2-PERFORMANCE EVALUATION HEARINGS

(a) The Franchising Authority may hold a performance evaluation hearing during each year of this Franchise. The Franchisee shall be provided timely notice of any such hearing. All such evaluation hearings shall be open to the public. The purpose of said evaluation hearing shall be to, among other things, (i) review the Franchisee's compliance with the terms and conditions of this Franchise, customer service and Complaint response, and PEG Access Channels, facilities and support; and (ii) hear comments, suggestions and/or Complaints from the public. The Franchising Authority shall provide the Franchisee with reasonable, advance notice regarding the hearing date and compliance matters.

(b) The Franchising Authority shall have the right to question the Franchisee on any aspect of this Franchise including, but not limited to, the operation, maintenance and/or removal of the Cable Television System. During review and evaluation by the Franchising Authority, the Franchisee shall cooperate fully with the Franchising Authority and/or its designee(s), and produce such documents or other materials as are reasonably requested from the Town. Any Subscriber or other Person may submit comments during such review hearing, either orally or in writing, and such comments shall be duly considered by the Franchising Authority.

(c) Within sixty (60) days after the conclusion of such review hearing(s), the Franchising Authority shall issue a written report with respect to the adequacy of Cable System performance and quality of Service. If inadequacies are found which result in a violation of any of the provisions of this Franchise, the Franchising Authority shall notify the Franchisee in writing of any instance of non-compliance pursuant to Section 12.1 infra. The Franchisee shall subsequently respond and propose a plan for implementing any changes or improvements necessary, pursuant to Section 12.1 infra.

Section 11.3-NONDISCRIMINATION

The Franchisee shall not discriminate against any Person in its solicitation, Service or access activities, if applicable, on the basis of race, color, creed, religion, ancestry, national origin, geographical location within the Town, sex, sexual orientation, disability, age, marital status, or status with regard to public assistance. The Franchisee shall be subject to all other requirements of federal and State laws or regulations, relating to nondiscrimination through the term of the Franchise.

Section 11.4-EMERGENCY REMOVAL OF PLANT

If, in case of fire or disaster in the Town at any time, it shall become necessary in the reasonable judgment of the Franchising Authority or any designee, to cut or move any of the wires, cables, amplifiers, appliances or appurtenances of the Cable Television System, the Town shall have the right to do so at the sole cost and expense of the Franchisee.

Section 11.5-REMOVAL AND RELOCATION

The Franchising Authority shall have the authority at any time to order and require the Franchisee to remove or relocate any pole, wire, cable or other structure owned by the Franchisee that is dangerous to life or property. In the event that the Franchisee, after notice, fails or refuses to act within a reasonable time, the Franchising Authority shall have the authority to remove or relocate the same,

which cost the Franchisee shall reimburse to the Town.

Section 11.6-JURISDICTION

Jurisdiction and venue over any dispute, action or suit shall be in any court of appropriate venue and subject matter jurisdiction located in the State of New Hampshire and the parties by this instrument subject themselves to the personal jurisdiction of said court for the entry of any such judgment and for the resolution of any dispute, action, or suit.

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ARTICLE 12

DETERMINATION OF BREACH, LIQUIDATED DAMAGES-FRANCHISE REVOCATION

Section 12.1-DETERMINATION OF BREACH

(a) In the event that the Franchising Authority has reason to believe that the Franchisee has defaulted in the performance of any or several provisions of this Franchise, except as excused by Force Majeure, the Franchising Authority shall notify the Franchisee in writing, by certified mail, of the provision or provisions which the Franchising Authority believes may have been in default and the details relating thereto. The Franchisee shall have sixty (60) days from the receipt of such notice to:

(b) Respond to the Franchising Authority in writing, contesting the Franchising Authority's assertion of default and providing such information or documentation as may be necessary to support the Franchisee's position; or

(c) Cure any such default (and provide written evidence of the same), or, in the event that by nature of the default, such default cannot be cured within such thirty (30) day period, to take reasonable steps to cure said default and diligently continue such efforts until said default is cured. The Franchisee shall report to the Franchising Authority, in writing, by certified mail, at twenty-one (21) day intervals as to the Franchisee's efforts, indicating the steps taken by the Franchisee to cure any such default and reporting the Franchisee's progress until any such default is cured.

(d) In the event that (i) the Franchisee fails to respond to such notice of default; (ii) the Franchisee fails to cure the default or to take reasonable steps to cure the default within the required thirty (30) day period; and/or (iii) the Franchising Authority is not satisfied with the Franchisee's response(s) or the Franchisee's efforts to cure, the Franchising Authority shall promptly schedule a public hearing no sooner than fourteen (14) days after written notice, by certified mail, to the Franchisee. The Franchisee shall be provided reasonable opportunity to offer evidence and be heard at such public hearing. Within thirty (30) days after said public hearing, the Franchising Authority shall determine whether or not the Franchisee is in default of any provision of this Franchise.

(e) In the event that the Franchising Authority, after such hearings, determines that the Franchisee is in default, the Franchising Authority may determine to pursue any of the following remedies, by written notice to the Franchisee:

- i. seek specific performance of any provision of the Franchise which reasonably lends itself to such remedy as an alternative to damages;
- ii. commence an action at law for monetary damages;
- iii. foreclose on all or any appropriate part of the security provided pursuant to Section 10.2 herein;
- iv. declare the Franchise to be revoked subject to Section 12.4 below and applicable law;
- v. invoke any other remedy available to the Town.

Section 12.2-LIQUIDATED DAMAGES

(a) For the violation of any of the following provisions of this Renewal Franchise, liquidated damages shall be paid by the Franchisee to the Franchising Authority, subject to Section 12.1 above. Any such liquidated damages shall be assessed as of the date that the Franchisee received written notice, by certified mail, of the provision or provisions which the Franchising Authority believes are in default, provided that the Franchising Authority made a determination of default pursuant to Section 12.1(d) above.

(1) For failure to fully activate, operate and maintain the Subscriber Network in accordance with Section 4.1 herein, Four Hundred Dollars (\$400.00) per day, for each day that any such

non-compliance continues.

(2) For failure to obtain the advance, written approval of the Franchising Authority for any transfer of this Renewal Franchise in accordance with Article 3 herein, Four Hundred Dollars (\$400.00) per day, for each day that any such non-compliance continues.

(3) For failure to comply with the PEG Access Channel and remote origination location requirements in Article 7 herein, One Hundred Dollars (\$100.00) per day that any such non-compliance continues.

(4) For failure to comply with the FCC's Customer Service Obligations in accordance with Section 13.4 infra, and Exhibit 4 attached hereto, One Hundred Fifty Dollars (\$150.00) per day that any such non-compliance continues.

(5) For failure to provide, install and/or fully activate the Subscriber Network and/or Outlets in accordance with Section 6.7 herein and/or Exhibit 2, Fifty Dollars (\$50.00) per day that any of such Drops and/or Outlets are not provided, installed and/or activated as required.

(b) Such liquidated damages shall not be a limitation upon, any other provisions of this Renewal Franchise and applicable law, including revocation, or any other statutorily or judicially imposed penalties or remedies; provided, however, that in the event that the Franchising Authority collects liquidated damages for a specific breach for a specific period of time, pursuant to Section 12.1 above, the collection of such liquidated damages shall be deemed to be the exclusive remedy for said specific breach for such specific period of time only.

(c) Each of the above-mentioned cases of non-compliance shall result in damage to the Town, its residents, businesses and institutions, compensation for which will be difficult to ascertain. The Franchisee agrees that the liquidated damages in the amounts set forth above are fair and reasonable compensation for such damage. The Franchisee agrees that said foregoing amounts are liquidated damages, not a penalty or forfeiture, and are within one or more exclusions to the term "franchise fee" provided by Section 622(g)(2)(A)-(D) of the Cable Act.

Section 12.3-REVOCAION OF THE FRANCHISE

In the event that the Franchisee fails to comply with any material provision of this Franchise, the Franchising Authority may revoke the Franchise granted herein, subject to the procedures of Section 12.1 above and applicable law.

Section 12.4-TERMINATION

The termination of this Franchise and the Franchisee's rights herein shall become effective upon the earliest to occur of: (i) the revocation of the Franchise by action of the Franchising Authority, pursuant to Section 12.1 and 12.3 above; (ii) the abandonment of the Cable System, in whole or material part, by the Franchisee without the express, prior approval of the Franchising Authority; or (iii) the expiration of the term of this Franchise, unless the Franchisee is otherwise permitted to continue operating the Cable System pursuant to applicable law(s).

Section 12.5-NOTICE TO OTHER PARTY OF LEGAL ACTION

In the event that either party intends to take legal action against the other party for any reason, such moving party shall first, except where injunctive relief is sought, (i) give the other party at least forty-five (45) day notice that an action will be filed, (ii) meet with the other party before it files any such action, and (iii) negotiate the issue, which is the subject of any proposed legal action, in good faith with the other party.

Section 12.6-NON-EXCLUSIVITY OF REMEDY

No decision by the Franchising Authority or the Town to invoke any remedy under the Franchise or under any statute, law or ordinance shall preclude the availability of any other such remedy.

Section 12.7-NO WAIVER-CUMULATIVE REMEDIES

(a) Subject to Section 626(d) of the Cable Act, no failure on the part of the Franchising Authority to exercise, and no delay in exercising, any right in this Franchise shall operate as a waiver thereof, nor shall any single or partial exercise of any such right preclude any other right, all subject to the conditions and limitations contained in this Franchise.

(b) The rights and remedies provided herein are cumulative and not exclusive of any remedies provided by law, and nothing contained in this Franchise shall impair any of the rights of the Franchising Authority under applicable law, subject in each case to the terms and conditions in this Franchise.

(c) A waiver of any right or remedy by the Franchising Authority at any one time shall not affect the exercise of such right or remedy or any other right or remedy by the Franchising Authority at any other time. In order for any waiver of the Franchising Authority to be effective, it shall be in writing. The failure of the Franchising Authority to take any action in the event of any breach by the Franchisee shall not be deemed or construed to constitute a waiver of or otherwise affect the right of the Franchising Authority to take any action permitted by this Franchise at any other time in the event that such breach has not been cured, or with respect to any other breach by the Franchisee.

(d) Acceptance of the terms and conditions of this Franchise will not constitute, or be deemed to constitute, a waiver, either expressly or implied, by the Franchisee of any constitutional or legal right which it may have or may be determined to have, either by subsequent legislation or court decisions.

ARTICLE 13

SUBSCRIBER RIGHTS & CONSUMER PROTECTION

Section 13.1-TELEPHONE ACCESS

(a) The Franchisee shall comply with the FCC's Customer Service Obligations, at 47 C.F.R. 76.309(c)(1)(A)-(D).

(b) The Franchisee's business-customer service office shall have a publicly listed local or toll-free telephone number.

Section 13.2-CUSTOMER CALL CENTER

(a) The Franchisee shall maintain and operate its customer service call center twenty-four (24) hours a day, seven (7) days a week, including holidays. The Franchisee reserves the right to modify its business operations with regard to such customer service call center. The Franchisee shall comply with all State and federal requirements pertaining to the hours of operation of such customer service call center.

Section 13.3-FCC CUSTOMER SERVICE OBLIGATIONS

The Franchisee shall comply with the FCC's Customer Service Obligations, codified at 47 U.S.C. Section 76.309

Section 13.4-BUSINESS PRACTICE STANDARDS

The Franchisee shall provide the Franchising Authority and all of its Subscribers with the following information:

- (i) Notification of its Billing Practices;
- (ii) Notification of Services, Rates and Charges;
- (iii) Equipment Notification;
- (iv) Form of Bill;
- (v) Advance Billing and Issuance of Bills;
- (vi) Billing Due Dates, Delinquency, Late Charges and Termination of Service;
- (vii) Charges for Disconnection or Downgrading of Service;
- (viii) Billing Disputes; and
- (ix) Service Interruptions; and
- (x) Security Deposits.

Section 13.5-COMPLAINT RESOLUTION PROCEDURES

Complaints by any Person as to the operation of the Cable System may be filed in writing with the Franchising Authority, which shall within ten (10) days, forward copies of such complaints to the Franchisee. Franchisee will comply with RSA 53-C:3-d and RSA 53-C:3-e.

Section 13.6-CONSUMER SALES STANDARDS

At the time of initial solicitation or installation of service, the Franchisee shall provide written information to the prospective customer that lists (i) all rates and charges for all levels of Service; (ii) all tiers and other programming packages with a listing of channels or Services; and (iii) billing policies and procedures.

Section 13.7-BILLING PRACTICES INFORMATION AND PROCEDURES

(a) Billing procedures shall be as follows:

- (i) The Franchisee shall bill all Subscribers to its Cable Television System in a uniform, non-discriminatory manner, regardless of a Subscriber's level of Service(s). The bill shall have an explicit due date.
- (ii) The Franchisee shall provide all Subscribers with itemized bills that contain the information required by federal law and/or regulation.

- (iii) Subscribers shall have thirty (30) days from the due date of a bill in which to register a complaint or dispute concerning said bill.
- (iv) In the event that a bona fide billing dispute arises, the Franchisee shall respond to each Complaint within fifteen (15) days of receiving a written notification of said dispute from the Subscriber and shall make its best efforts to resolve each dispute within forty-five (45) days of receiving a written notification of said dispute from said Subscriber. If said dispute cannot be settled within the forty-five (45) day period and/or the results of the Franchisee's investigation into said dispute are unacceptable to the Subscriber, the Franchisee shall notify, and deliver to, the affected Subscriber its proposed resolution of the dispute
- (v) The affected Subscriber shall be responsible for paying only that portion of the bill that is not in dispute. In no event shall the Franchisee, prior to the resolution of a billing dispute, disconnect, assess a late payment charge or require payment of a late payment charge from the Subscriber for failure to pay bona fide disputed bills, or portions thereof, provided the Subscriber notifies the Franchisee of said dispute within thirty (30) days following the beginning of the billing period for which service was rendered under the disputed bill.

Section 13.8-DISCONNECTION AND TERMINATION OF CABLE SERVICES

In no event shall the Franchisee disconnect a Subscriber's Cable Service for nonpayment unless (1) the Subscriber is delinquent, (2) the Franchisee has given said Subscriber written notice of such past due amount in a clear and conspicuous manner and (3) said Subscriber has been given a second notice of delinquency, which may be as part of a monthly bill. Disconnection and/or termination of Cable Services shall be subject to applicable federal and/or State law(s) and regulation(s).

Section 13.9-CHANGE OF SERVICE

(a) Upon notification by a Subscriber to disconnect or downgrade Service, the Franchisee shall cease and/or adjust said Subscriber's monthly Service charges immediately or as of the Subscriber's specified disconnect or downgrade date. In no case shall said Subscriber be charged for Service(s) requested to be changed after the Franchisee is notified of said change(s). In the event that

(b) Subscribers request disconnection or downgrade of Service(s), the Franchisee's charges, if any, shall comply with applicable federal law or regulation.

Section 13.10-EMPLOYEE AND AGENT IDENTIFICATION CARDS

All of the Franchisee's employees and agents entering upon private property, in connection with the construction, installation, maintenance and operation of the Cable System, including repair and sales personnel, shall be required to carry an employee identification card issued by the Franchisee.

Section 13.11-PROTECTION OF SUBSCRIBER PRIVACY

The Franchisee shall comply with applicable federal and State laws including, but not limited to, the provisions of Section 631 of the Cable Act and regulations adopted pursuant thereto.

Section 13.12-PRIVACY WRITTEN NOTICE

At the time of entering into an agreement to provide Cable Service to a Subscriber and at least once a year thereafter, the Franchisee shall provide all Subscribers with the written notice required in Section 631(a)(1) of the Cable Act.

ARTICLE 14

REPORTS, AUDITS AND PERFORMANCE TESTS

Section 14.1-GENERAL

(a) Upon the written request of the Franchising Authority, the Franchisee shall promptly submit to the Town any information regarding the Franchisee, its business and operations, or any Affiliated Person, with respect to the Cable System, any Service, in such form and containing such detail as may be specified by the Town pertaining to the subject matter of this Franchise which may be reasonably required to establish the Franchisee's compliance with its obligations pursuant to this Franchise.

(b) If the Franchisee believes that the documentation requested by the Franchising Authority involves proprietary information, then the Franchisee shall submit the information to its counsel, who shall confer with the Town Solicitor for a determination of the validity of the Franchisee's claim of a proprietary interest. If the Town Solicitor agrees that the material is of a proprietary nature, the information furnished shall not be a public record, but the Franchisee shall make it available, on its premises, to the Franchising Authority, at times convenient for both parties. The Franchisee may require the Franchising Authority and/or its representatives to execute a confidentiality agreement before making any such information available. In the event of a disagreement, the parties may submit the matter to the appropriate appellate entity.

Section 14.2-SUBSCRIBER COMPLAINT LOG

(a) The Franchisee shall keep a record or log of all written Complaints received regarding quality of Service, equipment malfunctions, billing procedures, employee relations with Subscribers and similar matters. Such records shall be maintained by the Franchisee for a period of two (2) years.

(b) Such record(s) shall contain the following information for each Complaint received:

- (i) Date, time and nature of the Complaint;
- (ii) Investigation of the Complaint; and
- (iii) Manner and time of resolution of the Complaint.
- (iv) If the Complaint regards equipment malfunction or the quality of reception, the Franchisee shall file a report to the Franchising Authority, upon written request, indicating the corrective steps it has taken, with the nature of the problem stated.
- (v) Upon written request, the Franchisee shall make available to the Franchising Authority records of such Complaints, as allowed by applicable law.

Section 14.3-INDIVIDUAL COMPLAINT REPORTS

The Franchisee shall, within ten (10) business days after receiving a written request from the Town, send a written report to the Franchising Authority with respect to any Complaint. Such report shall provide a full explanation of the investigation, finding(s) and corrective steps taken, as allowed by applicable law.

Section 14.4-ANNUAL PERFORMANCE TESTS

Upon request, the Franchisee shall provide copies of its Merrimack Cable System performance tests to the Franchising Authority in accordance with applicable FCC regulations, as set out in 47 C.F.R. Section 76.601 et seq.

Section 14.5-QUALITY OF SERVICE

Where there exists evidence which, in the reasonable judgment of the Franchising Authority, casts doubt upon the reliability or technical quality of Cable Service(s), the Franchising Authority shall cite specific facts which casts such doubt(s), in a notice to the Franchisee. The Franchisee shall submit a written report to the Franchising Authority, within thirty (30) days of receipt of any such notice from the

Franchising Authority, setting forth in detail its explanation of the problem(s).

Section 14.6-DUAL FILINGS

(a) Upon written request, and pursuant to Section 14.1(b), the Franchisee shall make available to the Town, copies of any petitions or communications with any State or federal agency or commission pertaining to any material aspect of the Cable System operation hereunder.

(b) In the event that either the Franchising Authority or the Franchisee requests from any State or federal agency or commission a waiver or advisory opinion pertaining to any material aspect of the Cable System operation hereunder, it shall immediately notify the other party in writing of said request, petition or waiver.

Section 14.7-ADDITIONAL INFORMATION

At any time during the term of this Franchise, upon the reasonable written request of the Franchising Authority, the Franchisee shall not unreasonably deny any requests for further information which may be reasonably required to establish the Franchisee's compliance with its obligations pursuant to the Franchise, subject to Section 14.1 supra.

Section 14.8-INVESTIGATION

The Franchisee and any Affiliated Person(s) shall cooperate fully and faithfully with any lawful investigation, audit, or inquiry conducted by a Town governmental agency as it related to Franchisee's compliance with the terms and conditions of this Franchise Agreement.

Section 14.9-ANNUAL TOWN REVIEW

At the Town's request, the Franchisee shall attend annual meetings with authorized Town official(s) to review compliance with the terms of this Franchise and matters of interest to either party. No later than five (5) days prior to such meeting either party may submit a list of items to be reviewed.

ARTICLE 15

EMPLOYMENT

Section 15.1-EQUAL EMPLOYMENT OPPORTUNITY

The Franchisee shall comply with all applicable State and federal laws regarding Equal Employment Opportunity.

Section 15.2-NON-DISCRIMINATION

The Franchisee shall adhere to all federal, State and local laws prohibiting discrimination in employment practices.

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ARTICLE 16

MISCELLANEOUS PROVISIONS

Section 16.1-ENTIRE AGREEMENT

This instrument contains the entire agreement between the parties, supersedes all prior agreements or proposals except as specifically incorporated herein, and cannot be changed orally but only by an instrument in writing executed by the parties.

Section 16.2-CAPTIONS

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

Section 16.3-SEPARABILITY

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

Section 16.4-ACTS OR OMISSIONS OF AFFILIATES

During the term of this Franchise, the Franchisee shall be liable for the acts or omission of its Affiliates while such Affiliates are involved directly in the construction, upgrade, maintenance or operation of the Cable System for the provision of Service as if the acts or omissions of such Affiliates were the acts or omissions of the Franchisee.

Section 16.5-FRANCHISE EXHIBITS

The Exhibits to this Franchise, attached hereto, and all portions thereof, are incorporated herein by this reference and expressly made a part of this Franchise.

Section 16.6-WARRANTIES

The Franchisee warrants, represents and acknowledges, that, as of the Effective Date of this Franchise:

- (a) The Franchisee is duly organized, validly existing and in good standing under the laws of the State of New Hampshire;
- (b) The Franchisee has the requisite power and authority under applicable law and its by-laws and articles of incorporation and/or other organizational documents, is authorized by resolutions of its Board of Directors or other governing body, and has secured all consents which are required to be obtained as of the Effective Date of this Franchise, to enter into and legally bind the Franchisee to this Franchise and to take all actions necessary to perform all of its obligations pursuant to this Franchise; and
- (c) To the best of the Franchisee's knowledge, there is no action or proceedings pending or threatened against the Franchisee which would interfere with performance of this Franchise.

Section 16.7-FORCE MAJEURE

If by reason of force majeure either party is unable in whole or in part to carry out its obligations hereunder, said party shall not be deemed in violation or default during the continuance of such inability. The term "force majeure" as used herein shall mean the following: acts of God; acts of public enemies; orders of any kind of the government of the United States of America or of the State of New Hampshire or any of their departments, agencies, political subdivision, or officials, or any civil or military authority; insurrections; riots; epidemics; landslides; lightening; earthquakes; fires; hurricanes; volcanic activity;

storms; floods; washouts; droughts; civil disturbances; explosions; strikes; hazardous safety conditions; and unavailability of essential equipment and/or materials beyond the control of the Franchisee, the Franchising Authority and/or the Town.

Section 16.8-APPLICABILITY OF FRANCHISE

All of the provisions in this Franchise shall apply to, and are enforceable against, the Town, the Franchisee, and their respective successors and assignees.

Section 16.9-NOTICES

(a) Every notice to be served upon the Franchising Authority shall be delivered or sent shall be delivered or sent by certified mail (postage prepaid) or via nationally recognized overnight courier service to:

- (i) Town of Merrimack
Attn: Town Council
6 Baboosic Lake Road
Merrimack, NH 03054

or such other address(es) as the Franchising Authority may specify in writing to the Franchisee. The delivery shall be equivalent to direct personal notice, direction or order, and shall be deemed to have been given at the time of receipt of such notice(s).

(b) Every notice served upon the Franchisee shall be delivered or sent by certified mail (postage prepaid) or via nationally recognized overnight courier service to:

- (i) Comcast Cable Communications, Inc.
Attn: Government Affairs
181 Ballardvale Street-Suite 203
Wilmington, MA 01887

with copies to:

- (ii) Comcast Cable Communications, Inc.
Attn: Vice President, Government Affairs
676 Island Pond Road
Manchester, NH 03109
- (iii) Comcast Cable Communications, Inc.
Attn: Government Affairs
1701 John F. Kennedy Blvd
Philadelphia, PA 19103

or such other address(es) as the Franchisee may specify in writing to the Franchising Authority. The delivery shall be equivalent to direct personal notice, direction or order, and shall be deemed to have been given at the time of receipt of such notice(s).

(c) All required notices shall be in writing.

Section 16.10-TOWN'S RIGHT OF INTERVENTION

The Town hereby reserves to itself, and the Franchisee acknowledges the Town's right as authorized by applicable law or regulation to intervene in any suit, action or proceeding involving this Franchise, or any provision in this Franchise.

Section 16.11-NO RECOURSE AGAINST THE FRANCHISING AUTHORITY

Pursuant to Section 635A(a) of the Cable Act, in any court proceeding involving any claim against the Franchising Authority or other governmental entity or any official, member, employee, or agent of the

Franchising Authority or such governmental entity, arising from the regulation of cable service or from a decision of approval or disapproval with respect to a grant, transfer, or amendment of this 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.

Section 16.12-TERM

All obligations of the Franchisee and the Franchising Authority set forth in the Franchise shall commence upon the execution of this Franchise and shall continue for the term of the Franchise except as expressly provided for herein.

Section 16.13–NO THIRD PARTY BENEFICIARIES

Nothing in this Franchise is intended to confer third-party beneficiary status on any member of the public to enforce the terms of this Franchise.

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EXHIBITS

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EXHIBIT 1

PROGRAMMING AND INITIAL SIGNAL CARRIAGE

The Franchisee shall provide the following broad categories of Programming:

- + News Programming;
- + Sports Programming;
- + Public Affairs Programming;
- + Children's Programming;
- + Entertainment Programming;
- + Foreign Language Programming; and
- + Local Programming.

DRAFT

EXHIBIT 2

FREE CONNECTIONS AND SERVICE TO PUBLIC BUILDINGS AND SCHOOLS

The following schools and public buildings shall receive Drops and the monthly Basic Cable Service at no charge.

(To be filled in at a later date)

DRAFT

SIGNATURE PAGE

In Witness Whereof, the Franchise is hereby issued as of **Month XX, 2018** by the Town Council of the Town of Merrimack, New Hampshire, as Franchising Authority, and all terms and conditions are hereby agreed to by Comcast of Connecticut/Georgia/Massachusetts/New Hampshire/New York/North Carolina/Virginia/Vermont, LLC

The Town of Merrimack, New Hampshire

Eileen Cabanel, Town Manager
(Duly authorized)

COMCAST OF CONNECTICUT/GEORGIA/MASSACHUSETTS/NEW HAMPSHIRE/NEW YORK/NORTH
CAROLINA/VIRGINIA/VERMONT, LLC
By:

Tracy L. Pitcher, Senior Vice President
Greater Boston Region

