



# 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: July 10, 2019

Date of Meeting: July 18, 2019

Submitted by: Media Services Coordinator Nicholas Lavallee

Department: Media

Time Required: 20 minutes

Speakers: Nicholas Lavallee

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"/>
<b>Public Hearing:</b>	<input type="checkbox"/>	Old Business:	<input checked="" type="checkbox"/>
New Business:	<input type="checkbox"/>	Consent Agenda:	<input type="checkbox"/>
Nonpublic:	<input type="checkbox"/>	Other:	<input type="checkbox"/>

## TITLE OF ITEM

Cable Television Franchise Agreement Follow-up Discussion

## DESCRIPTION OF ITEM

The Town Council to discuss and consider the renewal of the proposed Cable Television Franchise Agreement.

## 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: Nicholas Lavallee Address: 8 Baboosic Lake Road  
 Phone Number: 423-8561 Email Address: nlavallee@merrimacknh.gov

## APPROVAL

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



# TOWN OF MERRIMACK, NEW HAMPSHIRE

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July 11, 2019

The Town of Merrimack began discussing the Cable Television Franchise renewal in August of 2018. Over the past 11 months, the Council has hosted two presentations from the Media Division, a public hearing, and formed an ad-hoc group to further explore possibilities of the renewal. Attached is the proposed 10 year agreement that has been reviewed by our legal counsel and agreed upon by our current cable operator, Comcast. The proposed renewal includes several positive changes that were suggested by members of the Town Council, Media Division staff, and residents.

### Notable highlights in the 2019 - 2029 Cable Franchise Renewal:

- Service availability now extended from 150 feet to 300 feet before there is a charge to a potential cable subscriber. (Section 5.1b)
- Service availability lowered the number of dwelling units necessary for automatic extension from 30 to 20. (Section 5.1d)
- Retain a customer service office in an neighboring Town (Section 13.1b) and response to service calls and complaints. (Section 13.9a)
- Side letters stating a Senior Citizen Discount and one Town TV Channel on the high definition (HD) tier.

The document is only relative to traditional cable television services. Any other cable operator interested in doing business within the Town of Merrimack would be required to adhere to the same franchise agreement.

The renewal is dated for August 1, 2019 pending the Town Manager's signature.

  
 Nicholas Lavallee  
 Media Services Coordinator

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Assessing P: 603-424-5136 F: 603-424-0461	Community Development P: 603-424-3531 F: 603-424-1408	Finance P: 603-424-7075 F: 603-423-8539	Human Resources P: 603-424-2331 F: 603-424-0461	Media Services P: 603-423-8566 F: 603-424-0461
Public Assistance P: 603-423-8535 F: 603-423-8539	Public Works Administration P: 603-424-5137 F: 603-424-3890	Town Council P: 603-424-2331 F: 603-424-0461	Town Manager P: 603-424-2331 F: 603-424-0461	

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**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: August, 2019 – July 31, 2029**

**- Town of Merrimack, NH – Cable Television Franchise –  
Term: August 1, 2019 – July 31, 2029**



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**AGREEMENT**

This Agreement, made this 1<sup>st</sup> day of August, 2019, 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 System within the Town of Merrimack; and

WHEREAS, On September 27, 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, 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 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 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"): August 1, 2019.
- (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 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 August 1, 2019 and expiring on July 31, 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 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(1), 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 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.

### 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.



## 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 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 CAPACITY

The Franchisee shall provide Subscribers, upon request, 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 three hundred feet (300') from the existing aerial Trunk and Distribution System and additions thereto. The Franchisee may charge residents located more than 300 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 300 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 three hundred feet (300') 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 three hundred feet (300') 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 three hundred feet (300') 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 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 twenty (20) 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 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 twenty (20) dwelling units per aerial or underground mile of cable plant and/or fractional proportion thereof density requirement specified in subsection (d) 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

$$\frac{C}{\text{---}} - \frac{CA}{\text{---}} = SC$$

LE P

- \* 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 twenty (20) 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 (20) 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 SYSTEM**

The Franchisee shall operate and maintain the Cable 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 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 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 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.

## 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 300 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.

(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- 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 ACCESS CABLECASTING**

(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.

## 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.

The Franchising Authority may request, in writing, to the Franchisee, for a change in their Franchise Fee from three and three quarters percent (3.75%) of the Franchisee's Gross Annual Revenue as defined herein, to a percentage amount not to exceed the cap as defined below in Section 8.1 (d). The Franchisee shall grant the request within 90 days from date of receipt of the written request. The Franchising Authority shall be limited to one (1) request in any twelve (12) month period.

- (b) Said Franchise Fee payments shall be made to the Access Provider on a quarterly basis.

- (c) The first quarterly payment to the Access Provider shall be based on the period from August 1, 2019 through September 30, 2019 and shall constitute three and three quarters percent (3.75%), or other percentage granted under Section 8.1(a), 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 November 15, 2019. The second quarterly payment to the Access Provider shall be based on the three (3) months from October 1, 2019 through December 31, 2019, and shall constitute three percent and three quarters (3.75%), or other percentage granted under Section 8.1(a), of the Franchisee's Gross Annual Revenues. Said second payment shall then be due and payable to the Franchise Authority no later than February 15, 2020. Thereafter, the Franchisee's three and three quarters percent (3.75%), or other percentage granted under Section 8.1(a), payments to the Access Provider 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 July 1, 2029 through July 31, 2029, and shall constitute three and three quarters percent (3.75%), or other percentage granted under Section 8.1(a), 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**

(a) 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.

(b) Franchisee's use or occupancy of property of the state, town, or school district pursuant to this Franchise shall be subject to tax under RSA 72:23,1(b), and Franchisee shall be responsible for the payment of, and shall pay, all properly assessed current and potential personal and real property taxes, if any, for such use or occupation and all properly assessed current and potential and real property taxes, if any, on structures or improvements made by franchisee pursuant to this Franchise. Pursuant to the provisions of this section, failure of the franchisee to pay duly assessed personal and real estate taxes when due shall be cause to terminate said lease or agreement by the franchising authority. Accordingly, this is a material term of the franchise and failure to pay duly assessed personal and real property taxes when due shall be cause for the franchising authority to provide a written notice to franchisee to show cause by a date certain specified in the notice as to why this franchise should not be revoked. To the extent applicable law provides authority for the franchising authority to assess taxes on franchisee, the franchising authority shall be authorized to impose such taxes and franchisee shall be obligated to pay such properly assessed taxes. However, franchisee reserves all rights to appeal any assessment of personal or real property taxes.

### **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 upon written request provide 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, employees, volunteers, agents, and representatives 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) A property damage insurance policy naming the Franchising Authority, the Town, its officers, boards, committees, commissions, agents, employees, volunteers, agents, and representatives as additional insureds and save them harmless from any and all claims of property damage, real or personal, occasioned or alleged to have been so occasioned by the construction, installation, maintenance or operation of the Cable System, with a minimum liability of One Million Dollars (\$1,000,000.00) for damage to the property of any one Person in any one occurrence.
- (3) 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;
  - (b) One Million Dollars (\$1,000,000.00) for bodily injury and consequent death to any one person; and
  - (c) Five Hundred Thousand Dollars (\$500,000.00) for property damage per occurrence.
- (4) Worker's Compensation and Employer's Liability in the minimum amount of:
  - (a) Statutory limit for Worker's Compensation; and
  - (b) One Hundred Thousand Dollars (\$100,000) for Employer's Liability.
- (5) 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 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, defend, and hold harmless the Franchising Authority, the Town, its officials, boards, commissions, committees, agents, representatives, volunteers that are approved/appointed/designated by the Franchising Authority related specifically to Town projects or boards or commissions and/or employees against all claims for damage due to the actions of the Franchisee, its employees, officers, volunteers, representatives, or agents arising directly or indirectly out of the construction, installation, maintenance, operation and/or removal of the Cable 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.

### **Section 10.5 — NOTICE OF CANCELLATION OR REDUCTION OF COVERAGE**

The insurance policies and performance bond required herein shall each contain an endorsement stating that such insurance policies and performance bond are intended to cover the liability assumed by the Franchisee under the terms of this Renewal Franchise and shall contain the following endorsement:

It is hereby understood and agreed that this insurance policy/performance bond shall not be canceled, materially changed or the amount of coverage thereof reduced until thirty (30) days after receipt by the Franchising Authority by certified mail or electronic mail (e-mail) of one (1) copy of a written notice of such intent to cancel, materially change or reduce the coverage required herein.



**- Town of Merrimack, NH – Cable Television Franchise –  
Term: August 1, 2019 – July 31, 2029**

## 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 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 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 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 AND CHOICE OF LAW**

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. This Agreement shall be construed under New Hampshire substantive law without regard to any rules governing choice of law.

## 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 13.3 infra, and Exhibit 3 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 / OFFICE

(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 shall maintain and operate a customer service office in a neighboring Town for the purpose of receiving and resolving all complaints, including without limitation, those regarding billing, Service, installation and equipment malfunctions, accepting the return of Converters, and answering general inquiries.

#### 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. The Franchisee's customer service center shall have a publicly listed local or toll-free telephone number.

#### 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 (as may be amended), attached hereto as Exhibit 3.

#### 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 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 - RESPONSE TO SERVICE CALLS AND SERVICE COMPLAINTS**

(a) The Franchisee shall respond to all requests for Service that are received under Normal Operating Conditions on a first-come, first-served basis Monday through Friday. Such requests shall be handled immediately, if possible, but in all instances, within twenty-four (24) hours of the original call. Verification of the problem and, where possible, resolution, shall occur within forty-eight hours.

(b) Calls for repair service after Normal Business Hours and on Saturdays, Sundays and holidays shall be scheduled by the Franchisee's personnel according to Franchisee's normal repair service policies.

(c) The Franchisee shall ensure that there are stand-by personnel on-call at all times after Normal Business Hours. The answering service shall be required to notify the stand-by personnel of an unusual number of calls or a number of similar Complaint calls or a number of calls coming from the same area.

(d) System outages shall be responded to immediately, twenty-four (24) hours a day by the Franchisee's personnel. For purposes of this section, an outage shall be considered to occur when five (5) or more calls are received from any one neighborhood, concerning such an outage.

#### **SECTION 13.10 - COMPLAINT RESOLUTION PROCEDURES**

(a) The Franchisee shall establish a procedure for resolution of billing and privacy disputes and Complaints by Subscribers. The Franchisee shall provide, on an annual basis, a written description of said procedures to all Subscribers, as well as the Franchising Authority.

(b) Upon request, the Franchisee shall provide written information to the Franchising Authority regarding Subscriber Complaints in Merrimack.

(c) If the Franchising Authority or its designee(s) determines it to be in the public interest, the Franchising Authority or its designee(s) may investigate any multiple Complaints or disputes brought by Subscribers arising from the operations of the Franchisee, provided that the Subscribers make a good faith effort to comply with the Franchisee's procedures specified in paragraph (a) above for the resolution of Complaints.

(d) In the event that the Franchising Authority or its designee(s) finds a pattern of multiple unresolved subscriber Complaints, the Franchising Authority and the Franchisee may discuss appropriate amendments to this Renewal Franchise.

**Section 13.11-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 13.12-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 13.13-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 13.14-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.

**Section 13.15 - MONITORING**

Except as otherwise permitted by applicable law, neither the Franchisee or its agents nor the Town or its agents shall tap, monitor, arrange for the tapping or monitoring, or permit any other person to tap or monitor, any cable, line, Signal, input device, or subscriber Outlet or receiver for any purpose, without the prior written authorization of the affected Subscriber or User; provided, however, that the Franchisee may conduct system-wide or individually addressed "sweeps" solely for the purpose of verifying System integrity, checking for illegal taps, controlling return-path transmission, or billing for Pay Services. The Franchisee shall report to the affected parties any instances of monitoring or tapping of the Cable Television System, or any part thereof, of which it has knowledge, whether or not such activity has been authorized by the Franchisee, other than as permitted herein. The Franchisee shall not record or retain any information transmitted between a Subscriber or User and any third party, except as required for lawful business purposes. The Franchisee shall destroy all subscriber information of a personal nature after a reasonable period of time except as authorized not to do so by the affected Subscriber.

**SECTION 13.16 - DISTRIBUTION OF SUBSCRIBER INFORMATION**

The Franchisee and its agents or employees shall comply with Section 631 of the Cable Act regarding the distribution of Subscriber information.

### **SECTION 13.17 - INFORMATION WITH RESPECT TO VIEWING HABITS & SUBSCRIPTION DECISIONS**

Except as permitted by Section 631 of the Cable Act and other applicable law, the Franchisee shall not make available to any third party, including the Town, information concerning the viewing habits or subscription package decisions of any individual Subscriber, without a Subscriber's prior authorization, if a court authorizes or orders such disclosure, the Franchisee shall notify the Subscriber as soon as practicable, unless such notification is otherwise prohibited by applicable law or the court.

### **SECTION 13.18 - SUBSCRIBER'S RIGHT TO INSPECT AND VERIFY INFORMATION**

- (a) Upon request, the Franchisee shall make available for inspection by a Subscriber at a reasonable time and place all personal subscriber information that the Franchisee maintains regarding said Subscriber.
- (b) A Subscriber may obtain from the Franchisee a copy of any or all of the personal subscriber information regarding him or her maintained by the Franchisee. The Franchisee may require a reasonable fee for making said copy.
- (c) A Subscriber may challenge the accuracy, completeness, retention, use or dissemination of any item of personal subscriber information. Such challenges and related inquiries about the handling of subscriber information shall be directed to the Franchisee's General Manager .

### **SECTION 13.19 - CONSUMER INFORMATION**

The Franchisee shall, in soliciting prospective customers for Cable Service(s), provide full and complete information concerning its available Cable Services and shall provide the following:

- (a) description of each level of Service in detail;
- (b) description of each level of Service, including the number of channels, Programming and exact price;
- (c) A description of all premium services and prices thereof;
- (d) A description of the lowest cost Service in an objective manner;
- (e) A description of billing policies and procedures.

### **SECTION 13.20 - PRIVACY STANDARDS REVIEW**

The Franchising Authority and the Franchisee shall review this Article 13 to determine that it effectively addresses appropriate concerns about privacy. This Article may be amended periodically by agreement of the Franchising Authority and the Franchisee.



## 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.

**Section 14.10 – FINANCIAL REPORTS**

The Franchisee shall furnish the Franchising Authority and/or its designee(s), no later than one hundred and twenty (120) days after the end of the Franchisee's Fiscal Year, the following financial information:

(a) Statement of Income upon which the annual Franchise Fee is based, including:

- (i) All Subscriber Revenues, including but not limited to, regular Basic Service charges, Pay Cable charges, Pay-Per-View revenues, installation revenues (including reconnection, second set, etc.), advertising revenues, Internet revenues, Leased Access revenues, home shopping services revenues and any other special service revenues.

(b) If requested in writing, a list of officers and members of the Board of Directors of the Franchisee and its parent, if any.

**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.

## 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.

**EXHIBITS**

**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.

**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.

Schools:

Reeds Ferry - 15 Lyons Rd.  
Thorntons Ferry - 134 Camp Sargent Rd.  
Mastricola Elementary - 7 School St.  
James Mastricola Upper Elementary - 26 Baboosic Lake Rd.  
Merrimack Middle School - 31 Madeline Bennett Ln.  
Merrimack High School - 38 McElwain St.  
Merrimack Special Services Office - 2 Brentwood Dr.

Town:

Town Hall - 6 Baboosic Lake Rd.  
Public Works Department - 80 Turkey Hill Rd.  
Public Works Department - 76 Turkey Hill Rd.  
Merrimack Police Department - 31 Baboosic Lake Rd.  
Merrimack Fire Department - 432 Daniel Webster Hwy.  
Merrimack Fire Rescue Station 2 - 196 Naticook Rd.  
Solid Waste & Transfer Station - Fearon Rd.  
John O'Leary Adult Community Center - 4 Church St.  
Public Library - 470 Daniel Webster Hwy.  
Wastewater Treatment Facility - 36 Mast Rd.  
Reeds Ferry Fire Station - Daniel Webster Hwy.

**EXHIBIT 3**  
**FCC CUSTOMER SERVICE OBLIGATIONS**

TITLE 47--TELECOMMUNICATION  
CHAPTER I--FEDERAL COMMUNICATIONS COMMISSION  
PART 76--CABLE TELEVISION SERVICE  
Subpart H--General Operating Requirements

**§ 76.309 - Customer service obligations.**

(a) A cable franchise authority may enforce the customer service standards set forth in paragraph (c) of this section against cable operators. The franchise authority must provide affected cable operators ninety (90) days written notice of its intent to enforce the standards.

(b) Nothing in this rule should be construed to prevent or prohibit:

(1) A franchising authority and a cable operator from agreeing to customer service requirements that exceed the standards set forth in paragraph (c) of this section;

(2) A franchising authority from enforcing, through the end of the franchise term, pre-existing customer service requirements that exceed the standards set forth in paragraph (c) of this section and are contained in current franchise agreements;

(3) Any State or any franchising authority from enacting or enforcing any consumer protection law, to the extent not specifically preempted herein; or

(4) The establishment or enforcement of any State or municipal law or regulation concerning customer service that imposes customer service requirements that exceed, or address matters not addressed by the standards set forth in paragraph (c) of this section.

(c) Cable operators are subject to the following customer service standards:

(1) Cable system office hours and telephone availability -

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

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

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

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

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

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

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

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

(i) Standard installations will be performed within seven (7) business days after an order has been



placed. “Standard” installations are those that are located up to 125 feet from the existing distribution system.

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

(iii) The “appointment window” alternatives for installations, service calls, and other installation activities will be either a specific time or, at maximum, a four-hour time block during normal business hours. (The operator may schedule service calls and other installation activities outside of normal business hours for the express convenience of the customer.)

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

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

(3) Communications between cable operators and cable subscribers -

(i) Refunds - Refund checks will be issued promptly, but no later than either -

(A) The customer's next billing cycle following resolution of the request or thirty (30) days, whichever is earlier, or

(B) The return of the equipment supplied by the cable operator if service is terminated.

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

(4) Definitions -

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

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

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

**SIGNATURE PAGE**

In Witness Whereof, the Franchise is hereby issued as of August 1, 2019 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



July 11, 2019

Town of Merrimack  
Eileen Cabanel, Town Manager  
6 Baboosic Lake Road  
Merrimack, NH 03054

**RE: HD PEG Access Programming  
City of Merrimack, NH**

Dear Ms. Cabanel:

The purpose of this letter is to outline the Franchisee's (hereinafter "Comcast") commitment to launch a High Definition (HD) Public, Educational, and Governmental (PEG) Access channel in the Town of Merrimack (hereinafter "Town" or "Franchising Authority").

The Franchisee shall launch, within twenty-four (24) months of the Effective Date, of the Cable Television Franchise between the Town and Comcast one (1) HD PEG channel for PEG Access use. The Franchising Authority and/or its designee(s) shall be responsible for providing the PEG Access Channel Signal in HD format to the demarcation point at the designated point of origination for the PEG Access Channel. The Franchisee shall distribute the PEG Access Channel Signal on its Cable System in HD format without substantial alteration or deterioration.

If you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink that reads "Bryan Christiansen". The signature is written in a cursive, flowing style.

Bryan Christiansen  
Sr. Manager of Government & Regulatory Affairs  
Comcast



July 11, 2019

Eileen Cabanel, Town Manager  
Town of Merrimack  
6 Baboosic Lake Road  
Merrimack, NH 03054

**Re: Discount available to eligible Merrimack Senior Citizens**

Dear Ms. Cabanel:

The purpose of this letter is to outline the senior citizen discount that will be available to qualified Merrimack Comcast cable service subscribers.

Comcast will voluntarily offer a discount equal to \$2.00 per month off Digital Starter. The discount will be for those persons age sixty-five (65) or older, who are head of household and receiving SSI or Medicaid. A qualifying subscriber must be able to show proof of such qualifications. Acceptable documentation would be the following:

- Proof of Age: Drivers License, Birth Certificate, or Passport
- Head of Household: Lease, Deed, Town Tax Bill
- Receiving SSI or Medicaid benefits under Social Security

Comcast reserves the right to modify or eliminate such program at its sole discretion. In the event Comcast adopts and offers a statewide senior citizen discount program, Comcast reserves the right to implement such program, after reasonable written notice to your office.

Sincerely,

A handwritten signature in black ink, reading "Bryan Christiansen". The signature is written in a cursive style with a long, sweeping underline that extends to the right.

Bryan Christiansen  
Sr. Manager Government and Regulatory Affairs

Approved: December 6, 2018  
Posted: December 11, 2018

### Town Manager's Report

The School Board has approved and sent out the letter to HealthTrust authorizing the use of their claims data to give us combined rates.

Councilor Albert remarked the School Board should be commended. School Board Member Andy Schneider brought this suggestion to the forefront; something he sees as a great show of cooperation between the two governing bodies.

### Consent Agenda - None

*There being no objection, the Council went out of the regular order of business to take up the first item under New Business.*

#### **1. Committee Appointments**

*Submitted by Town Council Chairman Finlay Rothhaus and Vice Chair Tom Koenig*

The Town Council to consider appointing the following individual to Town committees, pursuant to Charter Article 4-8:

**Kevin Cotreau** - Technology Committee (*Full member*)

**MOTION made by Councilor Koenig and seconded by Councilor Harrington to appoint Kevin Cotreau as a full member of the Technology Committee**

### ON THE QUESTION

Vice Chairman Koenig noted Mr. Cotreau was interviewed. He has a great deal of information about technology infrastructure. He has volunteered his time, and will be a tremendous asset.

### **MOTION CARRIED**

**5-0-0**

*Oath of Office administered to Kevin Cotreau by Chairman Rothhaus*

*The Council returned to the regular order of business.*

### Old Business

#### **1. Cable Television Franchise Agreement Follow-up Discussion**

*Submitted by Media Services Coordinator Nicholas Lavallee*

Town Council to consider the recommendation to form an ad hoc group for the purpose of meeting and preparing suggestions regarding the Cable Television Franchise agreement.

Nicholas Lavallee, Media Services Coordinator, stated the desire to form an Ad hoc committee comprised of three Merrimack residents and a member of the Council, to formalize suggestions relative to the Franchise Agreement for submission to legal counsel and ultimately to the Council for consideration.



**Approved: December 6, 2018**  
**Posted: December 11, 2018**

Chairman Rothhaus spoke of the suggestions that have been brought forward noting he is particularly interested in the possibility of a municipally operated internet service provider. He questioned if that is an issue the committee would also be able to take on. Mr. Lavallee indicated it could.

Councilor Healey commented, as the Liaison to the Technology Committee, she has an interest in serving on the Ad hoc committee.

Town Manager Cabanel stated the desire to be clear, there would not be a lot of work done relative to the Franchise Agreement as there is not much in the way of latitude there. The work of the Ad hoc committee would be focused on additional and enhanced services for the Media Division. Recommendations of the Media Services Coordinator and Ad hoc committee would be brought before the Council for consideration.

The question was raised of whether there is sufficient time to form a committee to address items associated with the Franchise Agreement, which expires in January 8, 2019. Town Manager Cabanel commented there are items for inclusion learned from review of agreements of other communities, the possibility of reducing the franchise fee to the end users, etc. to be discussed. She spoke of the funds available that were gained through franchise fees, which is a revenue source that is already expected to be reduced as a result of users moving away from cable television in favor of streaming over the internet. She reiterated there is little latitude with regard to the agreement.

Mr. Lavallee noted the FCC is currently proposing a change to rulemaking on cable franchising. The industry has changed drastically since the time of the last Franchise Agreement and continues to do so at a fast pace. He spoke of the importance of executing a renewal to be put in place as soon as the existing agreement expires, and to form a committee to discuss the changes that have occurred in the industry, the expectations residents have in the Media Division, and what they would like to see in terms of internet services. Assistant Town Manager/Finance Director Micali noted although the contract expires November 8<sup>th</sup>, it contains a clause requiring it to stay in effect until a new contract can be negotiated.

Councilor Harrington requested clarification of changes proposed by the FCC. Reference was made to the document "Further Notice of Proposed Rulemaking on Cable Franchising". One of the items in that document that will work in favor of the cable company provides the potential for them to chargeback expenses over franchise fees. What municipalities are receiving in kind now, such as cable services to municipal buildings, could have a value assigned and be considered as an expense against the franchise fees. The majority of the proposed changes would be in favor of the cable company.

**MOTION made by Councilor Albert and seconded by Councilor Harrington to establish an Ad hoc committee, comprised of three or more residents and Councilor Healey as the Council's Liaison, for the purpose of meeting and preparing suggestions regarding the Cable Television Franchise agreement. MOTION CARRIED 5-0-0**

## **2. MS4 Permit Follow-up Discussion**

*Submitted by Deputy Public Works Director / Town Engineer Dawn Tuomala*

The Town Council to be presented with an update on the MS4 permit.



**Approved: February 14, 2019**

**Posted: February 15, 2019**

Aside from the direct cost to the programs, all programs cover a portion of the salary and benefits for the Director and Program Coordinator positions. In the current FY, that cost was \$40,295. For the FY20 budget, the allocation is \$59,166.

The registration software is being included in the fund as well. The \$59,166 and the added cost of the software totals \$62,646. The way they spread that cost is by taking the seven largest programs, the ones they know will run, and divide the cost amongst those. Not everything offered runs from year to year and some barely break even. Naticook day camp is shouldering the largest portion of that cost (73%).

The Council was provided information on last year's programming and this summer's camp numbers. It provides a sense of incoming expenses from the various categories and at the bottom the \$40,250 for the current FY. There was not a lot of funding remaining to carry into the next year.

In the first year of renting the Function Hall out, revenue was approx. \$1,200. This past year \$2,500 was gained, and year to date for the current fiscal year rental revenue is up to about \$4,100. The goal is that by next year revenue will cover the cost of heat, electricity, etc.

Councilor Healey noted 89-89-8375-0 Day Camp has an allocation for an EMT. Director Casparius stated that is for the summer camp. You can have an EMT, Nurse, LPN, or Doctor. The Town has had the same EMT for the past 3 years. He covers the day camp and all the concurrent summer programs.

Councilor Boyd questioned if there is 1 Lifeguard for the 764 campers at the Naticook Day Camp. Director Casparius stated there are technically 4. The Town splits the cost of Lifeguards (general fund budget). The Waterfront Director's salary is paid 50/50 by the camp and taxpayers. It is a public beach which is open to the public at the same time camp is running. There is a total of 3 lifeguards and the Waterfront Director, who is also a lifeguard.

Councilor Boyd remarked 4 lifeguards for 764 campers is an average of 191 campers/lifeguard. Director Casparius noted the 764 campers is a total for the summer. The average is about 100/week, but swim times are divided up so that at any given time there are only 30 at the waterfront. Councilor Boyd questioned if the day camp is staggered, e.g., different number of attendees each week. Director Casparius stated the average to be 90-100 kids/week total for Naticook. Within each individual activity the kids are divided into individual age groups. While one group of 20 kids is at the waterfront swimming and taking swimming lessons, another group might be in arts & crafts, etc. The ratio is 1 lifeguard for every 25 people in the water.

## Media

Nicholas Lavallee, Media Services Coordinator, remarked there are no significant changes in the beginning of their budget. Under 32-32-8504-0 Office Equipment; an increase of \$35,000. The bulk of the media equipment comes from an \$80,000 project where we will upgrade the head-end/cablecast system. There are many pieces of equipment that are essentially the brain of Merrimack TV. The expectation is the Town will have an HD channel (4<sup>th</sup> Merrimack TV channel). There are pieces of equipment that need to be compatible. The cameras are in HD, the news switches both on the public channel side and the control room for the Matthew Thornton Room are all in HD. All the meetings



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that occur are now uploaded to the YouTube channel on HD. What is not in HD is mostly everything that is in the head end. There are pieces of equipment that are just not compatible with any HD gear.

With the purchase, any of the programs played will be shot in HD, the video file itself will be in HD so that for the 1 HD channel we have you will be able to view it in HD.

The project will include a video server. You will not only be able to view content on YouTube, you will also be able to see any content that is on the video server in HD linked from the MerrimackTV website. The Cablecast unit has a service called Reflect. Using the Reflect service you would be able to see the MerrimackTV content via an Apple TV device.

Upgrades have been made to the head end over the past ten years, but it has been piecemeal and small upgrades. This is a complete overhaul.

Councilor Albert commented on meetings held in the Memorial Conference Room, and the inability for utilizing computers to project presentations so that the television viewing audience can see the presentations. Mr. Lavallee responded there is room in the current FY to make additions to that room.

Councilor Harrington commented residents having questions about the quality of the video can contact Nicholas Lavallee at 423-8524. The general office number is 423-8561.

Councilor Harrington stated concern revenue generated from the Comcast franchise fee will lessen over time. She believes now to be the time to address equipment needs.

Councilor Healey questioned the \$2,300 identified as Comcast under 32-32-8260-0 Telephone. She was informed of the need to upgrade the internet service coming out of the head end. With live streaming of channels onto the website there is the need for more bandwidth. Asked if the Town could get that at no cost, Mr. Lavallee stated it could not because of the business class speed. He spoke of meeting last month with the Adhoc media group to discuss the franchise agreement as well as other media needs. They also discussed what the media department offers and what it could do to further engage public interest.

Town Manager Cabanel spoke of the franchise fees. In FY14 the fees totaled \$311,000/year to a peak in FY17 at \$424,000. Now we're at about \$405,000. We are not seeing very serious declines.

Mr. Lavallee commented on how much the industry has changed. There is legislation in front of the FCC; the cable company may not have to necessarily offer in-kind services. What those in-kind services are hasn't been specified, but they may include such things as services for municipalities, basic cable television for police, fire, municipal and school buildings and may also put a price tag on the cost of a community television channel or the value of an actual channel. It may be a long way off.

Town Manager Cabanel provide the Council with a spreadsheet identifying revenues generated from franchise fees since FY14 and other revenue received from interest and other services. Total of expenses being proposed is \$342,592, then there is an offset from revenue of \$200,000. The bottom of the sheet shows what is occurring with fund balance. It has gotten to a really good size.



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The fund balance as of 6-30-13 was \$709,227. The adjustments represent the cumulative increases/decreases to the fund balance through FY18. Fund balance as of 6-30-18 was \$836,453. The Town started buying that down; FY19 \$151,312 and FY20 \$132,592. The estimated fund balance as of 6-30-19 is \$554,936. There will be revenue coming in, expenses, amount that goes over to the general fund. Trying to make a deficit every year so that the general fund can have offsetting revenue for this.

Asked to clarify, Town Manager Cabanel stated the general fund is where the tax rate is derived. The Council determined the franchise fee did not have to be 100% dedicated to the Media Division, it could be used for media needs and the balance given back to taxpayers. Proposed is for a little over half of the franchise fees to be returned to the general fund to offset the amount that must be raised through taxes. Those monies will appear in the general fund revenue.

### General Government

Town Manager Cabanel stated General Government includes her office, the Finance Office, legal fees, compensated absences, etc.

01-01-8142-0 Compensated Absences shows a decrease of \$160,406. The amount of the allocation is determined by the Finance Director and endorsed by the auditors to ensure the fund is enough to cover the cost of accumulated sick, vacation pay that must be paid out when employees retire (based on retirement eligibility).

01-01-8351-0 Consultants is budgeted at \$25,000 in the current year (as is the line in the fire department's budget) to cover the cost of a space needs study for the Public Safety Facility. In FY20, that has been reduced to \$5,000.

01-01-8359-0 Other Outside Services has an increase of \$22,359 mostly due to ambulance fees. The outside service charges 6.5% to do the ambulance billing. Last year they billed roughly \$1 million after contractual adjustments. The Town collected about \$770,000. The outside contractor was paid roughly \$48,000 last year. As a result, the line was increased. Assistant Town Manager/Finance Director Micali stated the \$12,909 allocated for collection agency – delinquent ambulance bills, was a number that was misinterpreted, and can be reduced back down to the FY19 figure of \$3,700. The collection agency is used for people who are out-of-Town or people for whom addresses cannot be found.

Councilor Albert questioned 01-01-8460-0 Other Operating Expenses - \$5,000 allocated to public relations, and was told that covers the cost of expressions of sympathy sent when an employee suffers the loss of a relative.

Councilor Boyd questioned 01-01-8107-0 Wages - Part-Time; if 225 hours were utilized in the preparation of meeting minutes. He questioned if the individual does the minutes for any other committee/board/commission, and was told there are others who do minutes, and the individual who does the Town Council minutes does those alone. Asked if the individuals are employees of the Town, Assistant Town Manager/Finance Director Micali stated they are and have been for several years. Councilor Boyd questioned if the cost for preparing all the meeting minutes of the various