

COUNTY OF KENTON
COMPETITIVE CABLE TELEVISION FRANCHISE AGREEMENT

BY AND BETWEEN
KENTON COUNTY, KENTUCKY
AND
CINCINNATI BELL EXTENDED TERRITORIES LLC

Approved by the Fiscal Court of Kenton County by Ordinance No. _____,
dated _____, 2021.

Effective Date of this Franchise Agreement is _____, 2021

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COMPETITIVE CABLE FRANCHISE AGREEMENT

This Competitive Cable Franchise Agreement, dated as of July 1, 2021, but made effective when legally adopted by an ordinance approving the Franchise and as provided in Article II, Section 6 in this Franchise Agreement, by and between the **COUNTY OF KENTON, KENTUCKY**, a Home Rule county (hereinafter referred to as “**Grantor**”), and **CINCINNATI BELL EXTENDED TERRITORIES LLC**, an Ohio limited liability company authorized to transact business within the Commonwealth of Kentucky (hereinafter referred to as “**Grantee**”) and locally known as “**FIOPTICS**” and a wholly-owned subsidiary of Cincinnati Bell Inc. Grantor and Grantee are referred to individually as a “**Party**” and collectively as the “**Parties**”.

RECITALS:

WHEREAS, the Telecommunications Board is a public agency established by the TBNK Member Governments in accordance with the provisions of the Interlocal Cooperation Act of Kentucky (KRS 65.210 - 65.300) and is authorized to exercise jointly the powers of the respective TBNK Member Governments relating to cable television matters, Cable Services and other telecommunication services, including the administration and regulation of cable television franchises, as provided in the Interlocal Agreement; and

WHEREAS, Grantee, the present holder of a nonexclusive competitive Franchise Agreement, dated as of January 1, 2009 (the “**Prior Franchise**”), and providing for Cable Services throughout the Franchise Area, has asked Grantor and the Telecommunications Board to renew or otherwise replace the Prior Franchise to own, construct, reconstruct, install, maintain, operate, dismantle, test, Upgrade, repair, use, and remove a Cable System and related facilities along, under, over, above, through or across the Streets within the corporate boundaries of Grantor; and

WHEREAS, in connection with the powers and administrative responsibilities set forth in the Interlocal Agreement, the Telecommunications Board has reviewed for and on behalf of Grantor, as well as other TBNK Member Governments, which are signatories to the Interlocal Agreement, Grantee’s performance under the Prior Franchise and has (1) identified the present and future cable-related community needs and interests of Grantor and its citizens, as delineated in that certain (a) Needs Assessment Report, dated September and October, 2008, and (b) Needs Assessment Report Update, dated July, 2017, and produced by Columbia Telecommunications Corporation (collectively, the “**Needs Assessment Reports**”); (2) determined that the foregoing meet the requirements of Section 526 of the Cable Act (see 47 U.S.C. § 546); and (3) Grantee has substantially complied with the material terms of the Prior Franchise under Applicable Law; and

WHEREAS, relying upon the administrative services and certain related written and oral reports and communications provided by the Telecommunications Board to Grantor and the other TBNK Member Governments, including but not limited to the Needs Assessment Reports, identifying the present and future cable-related community needs and interests of Grantor and the other TBNK Member Governments, the Grantor has accepted, adopted, approved and confirmed the Needs Assessment Reports and the determinations and findings of the Telecommunications

Board respecting the foregoing negotiation process by and through the action of its legislative body;

WHEREAS, having afforded the public adequate notice and an opportunity for comment, Grantor desires to grant a new and nonexclusive competitive Franchise to Grantee, to supersede the Prior Franchise, for the construction, upgrade, operation, and maintenance of a Cable System for the provision of Cable Service on the terms and conditions set forth in this Franchise Agreement and the provisions of the Cable Act; and

WHEREAS, Grantor has complied with all federal and State-mandated procedural and substantive requirements pertinent to this Franchise renewal;

NOW, THEREFORE, in consideration of Grantor's grant of a franchise to Grantee, Grantee's promise to provide Cable Service to residents of the Franchise Area of Grantor pursuant to the terms and conditions of this Franchise Agreement, the promises and undertaking herein, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Grantor and Grantee agree as follows:

ARTICLE I. GRANT OF FRANCHISE AND GENERAL PROVISIONS

SECTION 1. TITLE OF FRANCHISE AGREEMENT

This Franchise Agreement shall be known and may be cited as the "**2021 Cincinnati Bell Extended Territories LLC Franchise**" (hereinafter referred to as "**Franchise**" or "**Franchise Agreement**").

SECTION 2. DEFINITIONS

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

"Access Channel" or "Access Channels" shall mean all Public Access Channels, Educational Access Channels, and Government Access Channels that Grantee is required to provide under this Franchise Agreement, at no charge to the Authority, and carried on the Cable System for the benefit of the TBNK Member Governments, residents thereof and Access Users.

"Affiliate" or "Affiliates" means any Person who, directly or indirectly, owns or controls, is owned or controlled by, or is under common ownership or control with, Grantee.

"Applicable Law" shall mean any and all local, State, or federal law, statute, charter, ordinance, regulation, code, franchise, permit, judgment or decree, including, without limitation, the FCC Regulations.

“**Authority**” shall mean Grantor, or any authority, board, agency or other designee appointed or otherwise designated by Grantor, as provided in Article III, Section 6 (Delegation of Grantor Rights).

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

“**Cable Channel**” or “**Channel**” shall be defined as set forth in Section 602 of the Cable Act (47 U.S.C. § 522).

“**Cable Operator**” shall be defined as set forth in Section 602 of the Cable Act (47 U.S.C. §522).

“**Cable Service**” shall be defined as set forth in Section 602 of the Cable Act (47 U.S.C. § 522).

“**Cable System**” shall be defined as set forth in Section 602 of the Cable Act (47 U.S.C. §522).

“**Commencement Agreement**” has the meaning ascribed thereto in Article I, Section 6 (Duration and Acceptance of Franchise) of this Agreement.

“**Community Programming Center**” or “**CPC**” shall mean a division or department of the Telecommunications Board and/or any facility(ies) or Person(s) designated by the Telecommunications Board for purposes of providing any combination of public, educational, and/or governmental Access programming on the Cable System as provided in Article II, Section 15 (Required Services and Facilities – PEG Access) of this Franchise.

“**Competitive Franchise**” is a cable franchise awarded to an applicant in an area currently served by another Cable Operator or Cable Operators in accordance with 47 U.S.C. § 541(a)(1).

“**County**” shall mean the County of Kenton, Kentucky and the Fiscal Court of Kenton County, Kentucky.

“**Downstream Transmission(s)**” shall mean signals traveling from the Headend to the Subscriber’s location on the subscriber network or Cable System, including the Access Channels.

“**Effective Date**” shall mean the date set forth in Article I, Section 6 (Duration and Acceptance of Franchise) of this Franchise Agreement.

“**Emergency Alert System**” or “**EAS**” has the meaning ascribed thereto in Article II, Section 15(Q) (Emergency Alert System) hereof.

“Educational Access Channel” shall mean the Channel(s) or portion of a Channel or Channels on the Cable System required by this Franchise to be designated or dedicated by Grantee for educational access uses or purposes.

“FCC” shall mean the Federal Communications Commission, its designee, or any successor governmental entity thereto.

“FCC Regulations” shall mean the rules and regulations promulgated by the FCC from time to time and located in Title 47 of the Code of Federal Regulations (CFR), including any FCC reports and orders pertaining to the Cable Act and/or Cable System.

“FCC Third Report & Order” shall mean the Third Report and Order adopted by the FCC on August 1, 2019 and released on August 2, 2019 In the Matter of: Implementation of Section 621(a)(1) of the Cable Communication Policy Act of 1984, as Amended by the Cable Television Consumer Protection and Competition Act of 1992 (MB Docket No. 05-311) and as may be modified or altered by any federal court decision, including that of the U.S. 6th Circuit Court of Appeals in City of Eugene, Oregon v. Federal Communications Commission entered May 26, 2021.

“Franchise Area” shall mean, with respect to a city, the incorporated area of that city and such additional areas as may be included in the corporate or territorial limits of the city by way of annexation or other legal means, and, with respect to a county, the unincorporated area of the county and such additional areas as may be included in the unincorporated area by virtue of the dissolution of any city or any other legal means.

“Franchise Fee” shall mean the consideration paid by Grantee for the privilege to construct and/or operate a Cable System, as provided in Article I, Section 3 (Rights and Privileges of Grantee) hereof, in the Franchise Area, as set forth in Article II, Section 10 (Payment of Multichannel Video Programming Services – Franchise Fees) hereof, in accordance with Section 622 of the Cable Act (47 U.S.C. §542).

“GAAP” shall mean generally accepted accounting principles as determined by the Financial Accounting Standard Board.

“Government Access Channel” shall mean the Channel(s) or portion of a Channel or Channels on the Cable System required by this Franchise to be designated or dedicated by Grantee for use by the Authority for governmental Access uses or purposes.

“Grantee” is Cincinnati Bell Extended Territories LLC the grantee of rights under this Franchise Agreement, or its successor, transferee or assignee.

“Grantor” shall have the meaning ascribed thereto in the preamble above.

“Headend” shall mean the electronic control center or “super headend” of Grantee’s Cable System, which is presently located in Lebanon, Ohio, and which serves as the single aggregate point of national content, local over-the-air television signals and satellite transmission signals. The Headend usually includes cable, antennas, wires, fiber optic lines, computer network

equipment and switches, satellite dishes, monitors, switchers, modulators, demodulators, processors, servers and other related equipment or facilities.

“**Information Services**” shall be defined as it is defined in 47 U.S.C. § 153(20)), as amended.

“**Interlocal Agreement**” shall mean the Interlocal Cooperation Agreement among the TBNK Member Governments, approved on March 12, 1996, by the Attorney General of the Commonwealth of Kentucky, pursuant to the Interlocal Corporation Act of Kentucky (KRS §65.210 et seq.), filed with the Secretary of State of the Commonwealth of Kentucky on March 21, 1996, and recorded in the Kenton County Clerk’s Office (Miscellaneous Book 341, Page 315) on March 21, 1996, as such agreement may be amended, modified or restated, or replaced or substituted entirely by another agreement or agreements made and entered pursuant to the Interlocal Cooperation Act. The Interlocal Agreement provides for the establishment of the Telecommunications Board and its authority with respect to cable television and telecommunications matters.

“**Non-Cable Service**” or “**Non-Cable Services**” shall mean any service that does not constitute Cable Service pursuant to federal law, including but not limited to Information Services and Telecommunication Services.

“**PEG**” or “**PEG Access**” shall mean Public, Educational and Governmental Access used in conjunction with the Access Channels and PEG Access Facilities presently located at the Community Programming Center.

“**PEG Access Facilities**” shall be defined as set forth in Section 602 of the Cable Act (47 U.S.C. § 522(16)) and further construed and expounded upon in Alliance for Community Media, et al., v. Federal Communications Commission, 529 F.3d 763 (6th Cir. 2008).

“**Person**” shall mean an individual, partnership, association, corporation, trust, governmental entity or agency, or an organization of any kind but such term does not include Grantee or Grantor.

“**Prior Franchise**” has the meaning ascribed thereto in the recitals of this Franchise Agreement.

“**Public Access Channel**” or “**Community Program Channel**” shall mean the channel(s) or portion of a channel or channels on the Cable System required by this Franchise to be designated or dedicated by Grantee for use by Users and which is (are) available for such use on a non-discriminatory basis.

“**State**” shall mean the Commonwealth of Kentucky.

“**Service Tier**” shall mean a category of Cable Service provided by Grantee’s Cable System and for which a separate rate is charged by Grantee.

“**Street**” or “**Streets**” shall mean the surface of and the space above and below any public street, road, highway, freeway, lane, path, public way or place, sidewalk, alley, court,

boulevard, parkway, drive or easement dedicated for compatible uses now or hereafter held by the Grantor for the purpose of public travel and shall include other easements or rights-of-way as shall be now held or hereafter held by the Grantor, the County and/or Commonwealth of Kentucky. The term “**Street**” does not include any (1) park or recreational area of Grantor, (2) public buildings, structures or infrastructure, or (3) public land upon which any government or public building, fire station, police station or school may or may not be situated. No reference herein or in any franchise or license shall be deemed to be a representation, warranty or guarantee by Grantor that its title to any property is sufficient to permit its use for such purpose, and Grantee shall, by its use of the Streets, be deemed to gain only such rights to use the property in the Franchise Area as Grantor may have the undisputed right and power to give.

“**Subscriber**” means a lawful recipient of Grantee’s Cable Service.

“**TBNK Member Government**” or “**TBNK Member Governments**” shall mean those cities and counties which are, or which become and remain as, signatories to the Interlocal Agreement, thus being or becoming and remaining a member of the Telecommunications Board. As of the Effective Date, the TBNK Member Governments consist of those cities and county listed on Appendix 1 attached hereto.

“**Telecommunications Board**” or “**TBNK**” or “**Board**” or “**Cable Board**” shall mean the Telecommunications Board of Northern Kentucky established pursuant to the Interlocal Agreement, or any other similar entity or non-profit organization established or designated by the Grantor, Authority or TBNK Member Governments pursuant to Article III, Section 6(Delegation of Grantor Rights) of this Franchise Agreement.

“**Telecommunication Services**” shall be defined as set forth in 47 U.S.C. § 153(46)), as amended.

“**Term**” shall mean collectively, the “**Initial Term**” and the “**Renewal Term**”, as such terms are further defined in Article I, Section 6 (Duration and Acceptance of Franchise) of this Franchise Agreement.

“**Upstream Transmission(s)**” means signals traveling from originating points on the Cable System, including Access Origination Sites, and/or over PEG Transport Facilities, including, without limitation, the Interconnection Line, Access Origination Sites and the CPC, to the Headend or other centralized network location.

“**User(s)**” means a party utilizing a cable television system channel for purposes of production or transmission of material to Subscribers, as contrasted with receipt thereof in a Subscriber capacity.

SECTION 3. RIGHTS AND PRIVILEGES OF GRANTEE

The nonexclusive franchise granted by the Grantor pursuant to this Franchise Agreement shall and hereby does grant to the Grantee the right and privilege to erect, construct, operate, upgrade, maintain and repair in, upon, along, across, above, over and under the Streets any poles, wires, cable, underground conduits, manholes, and other television conductors and fixtures (but subject to the prior approval of Grantor) necessary for the maintenance and operation of a Cable System

for the interception, sale, transmission and distribution of Cable Service; and the right to transmit the same to the inhabitants of the Grantor on the terms and conditions hereinafter set forth. Any attachment to, or the use of, any utility poles within the Streets shall be accomplished through a separate pole attachment, tariff or utility easement agreement with the affected utility company. No privilege or power of eminent domain is bestowed by this grant; nor is such a privilege or power bestowed by this Franchise Agreement.

SECTION 4. FRANCHISE AGREEMENT

Upon adoption of this Franchise by Grantor and acceptance hereof by the Grantee, as hereinafter provided, the Grantee agrees to be bound by all the terms and conditions contained herein. Subject to Applicable Law, this Franchise authorizes Grantee to provide Cable Services over its Cable System within the Grantor's Franchise area.

SECTION 5. FRANCHISE TERRITORY

The Franchise is granted for the Franchise Area of the Grantor.

SECTION 6. DURATION AND ACCEPTANCE OF FRANCHISE

This Franchise shall take effect upon (a) the Effective Date and (b) the filing with the Executive Director of the Cable Board a Commencement Agreement, in the form and substance of the agreement attached hereto as Appendix 2 (the "**Commencement Agreement**") and providing for the following:

- (1) Grantee's unconditional acceptance of the Franchise Agreement and its agreement to comply with and abide by all its provisions, terms and conditions; and
- (2) A provision confirming the adoption of this Franchise Agreement by Grantor and evidencing the Effective Date of this Franchise Agreement.

The Commencement Agreement shall be duly executed and sworn to, by or on behalf of the Grantee before a notary public or other officer authorized by law to administer oaths.

The term of this Franchise shall be from the date of the Effective Date for a period of five (5) years (the "**Initial Term**"). This Franchise shall be automatically renewed for an additional five (5) year period (the "**Renewal Term**"), unless six (6) months prior written notice is given by the Grantor or Grantee that either Party does not wish to exercise the automatic renewal. If either Party chooses not to automatically renew this Franchise, then at the end of the Initial Term, Grantee's ability to provide Cable Services under this Franchise shall continue on a month-to-month basis provided that, in such event, Grantee demonstrates earnest efforts towards good faith negotiations to arrive at a mutually agreeable franchise. In the event, however, the Parties are unable to arrive at a mutually agreeable franchise prior to the six (6) month period, which begins with the thirty-sixth (36) month before the expiration date of the Renewal Term, either Party may initiate franchise renewal proceedings under Section 626 of the Cable Act (47 U.S.C. §546) by complying with the statutory requirements thereof and providing written notice to the other Party of its intention to commence such renewal proceedings or process. The Effective Date

of this Franchise Agreement shall be the last date of adoption of a franchise substantially the same as this Franchise Agreement by the TBNK Member Governments (the “**Effective Date**”).

SECTION 7. POLICE POWERS

In accepting this Franchise, the Grantee acknowledges that its rights and privileges hereunder are subject to the police powers of Grantor and its rights under State laws and regulations, including KRS 82.082 (Power for Public Purpose Only), to exercise its governmental powers to their full extent and to regulate a grantee and other users having the right and privilege to use the Streets pursuant to a franchise, license or other grant of authority, including, but not limited to, the right of Grantor to adopt, amend, and enforce ordinances and regulations as Grantor shall find necessary in the exercise of its police powers that are in furtherance of a public purpose of Grantor and not in conflict with a State constitutional provision or statute. The Grantor’s or County’s police powers include, but are not limited to, the right to adopt and enforce applicable zoning, building, permitting and safety ordinances and regulations, and the right to adopt and enforce ordinances and regulations containing Street or public right-of-way provisions. Grantee agrees to comply with all applicable ordinances, laws and regulations enacted or adopted by Grantor, or the County pursuant to such governmental powers.

Any conflict between the provisions of this Franchise and any present or future lawful exercise of Grantor’s and County’s police powers, as provided above in this Section 7 (Police Powers), shall be resolved in favor of any presently existing or future ordinances and regulations adopted or enacted by Grantor or the County. Notwithstanding the foregoing, any conflict between the provisions of this Franchise and any future right-of-way ordinance enacted by Grantor shall be resolved in favor of the former. As a point of clarification with respect to the preceding sentence, the Parties agree that no conflict will be deemed to exist between any specific provision(s) of any future right-of-way ordinances and the provisions of this Franchise where the right-of-way provision(s) of this Franchise are silent or do not specifically address the substance or terms of any such provision contained in any future right-of-way ordinance.

SECTION 8. CABLE FRANCHISE REQUIRED

No Cable System shall be allowed to be constructed upon, occupy or use the Streets of Grantor or the State that are located within the Franchise Area, or be allowed to operate without a Cable System franchise.

SECTION 9. USE OF GRANTEE FACILITIES

The Grantor shall have the right, during the life of this Franchise, to install and maintain free of charge upon the poles solely owned by the Grantee any wire and pole fixtures provided there is sufficient space and that the said attachments do not interfere with any facilities or operations of the Grantee and will be in conformity with the terms and provisions of the National Electrical Safety Code (NESC) and Telephone Company standards. The Grantor may not use the poles to compete with the Grantee’s or its Affiliates’ products and/or service offerings. Should the Grantor avail themselves of this right under Section 9, the value of the pole usage shall be treated as “in-kind” and be counted against the Franchise Fee cap, so long as federal law permits such treatment. Notwithstanding the foregoing, Grantor shall be permitted to place, attach or affix

street, informational, directional or road symbol signs on or to such poles without charge or without being treated as an “in-kind” contribution provided there is sufficient space and that said signs will not create safety hazard or interfere with facilities or operations of Grantee. Grantor must get Grantee’s permission prior to attaching or affixing anything to Grantee’s poles.

SECTION 10. NOTICES

The Authority and the Grantee shall provide the other party with the name and address of the contact Person designated to receive notices, filings, reports, records, documents, and other correspondence. All notices shall be delivered to each Party’s contact Person by (a) certified mail, return receipt requested, (b) personal service with a signed receipt of delivery, or (c) overnight with receipt verification. All other filings, reports, records, documents, and other correspondence may be delivered by any permissible means including, but not limited to: facsimile transmission (“**faxing**”); electronic mail (“**email**”) personal service; or overnight mail or package delivery. The delivery of all notices, reports, records, and other correspondence shall be deemed to have occurred at the time of receipt (unless otherwise designated by State law). The contact Persons and their respective addresses for receipt of notice under this Section 10 are as follows:

GRANTEE: Regulatory & Government Affairs
 Cincinnati Bell Extended Territories LLC
 221 East Fourth Street, 103-1080,
 Cincinnati, OH 45202

with a copy to: General Counsel
 Cincinnati Bell Inc.
 221 East Fourth Street, 103-1080
 Cincinnati, OH 45202

TELECOMMUNICATIONS BOARD & GRANTOR:

County Judge / Executive
Kenton County Fiscal Court
1840 Simon Kenton Way
Suite 5200
Covington, Kentucky 41011

Executive Director
Telecommunications Board of Northern Kentucky
3414 Decoursey Pike
Covington, Kentucky 41015

All notices to the Authority shall be sent to their designated agent at the address provided from time to time by the Authority or their designated agent.

SECTION 11. GRANTEE'S FINANCIAL RESOURCES AND PERFORMANCE BOND

A. **Proof of Financial Resources.** The Grantee, throughout the Term of the Franchise, shall maintain adequate financial resources to perform, or provide a plan acceptable to the Authority demonstrating that it can perform, on a timely basis, all obligations pursuant to this Franchise Agreement.

B. **Performance Bond.** Within thirty (30) days after the award of this Franchise, the Grantee shall file with the Cable Board a Performance Bond, which the Grantee shall maintain throughout the Term of this Franchise and any extensions or renewals thereof, in the amount of Three Hundred Thousand Dollars (\$300,000.00) in favor of the Cable Board, Grantor and the TBNK Member Governments, to guarantee the faithful performance by the Grantee of all its obligations under this Franchise.

C. **Conditions.** In the event the Grantee fails to comply with any Applicable Law governing the Franchise, or fails to observe, fulfill and perform well and truly each term and condition of this Franchise, there shall be recoverable, jointly and severally, from the principal and surety of the bond, any damages or loss suffered by the Grantor, or the Cable Board as a result, and to pay fees, penalties or damages due the Grantor and/or the Cable Board, or to pay any claims, taxes or liens due Grantor and/or the Cable Board, including the full amount of any compensation, indemnification, or cost of removal or abandonment of any property of the Grantee, plus a reasonable allowance for attorneys' fees, including the Grantor's and/or the Cable Board's outside legal counsel, and costs.

D. **Endorsement.** The bond shall contain the following endorsement:

It is hereby understood and agreed that this bond may not be canceled by the surety and that the intention not to renew may not be stated by the surety until thirty (30) days after receipt by the Cable Board, by registered mail, a written notice of such intent to cancel or not to renew.

E. **Notice Before Draw.** Prior to drawing upon the performance bond for the purposes described in this Section, the Authority or its designated agent shall notify the Grantee in writing that payment is due, and that the Grantee shall have ten (10) days from the receipt of such written notice to make a full and complete payment. If the Grantee does not make the payment within ten (10) days, the Authority or its designated agent may withdraw the amount thereof, with interest and penalties, from the performance bond. The Grantee's recourse, in the event Grantee believes any taking or withdrawing from the performance bond is improper, shall be through legal action.

F. **Replenishment.** No later than thirty (30) days after mailing to the Grantee, by certified mail, notification of a withdrawal pursuant to Section 12(E) (Notice Before Draw) above, the Grantee shall replenish the performance bond in an amount equal to the amount so withdrawn. Failure to make timely replenishment of such amount to the performance bond shall constitute a material violation of this Franchise.

SECTION 12. LIABILITY AND INSURANCE

A. **Scope and Limits.** The Grantee shall maintain, and by its acceptance of the Franchise specifically agrees that it will maintain, at its own cost and expense, throughout the Term of the Franchise, (a) commercial general and (b) auto liability insurance insuring the Grantor and the Cable Board as additional insureds, and the Grantee as the named insured in the minimum amount of \$5,000,000 for bodily injury (including death) and/or property damage in any one occurrence. This limit may include a self-insured retention and may be increased by mutual agreement of the parties. Grantee shall also maintain workers compensation insurance or state approved self-insurance as provided by Applicable Law. The required limit of insurance may be met with any combination of self-insured retention, primary insurance and umbrella/excess insurance.

B. **CGL Coverage.** Such Commercial General Liability insurance must include coverage for all of the following: premises-operations, no explosion and collapse hazard exclusion, no underground hazard exclusion, products/completed operations hazard, contractual liability (meaning Bodily Injury or Property Damage arising out of the tort liability of another assumed in an Insured Contract), and personal injury.

C. **Acceptability of Insurers and Certification.** The insurance policies obtained by the Grantee in compliance with this section shall be issued by a company or companies duly licensed to do business in the Commonwealth of Kentucky, carrying a rating by Best's, or some other nationally recognized rating service, of not less than A-. Copies of certificates of insurance for all policies required hereunder shall be filed and maintained with the Grantor and the Cable Board, or its designated agent during the Term of this Franchise and may be changed from time to time to reflect approved changing liability limits.

D. **No Limitation or Liability.** Neither the provisions of this section nor any damages recovered by the Grantor, or the Cable Board hereunder, shall be construed to limit the liability of the Grantee arising under this Franchise or for damages.

E. **Certificate of Insurance.** Certificates of insurance must be provided to the Grantor and the Cable Board within thirty (30) days of the execution of this Franchise, and whenever any changes to the insurance coverage occurs.

F. **Additional Insureds.** Such Commercial General Liability and auto liability insurance shall include Grantor, its elected officials, boards (including the Cable Board) as additional insureds.

SECTION 13. INDEMNIFICATION

A. **Indemnification.** The Grantee shall, at its sole cost and expense, fully indemnify, defend and hold harmless the Grantor and the Cable Board, the Grantor's and the Cable Board's officers, boards, and all members, commissions or councils, and employees, agents and designees (collectively, the "Indemnitee") against any and all demands, claims, suits, actions, proceedings, liability and judgments for damages including, but not limited to, reasonable attorneys' fees, expenses for reasonable legal costs and disbursements, and liabilities assumed by

the Grantor and/or the Cable Board, or their designated agent in connection therewith to Persons (including death) or property in any way:

1. Caused by or arising out of or through (a) the acts or omissions of the Grantee, its servants, agents or employees, (b) the ownership, operation or use of the Cable System, or (c) its business;
2. Caused by or arising out of any claim based on the acts or omissions of Grantee for invasion of the right of privacy, for defamation of any Person, or the violation, infringement or dilution of any copyright, trademark, trade name, service mark or patent, (excluding claims arising out of or relating to Grantor programming); and
3. Caused by or arising out of the Grantee's failure to comply with the provisions of this Franchise Agreement or any Applicable Law applicable to the Grantee in its business hereunder or the ownership, operation or maintenance of the Cable System.

Grantor acknowledges that Grantee shall not be required to indemnify Grantor or the Cable Board for demands, claims, suits, actions, proceedings, liability and judgments for damages arising from the negligence of Grantor, the Cable Board or their employees, agents or designees

B. **Notice.** The foregoing indemnity is conditioned upon the Indemnitee, or their designated agent, giving the Grantee prompt written notice of the making of any claim or the commencement of any action, suit or other proceeding covered by the provisions of this section. Nothing herein shall be deemed to prevent the Grantor, the Cable Board or the Indemnitee from cooperating with the Grantee and participating in the defense of any litigation by their own counsel at their sole cost and expense.

C. **Duty to Defend and Employ Counsel.** With respect to Grantee's indemnity obligations set forth in Section 13(A) (Indemnification) above, Grantee shall provide the defense of any claim, demand, suit, cause of action, or proceeding brought against the Indemnitee by selecting counsel of Grantee's choice to defend such claim, demand, suit, cause of action, or proceeding subject to the consent of the Authority, which consent shall not unreasonably be withheld. Grantee shall not have the right to settle or compromise any demand, claim, suit, cause of action, or proceeding arising hereunder without the prior written approval of the Authority and Indemnitee and so long as the settlement or compromise includes a full release of the Authority and Indemnitee.

D. **No Grantor Liability.** Neither the Grantor nor the Cable Board shall at any time be liable for any injury or damage occurring to any Person (including death) or property from any acts or omissions of Grantee in the erection, construction, reconstruction, installation, upgrade, repair, extension, maintenance, operation, use, exploitation, or removal of its Cable System or the presence thereof in the Streets. It is a condition of this Franchise Agreement that neither the Grantor nor the Cable Board assume, nor do they assume by reason of this Franchise Agreement any liability whatsoever of Grantee for any injury to Persons (including death) or damage to property; provided, however, that Grantor and the Cable Board shall be responsible

for their own acts of willful misconduct or negligence, subject to any and all defenses and limitations of liability provided by law.

E. **Survivability.** The Indemnification provisions of this Section 13 shall survive the Term of this Franchise Agreement for the acts of Grantee committed while the Franchise Agreement was in effect or performed under the color of the Grantee after the expiration, revocation, cancellation, or termination of the Franchise Agreement.

SECTION 14. FAILURE OF GRANTOR, OR THEIR DESIGNATED AGENT TO ENFORCE THIS FRANCHISE AGREEMENT CONSTITUTES NO WAIVER OF TERMS THEREOF

The Grantee shall not be excused from complying with any of the terms and conditions of this Franchise Agreement by any failure of the Grantor, the Cable Board, or their designated agent, upon any one or more occurrences to insist upon or to seek compliance with any such terms or conditions.

SECTION 15. RIGHTS OF INDIVIDUALS

A. **No Discrimination.** The Grantee shall not deny service, deny access, or otherwise discriminate against Subscribers, channel users, or general citizens on the basis of race, color, religion, sex or national origin. The Grantee shall comply at all times with all Applicable Law, and all executive and administrative orders relating to nondiscrimination which are hereby incorporated and made part of this Franchise Agreement by reference.

B. **Equal Employment.** The Grantee shall strictly adhere to the equal employment opportunity requirements of the FCC, state statutes and local regulations, currently in force and as amended from time to time.

C. **Subscriber Privacy.** The Grantee shall operate the Cable System in a manner that protects against invasions of any Subscriber's privacy, in accordance with 47 U.S.C. 551.

SECTION 16. PUBLIC NOTICE

Minimum public notice of any public meeting of the Authority relating to the consideration of an application by any other Person(s) for a franchise or other authorization to provide Cable Services over a Cable System, by Grantor or TBNK shall be given by Grantor or TBNK, in compliance with KRS 61.804 to 850 (Open Meetings of Public Agencies) and for KRS 424.110 to 424.150 (Legal Notices) and in accordance with the notice provisions of Article I, Section 10 (Notices), as applicable.

SECTION 17. SEVERABILITY

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

SECTION 18. TIME IS OF THE ESSENCE TO THIS FRANCHISE AGREEMENT

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

SECTION 19. COMPLIANCE WITH STATE AND FEDERAL LAWS

Notwithstanding any other provision of this Franchise to the contrary, the Grantee shall at all times comply with all Applicable Laws and regulations of the State and federal government or any administrative agencies thereof.

SECTION 20. PREEMPTION

In the event federal or State laws, rules, or regulations preempt a provision or limit the enforceability of a provision of this Franchise Agreement, the provision shall be read to be preempted to the extent, and for the time, but only to the extent and for the time, required by law. In the event any provision of this Franchise Agreement is preempted, or enforcement limited by any such provision of federal or State law, then the Parties shall negotiate in good faith to reconstitute this Franchise Agreement in a form that, to the maximum extent possible, is consistent with the original intent of the Grantor and Grantee and preserves the benefits bargained for by each Party.

SECTION 21. SOVEREIGN IMMUNITY

Nothing in this Franchise Agreement shall be construed to waive the tort or any other immunity or applicable defense of Grantor, and its elected and appointed officials, officers, boards (including the Telecommunications Board), commissions, commissioners, agents, and employees.

SECTION 22. SERVICES/PRODUCTS AVAILABLE ACROSS NORTHERN KENTUCKY

The Grantee agrees that the channel capacity of the Cable System, technical upgrades and the Cable Service offerings, and customer service Grantee makes available to the customer (except for PEG Access that may differ among the separate franchises) shall be substantially equal to the Cable Systems Grantee operates in Boone, Kenton and Campbell Counties, Kentucky (“Northern Kentucky”). Furthermore, if the Grantee provides HD for PEG Access for another franchise in Northern Kentucky it shall also be provided for PEG access programming provided by the Cable Board.

SECTION 23. RELIEF FROM THIS FRANCHISE

A. **Written Petition.** Grantee may file a written petition, at any time, with the Authority, or their designated agent, seeking relief from one (1) or more provisions of this Franchise. The relief requested may specifically include the delay in implementation of one (1)

or more provisions of this Franchise. Grantee's filing of a petition pursuant to this Section shall in no way limit its rights under Applicable Law, including, without limitations, Section 625 of the Cable Act.

B. **Competitor Subject to Regulation by the Grantor.** If at any time during the existence of this Franchise, a competing franchised multi-channel video programming distributor, which operates a Cable System in the Streets of the Grantor, is granted more favorable term(s) than those established for the Grantee under this Franchise (including but not limited to lesser channel capacity, lesser requirements to provide Public, Educational, or Government access, less onerous reporting requirements, less onerous customer notification requirements, less restrictive billing practices, less onerous customer service requirements, or less responsibility to pay a Franchise Fee), then such term(s) shall also be simultaneously extended to the Grantee, upon the written request of the Grantee, so that no provider of multi-channel service shall receive an unfair competitive advantage; provided, however, in considering such request of Grantee, the Authority or their designated agent, shall take into consideration all of the circumstances relevant as to each particular term as such circumstances exist at the time and can be reasonably anticipated to exist in the future, including, but not limited to, any federal, State or local regulation (including the FCC Report and Order) that might stipulate different cable television requirements applicable to cable television entrants, as delineated in the FCC Report and Order, as well as the proportional relationship of the operations (such as size Subscriber base or amount of revenues) at the time and as can be reasonably anticipated in the future. For purposes of this Section 23(B), the term "FCC Report and Order" shall mean the Federal Communications Commission's Report and Order, FCC 06-180, adopted on December 20, 2006, and released on March 5, 2007 respecting the "Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as amended by the Cable Television Consumer Protection and Competition Act of 1992".

C. **Competitor Not Subject to Regulation by Grantor.** The Grantor recognizes that potential competitors of the Grantee, including but not limited to wireless broadcasters, virtual multichannel video distributors, video dial tone providers, and direct broadcast satellite services, may not be franchised, or subject to regulation by the Grantor. If, at any time during the existence of this Franchise, a competing multi-channel service, franchised as provided in the Cable Act, operates within the Franchise Area of the Grantor, under terms more favorable than those established for the Grantee under this Franchise (including but not limited to lesser channel capacity, lesser requirements to provide Public, Educational, or Government access, less onerous reporting requirements, less onerous customer notification requirements, less restrictive billing practices, less onerous customer service requirements, or less responsibility to pay a fee reasonably comparable to a franchise fee), then the Grantee shall be permitted to petition the Grantor, or its designated agent, for relief from such term(s), so that no provider of multi-channel service shall receive an unfair competitive advantage. The Grantor, or its designated agent, shall not unreasonably refuse to grant the relief requested by the Grantee; provided, however, in considering such request of Grantee, the Grantor, its designated agent, shall take into consideration all of the circumstances in existence at the time, including, but not limited to, Applicable Law that might stipulate different levels of requirements applicable to different multi-channel service providers.

ARTICLE II. CABLE SYSTEM EXTENSION, OPERATION, STANDARDS AND PROCEDURES

SECTION 1. DESCRIPTION OF CABLE TELEVISION DISTRIBUTION SYSTEM

A. **Characteristics.** The Grantee will operate a Cable System capable of providing over two hundred (200) channels of digital content, as well as high-definition (HD) programming, digital video recorder (DVR) and video-on-demand (VOD) services. The Cable System is capable of continuous twenty-four (24) hour operation without significant degradation of signal, except during extreme inclement weather or immediately following severe storms that adversely affect utility services or damage major system components.

B. **Upgrade of Cable System and Confidential Treatment.** The Grantee will keep the Authority advised of its major upgrades or projects for the Cable System, with the understanding that the Authority will keep proprietary information confidential pursuant to the open records exception set forth in KRS 61.878(1)(c)(l). Proprietary information that is subject to this exception shall be marked as confidential. If Grantor and/or the Board believe it must release any such proprietary or confidential information in the course of enforcing this Franchise or overseeing compliance with FCC Regulations, or for any other reason, it shall comply with KRS 61.878 [certain public records exempted from inspection on court order] and advise Grantee in advance so that Grantee may take appropriate steps to protect its interests. Until otherwise ordered by a court or agency of competent jurisdiction, Grantor and the Telecommunications Board agree that, to the extent permitted by Applicable Law, including the Open Meetings/Records Laws, it shall deny access to any of Grantee's books and records marked confidential, as set forth above, to any Person.

SECTION 2. SERVICE AVAILABILITY AND RECORD REQUEST

The Grantee shall provide Cable Service throughout the entire Franchise Area pursuant to the provisions of this Franchise and shall keep a record for at least three (3) years of all requests for service received by the Grantee.

SECTION 3. CABLE SYSTEM EXTENSION

The Cable Board and Grantor recognize that, as the competitive entrant provider of Cable Service, the Grantee's ability to construct and extend its Cable System will be largely dependent upon the market penetration and success it achieves over time.

SECTION 4. CONSTRUCTION AND TECHNICAL STANDARDS

A. **Compliance with Construction and Technical Standards.** The Grantee shall construct, install, upgrade, remove, replace, repair, operate and maintain its Cable System in a manner consistent with (a) all Applicable Laws, (b) good engineering practices and construction standards, and (c) FCC technical standards, which standards are set forth in Title 47, Part 76, Subpart K of the Code of Federal Regulations and which are incorporated by reference herein. In addition, the Grantee shall provide the Cable Board, upon request, with a written report of the results of the Grantee's annual proof of performance tests conducted pursuant to FCC standards and requirements.

- B. **Compliance with Codes.** Grantee shall at all times comply with:
1. National Electrical Safety Code (National Bureau of Standards);
 2. National Electrical Code (National Bureau of Fire Underwriters);
 3. Applicable FCC or other federal, State and local regulations including Technical Standards; and
 4. Applicable local permits and ordinances.

C. **Additional Specifications.** The Cable System shall operate by means of transmission lines of optical fiber (Fiber to The Premise - FTTP), combination optical fiber and copper or combination optical fiber and any other last mile technology capable of providing Cable Service (Fiber To The Node - FTTN) and/or coaxial cable to distribute the signals.

D. **Construction Standards and Requirement.** The construction, installation, upgrade, and maintenance of the Cable System shall be performed in an orderly and workmanlike manner. In any event, the Cable System shall not endanger or interfere with the safety of Persons or property or with the functioning of property, in the Franchise Area or other areas where the Grantee may have equipment located.

E. **Installation of New Cables.** All new cables and wires shall be installed, where possible, parallel with electric and telephone lines. Multiple cable configurations shall be arranged in parallel and bundled with due respect for engineering considerations and may not cross the Streets where lines do not already cross the Streets, without the prior written approval of the Grantor, except for drop lines into a Subscriber's home or building.

F. **Location of Pedestals.** Grantee will use all reasonable efforts to locate pedestals on the far side of the Subscriber's lot or yard, immediately next to or along the side property lines, or adjacent to other existing utility pedestal locations within the constraints of the proper technical design and operation of the Cable System.

G. **Antenna Regulation.** Any small cell tower(s) or antenna structure(s) used-in the Cable System shall comply with the standards and requirements of the U.S. Department of Transportation, FCC Regulations, and the Kenton County regulations for cellular antenna and small cell towers, as applicable, for the location, placement, height, design construction, marking, and lighting of small cell towers and antenna structures.

H. **Compliance with OSHA Standards.** All working facilities, conditions and procedures used during construction, installation, upgrade, and maintenance of the Cable System shall comply with the standards of the Occupational Safety and Health Administration and such other Applicable Law.

I. **RF Leakage & Standby Power.** Rf leakage shall be checked and maintained in conformance with FCC Regulations. The Grantee shall maintain equipment capable of providing standby power for Headend for a minimum of two hours.

J. **Underground Construction.** In all areas of the Franchise Area where the fiber optic lines, cables, wires, and other like facilities (including but not limited to telephone and power), of all public utilities are placed underground, the Grantee shall place its fiber optic lines, cables, wires, or other like facilities underground to the maximum extent that existing technology reasonably permits. With respect to those areas of the Franchise Area where existing telephone and/or electric utility wires, fiber optic lines and/or other facilities are installed aerially or above ground at the time of Grantee's Cable System construction, reconstruction, upgrade, rebuild, extension or expansion, Grantee may install its cables, wires, or facilities aerially or above ground with the understanding, however, that at such time as the existing aerial or above ground wires, fiber optic lines and/or facilities are required to be placed underground by Grantor, the Grantee shall likewise place its cables, wires, fiber optic lines and/or facilities underground at its sole cost. In the event that any cable/video or telephone/communications or electric utilities/providers are reimbursed by Grantor or any agency thereof for the placement of cables, wires, fiber optic lines or facilities underground or the movement of cables, wires, fiber optic lines or facilities, Grantee shall be reimbursed upon the same terms and conditions as any cable/video, telephone/communications, electric, gas or other utilities, including water and sanitation districts.

K. **Method of Construction.** The methods of construction, upgrade, installation, maintenance, and repair of the Cable System shall comply and be consistent with good engineering practices for Cable Systems of similar size and design, and consistent with and satisfy FCC performance and technical standards. All work shall be performed by the Grantee in a good and workmanlike manner.

L. **Compensation.** The Grantee shall compensate property owners for any damages caused by its installation, construction, operation or removal of its cable facilities, as required by the Cable Act (47 U.S.C. 541(a)(2)(C)).

SECTION 5. USE OF STREETS

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

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

C. **Restoration to Prior Condition.** In case of any disturbance of pavement (whether cement, asphalt or other surface material), curb, sidewalk, driveway, apron or other surfacing, the Grantee shall, at its own cost and expense, and in a timely manner, replace and restore all paving, sidewalk, driveway, landscaping, or surface of any Street disturbed, in as good

condition as before said work was commenced and in accordance with generally applicable standards for such work, as set by the Grantor or its designated agent, including the requirements of Applicable Law.

D. **Repair of Streets by Grantor.** In the event Grantee fails, refuses or neglects to repair, restore or replace the damage, alteration or disturbance caused to the Streets, sidewalks, curbs or other infrastructure as provided in Section 5(C) (Restoration To Prior Condition) above, the Grantor shall have the right, after a ten (10) day prior written notice to Grantee to comply with the above provisions, to make such repair, restoration or replacement and the cost and expense thereof shall be paid by Grantee to the Grantor within thirty (30) days from the date on which an itemized bill is presented to Grantee.

E. **Erection, Removal, and Common Uses of Poles.**

1. **Installation of New Poles.** No poles or other wire-holding structures shall be erected by the Grantee without the generally required prior written approval of the Grantor, or its designated agent, with regard to location, design, height, type, and any other pertinent aspect. However, no location of any pole or wire-holding structure of the Grantee shall be a vested interest, and the Grantee shall remove or modify such poles or structures, at its own cost and expense, whenever the Grantor, or its designated agent, determines that such removal or modification (a) would enhance the public convenience and/or necessity or (b) is required by Applicable Law.

2. **Use of Existing Poles.** Where poles or other wire-holding structures already existing for use in serving the Franchise Area are available for use by the Grantee, but the Grantee does not make arrangements for such use, the Grantor, or its designated agent, may require the Grantee to use such poles and structures if the Grantor, or its designated agent, determines that such use would enhance the public convenience and/or necessity and that the terms of the use available to the Grantee are commercially just and reasonable. Notwithstanding the foregoing, the Grantee will use its reasonable efforts to make or secure the use of existing poles or structures by way of the State' Public Service Commission's rules and orders pertaining to pole attachments.

3. **Good Faith Negotiations.** Where the Grantor, or a public utility serving the Franchise Area desires to make use of the poles of the Grantee, the Grantee shall immediately initiate good faith negotiations to permit such use for such consideration and upon such terms as are just and reasonable.

F. **Relocation of the Facilities.** In the event that, at any time during the Term of this Franchise, the State, the County and/or the Grantor shall lawfully elect to alter or change the grade, location, width, or orientation of any Street(s) or other public ways, or perform other rights-of-way or road construction or other public improvement or work of any description, for purposes or by reason of a public purpose, convenience, interest or safety, the Grantee, upon reasonable written notice by the proper government unit, to be not less than sixty (60) days, shall relocate, change, remove and relocate, temporarily disconnect, as necessary, their poles, wires, cables, underground conduits, manholes, equipment and other fixtures at its own cost and expense; provided, however, if Grantor compensates any other entity for removing or relocating

its poles, wires, cables, underground conduits, manholes, equipment or other fixtures, then the Grantee shall be similarly compensated.

G. **Cooperation with Building Movers.** The Grantee shall, on the request of any Person holding a building-moving permit issued by the Grantor, temporarily raise or lower its wires to permit the moving of buildings. The Person requesting such raising or lowering shall bear the expense of such temporary removal, raising or lowering of wires, and the Grantee shall have the authority to require such payment in advance. The Grantee shall be given not less than fourteen (14) calendar days advance notice to arrange for such temporary wire changes.

H. **Removal in Emergency.** Whenever, in case of fire, disaster, or other emergency it becomes necessary in the judgment of Grantor to cut or remove any of Grantee's facilities, Grantor or the Authority shall have the right to do so without liability and no charge shall be made by the Grantee against Grantor for restoration and repair. The Grantor or the Authority, as the case may be, shall provide written notice to Grantee of any such emergency removal within five (5) days of the occurrence.

I. **Tree Trimming.** Grantee shall have the authority (but only to the extent the Grantor can lawfully give it), at its own expense, to trim trees located in or overhanging the Streets and that are interfering with the operation of its Cable System, lines, poles and/or related equipment in the Streets only to the extent necessary to keep the branches of the trees from coming into contact with such Cable System, lines, poles and/or related equipment. All trimming and pruning shall comply with all Applicable Laws and ordinances of the Grantor. Notwithstanding the foregoing and prior to engaging in such activity, Grantee shall submit to the Grantor a tree trimming or pruning plan for approval at least seven (7) days before any trimming begins. Except for branches or limbs of trees and bushes overhanging the Streets, Grantee shall secure the consent of the private property owner, upon whose property the tree or bush is located, prior to cutting or trimming such tree or bush.

SECTION 6. OPERATIONAL STANDARDS

A. **Good Condition of Cable System.** The Grantee shall put, keep, and maintain all parts of the Cable System in good condition and in accordance with FCC Regulations throughout the entire Term of this Franchise.

B. **Request for Service.** Upon the reasonable request for service by any Person located within the Franchise Area and subject to the customer service provisions of the FCC Regulations, the Grantee shall, within seven (7) business days, furnish the requested service to such Person within the terms of the line extension policy. A request for service shall be unreasonable for the purpose of this subsection if no activated distribution facility capable of servicing that Person's block has yet been installed.

C. **Repairs and Interruptions.** The Grantee shall render efficient service, make repairs promptly, and interrupt service only for good cause, for the shortest time reasonable, and in accordance with the customer service provisions of the FCC Regulations. Such interruptions, insofar as possible, those shall be preceded, where reasonable, by notice to Persons affected thereby and shall occur during periods of minimum system use.

D. **No Interference.** The Grantee shall not allow its cable or other operations to interfere with television reception of Persons not served by the Grantee, nor shall the Cable System interfere with, obstruct, or hinder in any manner, the operation of the various utilities serving the residents within the confines of the Franchise Area.

E. **Technical Standards and Quality of Service.** The Grantee shall continue, through the Term of this Franchise, to maintain the technical standards and quality of service set forth in this Franchise Agreement and the FCC Regulations. Should Grantor or the Cable Board find, by resolution, that the Grantee has failed to maintain these technical standards and quality of service, and such failure continues for three (3) months following such resolution, the failure will constitute a material breach of this Franchise Agreement, a condition for which the remedy of Article III, Section 2(A) (Default of Franchise) is applicable.

SECTION 7. CONTINUITY OF SERVICE MANDATORY

A. **Uninterrupted Service.** It shall be the right of all Subscribers to continue to receive service insofar as their financial and other obligations to the Grantee are honored. The Grantee, therefore, shall at all times maintain all parts of the Cable System in good condition and repair so as to provide that service on an uninterrupted basis. In the event that the Grantee elects to overbuild, rebuild, modify or sell the Cable System, or the Grantor or its designated agent give(s) notice of its (a) intent to terminate or (b) decision not to renew this Franchise as permitted in Article I, Section 6 (Duration and Acceptance of Franchise) or in the Cable Act, the Grantee shall act so as to ensure that all Subscribers receive continuous, uninterrupted service, except when the interruption occurs as a result of (a) an event of force majeure, as provided in Article III, Section 4 (Force Majeure) or (b) the termination, revocation or non-renewal of this Franchise, all as provided in this Franchise Agreement, and Grantee will take steps to sell the Cable System to another operator.

B. **Change of Ownership – Sale of Cable System.** In the event of a change of the Grantee, or in the event a new operator acquires the Cable System, which events are subject to the Transfer provisions set forth in Article II, Section 11 (Transfer of Ownership of Control) of this Franchise, the Grantee shall cooperate with the Cable Board, the Grantor, and the new owner, franchisee, or operator in maintaining continuity of service to all Subscribers. During such period, the Grantee shall be entitled to the revenues for any period during which it operates the Cable System, and the Grantee shall be entitled to reasonable costs for its services when it no longer operates the Cable System, subject at all times, however, to the terms and conditions of any underlying or associated stock or asset purchase agreement, any merger agreement, or any other agreement providing for or relating to a Transfer.

SECTION 8. CUSTOMER SERVICE AND COMPLAINT PROCEDURE

A. **Administration of Complaints.** The Grantor or the Cable Board, or their designated agent, shall have primary responsibility for the continuing administration of the Franchise terms and implementation of complaint procedures.

B. **Customer Service Center and Customer Service Obligations.** During the Term of this Franchise, and any extension thereof, the Grantee shall exercise commercially

reasonable efforts to maintain a local business office convenient to the geographic confines of the Franchise Area (the “Customer Service Center”) for the purpose of receiving and resolving all complaints regarding the quality of service, equipment malfunctions, providing for the pick up or drop off of equipment, paying of subscriber bills, opening and closing of customer accounts, and similar matters, and Grantee shall comply with all the customer service standards or obligations specified by the FCC Regulations, including, without limitation, 47 C.F.R. §§ 76.309(c), 76.1602, 76.1603, and 76.1619, as such standards may be amended from time to time by the FCC. As provided in the above recited FCC Regulations, notice is hereby given that the Authority intends to enforce the customer service obligations and standards herein set forth.

C. **Electronic Notice/Communications.** Any bill, notice or other communication provided or issued by Grantee to any Subscriber may be provided or issued, if such Subscriber so consents, solely by electronic means.

D. **Rate Regulation.** In the event Grantor contends that Effective Competition, as defined in 47 U.S.C. § 543(l)(1) and 47 C.F.R. § 76.905(b) no longer exists in the Franchise Area, Grantor shall have the right to file a certification with the FCC seeking authority to exercise rate regulation to the extent authorized by law, or to refrain from exercising such regulation for any period of time. Grantee shall have the right to file a Petition for Reconsideration with respect to any certification filed by Grantor. If, and when exercising rate regulation, the Grantor shall abide by the applicable FCC Regulations, set forth in 47 C.F.R. § 76.901, et seq.

E. **Performance and Technical Standards.** When there exists evidence that the Grantee does not satisfy FCC performance and technical standards in accordance with FCC Regulations, as set forth in 47 CFR, Part 76, Subpart K, the Authority, shall have the right and authority to require the Grantee to test, analyze, and report on the performance of the Cable System. The Grantee shall fully cooperate with the Authority, or their designated agent, in performing such testing, and shall prepare a report reflecting the results of such tests, if requested, within thirty (30) days after notice. Such report shall include the following information:

1. The nature of the complaints or the problem that precipitated the special tests;
2. What Cable System component was tested;
3. The equipment used and procedures employed in testing;
4. The method, if any, in which such complaint or problem was resolved; and
5. Any other information pertinent to said tests and analysis that may be required.

The Authority may require that such tests be supervised by a professional engineer not on the permanent staff of the Grantee. The engineer should sign all records of special tests and forward to the Authority, such records with a report interpreting the results of the tests and recommending actions to be taken. The expense of the professional engineer shall be borne by the Authority,

unless a significant violation of performance and technical standards contained in FCC Regulations are found, in which case the expense shall be borne by the Grantee. The Authority's right under this section shall be limited to requiring tests, analyses, and reports covering specific subjects with characteristics based on said complaints or other evidence when and under such circumstances as the Authority has reasonable grounds to believe that the complaints or other evidence require that the tests be performed to protect the public against substandard Cable Service. The Authority may require remedies, including, requiring Grantee to fix the problem(s), or initiating non-compliance or default procedures.

SECTION 9. GRANTEE RULES AND REGULATIONS

The Grantee shall have the authority to promulgate such rules, regulations, terms and conditions governing the conduct of its business as shall be reasonably necessary to enable it to exercise its rights and perform its obligations under this Franchise, and to assure an uninterrupted service to each and all of its Subscribers. Those rules, regulations, terms and conditions shall not be in conflict with the provisions herein or in conflict with Applicable Law.

SECTION 10. PAYMENT OF MULTICHANNEL VIDEO PROGRAMMING SERVICES TAX – FRANCHISE FEES

A. **Franchise Fee.** Grantee shall make payments at the times and in conformance with the requirements of KRS 136.600 - 136.660 (“Telecommunications Tax”) and said payments shall be in lieu of any Franchise Fees paid to the Grantor. Notwithstanding the foregoing, if the Grantor elects or has elected to collect Franchise Fees in lieu of the Grantor's share of the Distribution Fund¹ authorized by the Telecommunications Tax, the Franchise Fee shall be in an amount equal to five percent (5%) of Grantee's Gross Revenues (as such term is defined below) derived from the operation of Grantee's Cable System to provide Cable Service within the territorial limits of the Grantor.

B. **Transition to and from Distribution Fund.** Under State law political subdivisions are allowed or otherwise have the right and option to (1) withdraw from and elect not to participate in (Opt-Out) the Distribution Fund and/or (2) return to or be reinstated in (Opt-In) the Distribution Fund and receive its local historical amount, as opposed to receiving direct franchise fee payments from Cable Operators, accordingly, Grantee agrees to cooperate in good faith with Grantor and/or the Authority in making any such withdrawals from (Opt-Out) and returns or reinstatements to (Opt-In) the Distribution Fund. In this regard, Grantee shall also take all such action as is necessary or appropriate with the Kentucky Department of Revenue (DOR) or the State in order to meet or otherwise comply with the obligations or requirements of KRS 136.600 through 136.660, as applicable. The Parties acknowledge the TBNK Member Governments have made the Opt-Out and Opt-In choices respecting the Distribution Fund as noted or set forth on Appendix 3 attached hereto and made a part hereof.

C. **Opt-Out Application-Franchise Fee; Limitation on Transitions.** For any given period of time that Grantor has elected to Opt-Out of the Distribution Fund, then Grantor

¹ This Distribution Fund is also known as the “monthly hold harmless amount” and is addressed in KRS 136.650 [Required participation funds – Computation of amounts – Designated monthly hold harmless amount] and KRS 136.652 [Distribution – Administrative costs – Monthly hold harmless amounts].

shall be entitled to receive, and Grantee shall pay to Grantor, Franchise Fee payments pursuant to Article II, Section 10(A) (Franchise Fee) and Article II, Section (D)(1) (Payment of Franchise Fee) of this Franchise Agreement, and all provisions of said Section 10(D)(1) shall be operative. However, for any period of time that Grantor has elected to Opt-In the Distribution Fund, then the provisions of Section 10(D)(1) (Payment of Franchise Fee) do not apply. The Parties agree that the number of times that Grantor can Opt-In and Opt-Out of the Distribution Fund is limited to a total of three (3) times during the Term of this Franchise Agreement; provided, however this limitation or restriction shall not apply during any extension of the Term.

D. **Payment of Franchise Fee.** For any period of time that a Franchise Fee is due to the Grantor, as outlined in Article II, Sections 10(A) (Franchise Fee) and 10(C) (Opt-Out Application-Franchise Fee; Limitations on Transitions) of this Franchise Agreement, the Franchise Fee shall be payable as follows:

1. **Quarterly Payments; Certified Revenue Statement; Late Fee.** Franchise Fees shall be payable quarterly for each calendar quarter [March 31, June 30, September 30, and December 31], and said payment shall be made no later than forty-five (45) days after the expiration of the quarter. Payment of the quarterly Franchise Fee shall be rendered proportionally to Grantor and to the Telecommunications Board for their respective portions in the percentage amounts set forth in the Interlocal Agreement at the time the revenue statement is filed. In addition, the Grantee shall file a gross revenue report from operations of the Grantee within the Franchise Area, which shall include: a revenue statement clearly showing the Gross Revenues received by Grantee during the preceding quarter and certified by an officer of Grantee attesting to the accuracy and completeness of the revenue figures. Such statement shall also include the Franchise Fee amount paid proportionally to Grantor and the Telecommunications Board for their respective portions in the percentage amounts set forth in the Interlocal Agreement. The Authority shall have the right to reasonably require further supporting information for each Franchise Fee payment. In the event any Franchise Fee payment is not made on or before the required date, Grantee shall pay, for the period such unpaid amount is owed, the amount owed plus interest charges computed from such due date, at an annual rate of eight percent (8%).

2. **No Deductions.** Gross Revenue shall be determined without deduction for (1) any operating expense; (2) any accrual; or (3) any other expenditure, regardless of whether such expense, accrual or expenditure reflects a cash payment, and revenue shall be counted only once in determining Gross Revenue.

3. **Bundled Services.** If Grantee bundles Cable Service with Non-Cable Services, Grantee agrees that it will not intentionally, unfairly or unlawfully allocate such revenue for the purpose of evading the Franchise Fee payments under this Franchise. In the event that Grantee or any Affiliate shall bundle, tie, or combine Cable Services (which are subject to the Franchise Fee) with Non-Cable Services (which are not subject to the Franchise Fee), so that Subscribers pay a single fee for more than one class or category of service or receive a discount on Cable Services, a pro rata share of the revenue received for the bundled, tied, or combined services shall be allocated to gross revenues for purposes of computing the Franchise Fee. Revenue recognition of bundled

services will be in accordance with GAAP and Financial Accounting Standards Board's (FASB) accounting standards codification.

4. **Definition of Gross Revenues.** "Gross Revenue" or "Gross Revenues" shall mean any and all revenues or receipts derived from the Cable System or the operation thereof to provide Cable Services within the Franchise Area, including cash, credits, property or other consideration of any kind or nature, and collected by Grantee. Gross Revenues shall be recognized according to GAAP, to include, without limitation, recurring monthly charges for Cable Services; event-based charges for video services including, but not limited to, Pay-Per-View Event(s), Pay-Per-View Movie(s), Premium Channels and video-on-demand charges; charges for the rental or sale of set top boxes and other Cable Services or video service related equipment; service charges related to the provision of Cable Services, including, but not limited to, service order, installation, connection and service termination charges; and advertising revenue. Gross Revenue shall include any such revenue or receipts received by any Affiliate of the Grantee where such revenue or receipts in the ordinary course of business should have, according to existing practices, been paid to Grantee in connection with the operation of its Cable System within Grantor's Franchise Area. Gross Revenues shall not include the following: (1) any taxes, fees, or assessments that are collected by the video service provider from video service Subscribers for pass-through to any federal, state, or local government agency, including the Franchise Fee authorized under Article II, Sections 10(A) (Franchise Fee), 10(C) (Opt-Out Applications – Franchise Fee; Limitations on Transitions) and 10(D) (Payment of Franchise Fee); (2) uncollectible charges, except that uncollectible charges, all or part of which are written off as bad debt but subsequently collected, less the expenses of their collection shall be included in gross revenue in the quarter collected; (3) late payment charges; (4) maintenance charges; (5) charges for services other than Cable Service, reasonably identifiable on books or records the Grantee kept in the regular course of business or by other reasonable means, that are aggregated or bundled with amounts billed to Cable Service Subscribers, including, but not limited to, any revenue received by Grantee or its Affiliates for Non-Cable Services or the provision of directory or internet advertising, including yellow pages, white pages, banner advertising, and electronic publishing; and (6) reimbursement by programmers of marketing costs actually incurred by the video service provider.

5. **All Inclusive; Change in Law.** The definition shall be construed so as to include all Gross Revenues to the maximum extent permitted by federal and state law for Cable Services, except to the extent specifically excluded in this Section 10(D) and encompasses Cable Services revenue that may develop in the future, whether or not anticipated. If a statutory change in state or federal law or a decision of the FCC or a court of competent jurisdiction expands the Cable Service categories of revenue available to Grantor for the Franchise Fee assessment beyond those permitted under this definition as of the Effective Date, that change shall automatically be included in the definition of the Gross Revenues under this Franchise, provided that Grantor imposes the same requirement upon any other similarly situated multi-channel video provider over which Grantor has jurisdiction and authority to impose such fees.

E. **Audit.** In the event that Grantee pays a Franchise Fee under Article II, Sections 10(A) (Franchise Fee), 10(C) (Opt-Out Application – Franchise Fee; Limitations on Transitions) of this Franchise Agreement, upon reasonable notice, the Grantor and/or the Cable Board shall have the right during normal business hours to inspect the Grantee’s records relevant to the payment of Franchise Fees at the Grantees local office and the right to audit and to re-compute any amounts determined to be payable under this Franchise Agreement, including the right to audit records regarding the allocation of revenues derived from bundled services involving Cable Services and Non-Cable Services, if the Authority deems it necessary; provided, however, that such audit shall be limited to a maximum period of two (2) calendar years (the most recent calendar year and the immediately preceding calendar year) (the “Audit Period”). After Grantee has a reasonable opportunity to review and comment on an audit, which review period shall not exceed sixty (60) days, Grantee and the Authority shall agree to and be bound by the results of any properly conducted audit it performs or causes to be performed, except for instances involving fraud, and Grantee shall remit to the Grantor and the Cable Board any amounts due as a result of the audit. In addition, if, as a result of such audit or review, the Grantor or Cable Board and Grantee agree that the Grantee has underpaid its fees to the Grantor and/or the Cable Board during the Audit Period being audited or reviewed by ten percent (10%) or more, then, the Grantee shall also reimburse the Grantor and Cable Board for all of the reasonable costs associated with the audit or review, including costs for attorneys, accountants and other consultants. Any additional amount due to the Grantor and the Cable Board as a result of an audit or review shall be paid within the thirty (30) days following written notice to Grantee by the Grantor and/or the Cable Board, which notice shall include a copy of the audit report and copies of all invoices for which the Grantor and Cable Board seeks reimbursement.

SECTION 11. TRANSFER OF OWNERSHIP OR CONTROL

A. **Transfer of Interest.** Except as provided in Section 11(G) (Consent Not Required) hereof, neither this Franchise nor any rights, interest or obligations of the Grantee in the Cable System or Cable System assets shall be sold, assigned, transferred, leased, subleased, pledged, mortgaged or disposed of (including, but not limited to, by forced or voluntary sale, sale or lease of all or substantially all of the assets or a merger, consolidation, combination, sale of voting interest of Grantee, sale of stock of Grantee, receivership or other means) in whole, or in part, nor shall title thereto, either legal or equitable, or any right or interest therein, pass to or vest in any Person either by act of the Grantee, by act of any Person holding Control of or any Controlling Interest in the Grantee, the Cable System, Cable System assets, or this Franchise by operation of law or otherwise, without the prior express written approval by the Grantor through its designated agent, the Cable Board, and in compliance with Applicable Law. For purposes of this Section 11, the transfers described in this Section 11(A) (Transfer of Interest) and 11(B) (Transfer of Control) below are hereinafter referred to as a “Transfer.”

B. **Transfer of Control or Stock.** Notwithstanding any other provision of this Franchise, except as provided in Section 11(G) (Consent Not Required) hereof, no change in Control of, or any Controlling Interest in, the Grantee, the Cable System, Cable System assets, or this Franchise shall occur after the Effective Date of this Franchise, by any act of: (i) the Grantee, (ii) any Person holding Control of, or any Controlling Interest in, the Grantee, the Cable System, Cable System assets, or the Franchise or by any sale, transfer, or operation of law or otherwise, without the prior express written approval by the Grantor through its designated

agent, the Cable Board, and in compliance with Applicable Law. For purposes of this Section 11(Transfer of Ownership or Control), the word “Control” or “Controlling Interest” means actual working control in whatever manner exercised, including without limitation, working control through ownership, management, debt instruments or negative control, as the case may be, of the Cable System or of the Grantee. “Control” or “Controlling Interest” as used herein may be held simultaneously by more than one Person, or group of Persons or entities.

C. **Default.** Every Transfer without the prior approval of the Grantor and the Cable Board shall constitute a material default of this Franchise. The approval of a Transfer in one instance shall not render unnecessary approval of any subsequent Transfer.

D. **Default Procedure.** In the event of such a default, the Grantor/Cable Board through their designated agent shall proceed according to the procedure set forth in this Franchise, and any Applicable Law.

E. **Application for Approval.** At least one hundred twenty (120) days prior to the contemplated effective date of a Transfer, the Grantee shall petition in writing for the Grantor’s and Cable Board’s written approval through their designated agent for a proposed Transfer. In making such petition, the Grantee shall file the appropriate form mandated by federal law or FCC Regulations with the Grantor/Cable Board through their designated agent. The petition shall detail the terms of the proposed Transfer and all applicable qualifications of the assignee or transferee relating to fulfilling the terms of the Franchise and provide any contract that relates to the proposed Transfer.

F. **Consent Factors.** The Grantor, through the Cable Board, will not unreasonably withhold its/their approval to any Transfer. In making such a determination, the Grantor, through the Cable Board, shall consider the following; provided, however, that the Grantor/Cable Board, through their designated agent, will respond within one hundred and twenty (120) days or such other period as Applicable Law may require:

1. Technical qualifications, experience and expertise of the proposed assignee or transferee (including conducting an investigation of the proposed assignee or transferee’s service record in other communities);
2. Legal qualifications of the proposed assignee or transferee;
3. Financial qualifications and stability of the proposed assignee or transferee;
4. The corporate connection, if any, between the Grantee and the proposed assignee or transferee;
5. Grantee’s compliance with the terms and conditions of the Franchise and, if not in compliance, the proposed assignee’s or transferee’s commitment to cure such noncompliance;
6. Whether the assignee or transferee owns or controls any other Cable System in the City or County, as the case may be, and whether operation by the assignee

or transferee may eliminate or reduce competition in the delivery of the Cable Service in the City or County, as the case may be; and

7. Whether operation by the assignee or transferee or approval of the Transfer would adversely affect Subscribers, the public, or the City or County's interest, as the case may be, under this Franchise, the Cable Act, or other Applicable Law.

If the Grantor and the Cable Board, through their designated agent, do not respond or fail to render a final decision within one-hundred and twenty (120) days (or such other period as Applicable Law shall require) of receipt of the Grantee's petition for approval, said petition shall be deemed to have been approved, unless the Grantee, and the Grantor and the Cable Board, through their designated agent, agree to an extension of time, which extension shall not be unreasonably withheld. A transfer does not release any non-performance or default occurring or arising prior to the Transfer.

G. **Consent Not Required.**

1. **Finance Purposes.** Notwithstanding the foregoing, no consent shall be required for the Grantee to hypothecate, pledge, mortgage or assign all or any part of the Cable System, or any right or interest therein for financing purposes; provided, that each such hypothecation, pledge, mortgage or assignment for security purposes shall be subject to the rights of the Grantor and the Cable Board pursuant to this Franchise and Applicable Law.

2. **Intra-Company Transfers.** Notwithstanding any other provision of this Section 11, no consent shall be required for any Transfer of the Franchise or any interest in the Cable System or the Grantee to any existing or future Affiliates of Grantee in connection with an internal reorganization of any one or more of such Affiliates, as long as such Affiliate has the requisite expertise and qualifications (as contemplated above in Section 11(F) and applicable federal law) in the operation of a Cable System: (2) the provisions of Section 11(H) (Assumption Requirements) are fulfilled; (3) Grantee notifies the Telecommunications Board of the Transfer at least sixty (60) days before the Transfer occurs and, at that time, describes the nature of the transaction(s) effectuating the internal reorganization or restructuring and submits complete information describing who will have direct and indirect ownership and control of the Cable System and Grantee after such internal reorganization or restructuring; and (4) warrants that the Transfer will not substantially increase the financial burdens or substantially diminish the financial resources available to the Person holding this Franchise or otherwise adversely affect the ability of the Person holding the Franchise to perform. This provision should not be interpreted to permit any other Transfer, reorganization or change of Control as contemplated in Sections 11(A) (Transfer of Interest) and 11(B) (Transfer of Control of Stock) of this Franchise Agreement.

H. **Assumption Requirements.** Any approval by the Grantor and the Cable Board, through their designated agent, of a Transfer shall be contingent upon the prospective transferee or assignee of the Grantee agreeing in writing to the following:

1. To abide by and accept the terms of the Franchise or otherwise becoming a signatory to the Franchise Agreement;
2. To assume and be responsible for the obligations and liabilities of the Grantee to the Grantor and the Cable Board under this Franchise, known and unknown; and
3. That the approval by the Grantor and the Cable Board, through their designated agent, does not constitute a waiver or release of any noncompliance claims the Grantor may have against the Grantee or of rights of the Grantor under the Franchise or Applicable Law upon discovery, whether arising before or after the effective date of the Transfer.

SECTION 12. AVAILABILITY OF BOOKS AND RECORDS

A. **Inspection of Records.** The Grantee shall fully cooperate in making available at reasonable times, and the Authority, or their designated agent, shall have the right to inspect, the books, records, maps, plans and other like materials of the Grantee necessary for enforcement of this Franchise, at any time during normal business hours. However, when volume and convenience necessitate, the Grantee may require inspection to take place on the Grantee's premises at the local office.

B. **System Maps and Technical Documents.** Upon request of the Authority, Grantee will share with the Board and/or engineers hired by the Board copies of any system maps, schematics, headend drawings, and any technical documents as necessary for a technical evaluation of the Cable System. Grantor acknowledges the proprietary nature of such documents, and Grantee shall share the copies at the Authority's premises, except when volume or convenience requires an inspection at Grantee's premises at the local office.

C. **Confidentiality.** Subject to the provisions of the Kentucky Open Meeting (KRS 61.800 through 61.850) and Open Records (KRS 61.870 through 61.884) ("Open Meetings/Records Laws"), to which Grantor and the Cable Board are subject, Grantor and the Cable Board shall maintain as confidential any information provided to it by Grantee under the terms of this Franchise, which Grantee has designated and marked as confidential. In the event that Grantor, or the Cable Board believes at any time that it is required by law to disclose such information to a third party, it will so notify Grantee at a time prior to any such disclosure that affords Grantee a reasonable opportunity to take such action as it deems necessary to prevent such disclosure, including seeking relief in court, all as further provided in Article II, Section 1(B) (Upgrade of Cable System and Confidential Treatment).

SECTION 13. OTHER PETITIONS AND APPLICATIONS

Copies of all petitions, applications, communications, and reports submitted by the Grantee to the Federal Communications Commission, Securities and Exchange Commission (specifically 10K and 8K filings), or any other federal or state regulatory commission or agency having jurisdiction in respect to any matters affecting cable television operations authorized pursuant to

the Franchise, shall be provided to the Authority, or its designated agent, upon their written request.

SECTION 14. FISCAL REPORTS

A. **Quarterly Reports.** Forty-Five (45) days following each calendar quarter, Grantee shall submit the following reports to the Telecommunications Board (and present such reports at the Quarterly Report Meetings set forth in Article II, Section 14(C) (Attendance at TBNK Meetings), which contain for that quarter:

1. A general report providing for:
 - Total Homes passed in the franchise area of all TBNK Member Governments as a whole and broken out by city (and the unincorporated County area.);
 - Total Amount of Cable TV Subscribers in the Franchise Area of all TBNK Member Governments as a whole and broken out by city (and the unincorporated County area.);
 - Total Cable TV Subscribers added or deleted (net change) in the quarter in the Franchise Area of all TBNK Member Governments as a whole and broken out by city (and the unincorporated County area);
2. A compliance report that shows whether or not Grantee is meeting all applicable FCC customer service standards. Grantee shall keep such records as are reasonably required to enable the Authority to determine whether Grantee is complying with all such customer service standards, including telephone metrics;
3. Changes that have occurred in the programming offered by the Cable System;
4. Additional line extensions and construction activity and such other information that will permit TBNK to determine the expansion of the Cable System and Cable Services; and
5. The number and type of Service Interruptions known by Grantee. The total hours of known Service Interruptions or System Interruptions (as such terms are defined in FCC Regulations) as a percent of total hours of Cable System operation.

The quarterly reports provided for in this Section 14(A) shall be marked “confidential” and accorded the protections set forth in Article II, Section 12(C).

B. **Annual Reports.** Upon request, the Grantee shall provide the Authority, or its designated agent, no later than one hundred and twenty (120) days after the end of the Grantee’s fiscal year, a copy of Grantee’s or Grantee’s parent company’s Form 10-K for the preceding twelve (12) month period.

C. **Attendance at TBNK Meetings.** Upon request of the Telecommunications Board, Grantee shall cause a spokesperson to attend a monthly meeting of the

Telecommunications Board, which meeting will be designated by the Cable Board and which will follow the end of the 30-day period during which the quarterly report called for in Section 14(A) (Quarterly Reports) above is to be submitted to the Authority (the “Quarterly Report Meeting”). The board members of TBNK will be entitled to question the Grantee spokesperson with respect to matters contained in the quarterly report, the Cable System, and Cable Services to be provided pursuant to the Franchise. On special occasions and upon written notice to the Grantee, the Telecommunications Board may require Grantee to attend such other meetings as may be reasonably required. Notice is hereby given, and Grantee acknowledges that, as of the Effective Date, regular meetings of the Telecommunications Board are held on the third (3rd) Wednesday of each calendar month, and the Board hereby reserves the right to change meeting dates and time and, accordingly, will advise Grantee in writing of such change.

D. **False Entry.** Any false entry in the books, accounts or records of Grantee or false statement in the reports to the Grantor or the Board as to a material fact knowingly made by or with the knowledge of an officer of Grantee, shall constitute a material violation of this Franchise. However, an erroneous entry, made in good faith, shall not constitute a violation of this Franchise.

SECTION 15. REQUIRED SERVICES AND FACILITIES – PEG ACCESS

A. **Access Channel Capacity.** In order to promote and develop Public, Educational and Governmental (“PEG”) access programming in the TBNK Member Governments jurisdictional areas for the Cable System Access Channels, Grantee shall make available, upon the adoption of this Franchise by Grantor and Cable Board and during the Term of this Franchise, sufficient PEG Access Channel capacity and the necessary electronics to provide seven (7) channels for the exclusive and joint use of the Cable Board and its TBNK Member Governments.

1. Two (2) full-time Governmental Access Channels;
2. One (1) split Governmental and Educational Access Channel for full time use by elementary and secondary schools and boards of education located within the geographical confines of unincorporated Kenton County and the TBNK Member Governments, and for overflow government meeting coverage;
3. Three (3) full-time Community Program/Public Access Channels dedicated to community programming, including religious programming; and
4. One (1) full-time Educational Access Channel for use by Northern Kentucky University.

The Access Channels shall be dedicated for the purposes specified above. All Guide Data costs and Detailed Hourly Programming Placement in the Channel Guide will be the responsibility of the Cable Board to work out with the Channel Guide Vendor.

B. **Access Channel Location.** During the Term of this Franchise, the Access Channels, as provided in Section 623 of the Cable Act (47 U.S.C. § 543), shall be located on the basic Service Tier as required by the Cable Act and repositioning of the Access Channels, where

reasonably possible, shall be held to a minimum in order that the public can become accustomed to Access Channel locations. Before repositioning or reassigning any Access Channel, Grantee shall (1) give TBNK no less than ninety (90) days written notice of such change, and (2) provide, free of charge, public announcements of such channel repositioning or reassignment fourteen (14) days prior to such change and such advertising spots shall be run several times during primetime television hours.

C. **Franchise Fee Offset.** If at any time during the Term of this Franchise Agreement, federal or State law or any effective FCC order, including the FCC Third Report & Order, allows Grantee, as a Cable Operator, to (1) off-set against Franchise Fee payments otherwise due and payable to Grantor and the Cable Board pursuant to this Franchise Agreement, or (2) seek payment for the value and/or costs and/or maintenance of the Access Channel requirements, return lines, or related services of this Section 15 (Required Services and Facilities – PEG Access), or any Franchise requirement or services provided by Grantee and that are deemed as “in-kind” contribution to be included within the franchise fee cap pursuant to the FCC Third Report and Order, then Grantee agrees not to make any such offset or to impose against and seek payment from Grantor and/or TBNK for the value and/or costs² of the aforesaid “in-kind” Franchise requirement or service without first providing at least 120 days prior written notice to Grantor, TBNK and any other affected TBNK Member Government. Such written notice shall (1) provide an explanation for any proposed offset and costs, (2) state the amount of the offset or the value or cost of the claimed “in-kind” Franchise requirement or services, including the calculation thereof. At any time prior to the end of the 120 days’ notice period, Grantor and/or TBNK shall have the right and option, and shall provide written notice to Grantee of its intent, to either: (1) pay Grantee for the value or cost, as the case may be, of the “in-kind” Franchise requirement or service in lieu of any offset by Grantee against Franchise Fee payments due and payable to Grantor; (2) agree to the Franchise Fee offset; or (3) cancel the affected “in-kind” Franchise requirement or service. However, if such federal or State law or any non-appealable FCC Order, including the FCC Third Report & Order, or any portion of such federal or State law or any FCC Order is over-turned or reversed by a court decision or new law or regulation, then such claimed “in-kind” franchise requirements or services will be re-instated under the same terms and conditions as outlined in the Franchise Agreement.

D. **Locally Produced Programming.** The Cable Board and the TBNK Member Governments agree that at least two-thirds (2/3) of the Original Programming for Community Program/Public Access Channels shall be locally produced.

E. **Definitions.** As used in this Section 15:

1. **“Locally produced”** means noncommercial programs the production of which utilize (i) primarily local, non-paid volunteer personnel, any resident or any agency (public or private) which provides services to residents within the service area of Grantee, or personnel or contract agents of the Cable Board and/or Grantor, their designated agent or the Community Programming Center, and (ii) the services, materials or components of

² As noted in the definition of “FCC Third Order & Report”, the United States Court of Appeals for the Sixth Circuit modified the said FCC order indicating that “in-kind” or “noncash cable-related exactions should be assigned a value equal to the cable operator’s marginal cost in providing ...” such noncash cable-related services.

the equipment and/or facilities of the TBNK Member Governments and the Cable Board or their designated agent or the Community Programming Center.

2. **“Original Programming”** means the first showing of any program and video programming.

F. **Usage Requirement and Review.** As of the Effective Date of this Franchise Agreement, the Cable Board, its designated agent and/or the Community Programming Center will produce a minimum of one thousand and fifty (1,050) hours of Original Programming on the initial Community Program/Public Access Channels. The Cable Board and/or the TBNK Member Governments, their designated agent and/or the Community Programming Center, and the Grantee shall review the use of the initial Community Program/Public Access Channels every twelve (12) months. At the end of each twelve (12) month period, the Cable Board, or their designated agent shall evaluate the community’s response to and the Community Programming Center’s actual use of such channels. If, after any twelve (12) month period, the use for the required Public Access Channels drops below one thousand and fifty (1,050) hours, Grantee may require a rollback of hours on the initial Public Access Channel(s) on a proportional basis; provided, however, that if the use for the required Community Program/Access Channels drops below four hundred twelve and one half (412.5) hours, then the requirement for one channel’s availability shall cease, and Grantee may use such channel for any lawful purpose. There is no usage requirement to keep the first Public Access Channel. However, if only one (1) Public Access Channel remains, and the hours of usage of the remaining Public Access Channel subsequently increase to where the hours exceed four hundred twelve and one half (412.5) hours, then usage of the discontinued second Public Access Channel shall be restored and made available to TBNK for full time use. Once the hours of usage on the two (2) Public Access Channels equal or exceed one thousand and fifty (1,050) hours on a combined basis, the discontinued third Public Access Channel shall be restored and made available to TBNK for full time use. Notwithstanding the foregoing paragraph, no usage requirement is imposed on either the Educational or Government Access Channels.

G. **Programming and Community Programming Center.**

1. **Access Functions and the Community Programming Center.** The parties agree that the provision of Public, Educational and Governmental access programming, scheduling playback, services and PEG Access Facilities (collectively, the **“Access Functions”**) will be performed by the Cable Board, its designated agent and/or the Community Programming Center. The Cable Board and/or the TBNK Member Governments, and/or their designated agent, shall have the right to allocate or assign the Access Channels and/or Access Functions to any organization, committee or agency created as a community programming entity. The Cable Board’s and the Community Programming Center’s offices are currently located at 3414 Decoursey Pike, Covington, Kentucky 41015 (a/k/a the **“Community Programming Center”**).

The following Access Functions, among others, shall be performed at the Community Programming Center for the TBNK Member Governments, and it shall be the responsibility of the TBNK Member Governments, their designated agent and/or the Community Programming Center provided for herein to provide such functions:

- i. Playback of all pre-recorded programs for Public, Educational or Government Access Channels for the TBNK Member Governments;
- ii. At the request of any one or more of the TBNK Member Governments, provide (to the extent possible and considering scheduling issues) live coverage of all meetings, of the City Commissions or Councils, County Fiscal Court, Planning and Zoning Commissions or Boards, Boards of Education and other local governmental programming; and
- iii. Routing of all programming from remote locations (Access Origination Sites) using live streaming, as provided in Section 15(G)(7) (Streaming of Programming from Access Origination Sites) below to the CPC to support access programming.

2. **Non-Commercial Access.** Consistent with Section 623 of the Cable Act, the Community Programming Center shall provide only non-commercial PEG Access programming provided, however, the parties acknowledge that the Community Programming Center shall be permitted to offset the operational expense of the playback center by or through sponsorships, grant money, gifts, and fees for videotapes.

3. **Interconnection of Community Programming Center to Headend.** In order to provide for the playback of, or to enable the PEG Access Channels to be carried live through the use of media over the Cable System, Grantee shall keep and maintain in place the return fiber optic line, including the associated electronics and equipment, connecting the Community Programming Center, located at 3414 Decoursey Pike, Covington, Kentucky 41015, within the distribution system of Grantee's Cable System, to its Headend, all of which shall be capable of providing transparent, reliable and simultaneous transmission of Public, Educational and Governmental Access programming over the Access Channels delivered at a quality similar to the commercial channels on the Cable System (the "**Interconnection Line**"). The Grantee's capital cost for the Interconnection Line will include the associated and necessary equipment including, but not limited to, modulators, video encoders and decoders, digital transmitters, fiber links, processors, drops, wiring and automatic switching equipment at the Grantee's Headend from the Community Programming Center without assistance from the Grantee, to enable Subscribers within the Franchise Areas of the TBNK Member Governments to receive Access Channel programming transmitted to Grantee's Headend from the Community Programming Center. The intent is that proper equipment will be provided by the Grantee so that the Community Programming Center can generate and send signals over the Interconnection Line to the Headend for Downstream Transmission on the subscriber network and to send and receive signals through Grantee's Headend in order to transfer signals originating at the Community Programming Center onto any of the Access Channels on the subscriber network and otherwise control the signals to allow for smooth breaks, transitions, insertion of station identification and other material. As provided under the FCC Third Report and Order, the

recurring cost to maintain the Interconnection Line is deemed as an “in-kind” contribution giving Grantee the right (a) to charge and receive payment from Grantor for such costs or (b) offset such charges or costs against Franchise Fees required to be paid under this Franchise Agreement, as further detailed in Article II, Section 15(C) (Franchise Fee Offset) of this Franchise. Notwithstanding the foregoing, in the event the “in-kind” contribution aspect set forth in the FCC Third Report and Order is reversed or withdrawn by the FCC, or is overturned in a court of law, or otherwise becomes nonbinding or null and void, then Grantee’s right to claim “in-kind” treatment and charge for or offset such maintenance cost from or against Franchise Fees shall become inoperative or voided immediately. Furthermore, notwithstanding the fact that the Interconnection Line constitutes a part of the PEG Transportation Facilities that are being released or surrendered to Grantee, as provided in Section 15(G)(6) (Release of Certain Transport facilities) below, it is understood and agreed that the Interconnection Line is neither being released nor surrendered, but it shall (a) remain in place and operational and (b) be subject to the terms and conditions of this Franchise Agreement.

4. **Repair and Response Time for Access Channels, Fiber Drops and Fiber Connections PEG Transport Network.** Under normal operating conditions, Grantee shall respond to and repair or resolve all technical problems on or relating to the Access Channels, the Interconnection Line, any cable or fiber drops and/or the associated electronic equipment (with the exception of any equipment owned and operated by the Cable Board at the CPC) within four (4) hours of either being reported or Grantee becoming aware of such technical problem(s), with the exception of public safety. In such cases, Grantee shall respond immediately. Grantee shall provide the Authority and the Board with technical assistance as to the drops, the fiber optic or coaxial connections and those components of Grantee’s network distribution system over which PEG Access programming travels, as and when needed.

5. **PEG Channel Monitoring.** Grantee shall provide TBNK and the CPC with basic service packages, free of charge and no deduction from Franchise Fees, so TBNK and the CPC can validate their signal.

6. **Release of Certain Transport Facilities.** Under the Prior Franchise, Grantee was required to provide PEG Transport Facilities (hereinafter defined), which permitted or provided for the Upstream Transmission or transportation of PEG Access programming from certain government buildings located within the Franchise Area (each such building or location is referred hereinafter as an “**Access Origination Site**” and, collectively as “**Access Origination Sites**”) which permitted or provided for the Upstream Transmission or transportation of PEG Access Programming generated at the Access Origination Sites to the Community Programming Center and Grantee’s Headend for the ultimate Downstream Transmission over the Access Channels on the Cable System. As a result of the “in-kind” contribution treatment required under the FCC Third Report and Order and, in further consideration of other offerings or benefactions being made by Grantee in connection with this Franchise Agreement, Grantor (and the other TBNK Member Governments as a party to their own respective Franchise Agreement with Grantee) hereby releases from the terms and conditions of this Franchise Agreement and relinquishes unto Grantee, as of the Effective Date, those

PEG Transport Facilities that are presently connected to and servicing those Access Origination Sites. For purposes of this Section 15(G)(6), the term “**PEG Transport Facilities**” shall mean the existing video and audio transport (or return) lines of Grantee, including associated equipment, that are physically joined to Grantee’s Cable System connecting the Access Origination Sites to the Community Programming Center and the Headend allowing for the transmission of PEG Access video and audio signals generating from the Access Origination Sites to Grantee’s Headend for the ultimate Downstream Transmissions over the Access Channels.

7. **Streaming of Programming from Access Origination Sites.** By virtue of the release of the PEG Transport Facilities from the operation of this Franchise Agreement, as provided in Section 15(G)(6) above, it is the intention of the Cable Board to replace the function of the PEG Transport Facilities by streaming all live PEG Access programming originating from or produced at the Access Origination Sites, over the internet to the Community Programming Center and the TBNK studios for further processing and recording and then Upstream Transmission to the Headend using the Interconnection Line (as set forth in Article II, Section 15(G)(3) of this Franchise) for the ultimate Downstream Transmissions over the Access Channels.

8. **Relocation of CPC.** The Community Programming Center may be relocated by the Authority and/or the Telecommunications Board within the Franchise Area, or within the jurisdiction of another TBNK Member Government, with the consent of Grantee, which consent shall not be unreasonably withheld, delayed, or conditioned. The Parties may take into consideration the reasonable proximity of the selected relocation site to the tie-in or connection point of the Cable System, and upon the request of the Telecommunications Board, Grantee shall make the same interconnection with the new site or location as is required in Article II, Section 15(G)(3) (Interconnection of Community Programming Center to Headend) above, and this new site or location will likewise be referred as the “**Community Programming Center.**” The cost of relocating the interconnection facilities/fiber/equipment for the new CPC will be borne by CBET except where relocation of the Community Programming Center occurs more than once every five years, in which case the relocation costs will either be borne by TBNK or will be treated as “in-kind” and be counted toward the cap on Franchise Fees.

H. **Government Access.**

1. **Sharing of Channels.** The Government Access Channels will be shared by the TBNK Member Governments. The TBNK Member Governments or their designated agent shall schedule non-commercial local governmental programming on these channels in a manner designed to provide all Subscribers within the Franchise Area with equal opportunity to view programs about or affecting the TBNK Member Governments. These Government Access Channels shall be made available in order to increase the general public’s awareness of local government.

2. **Purpose.** The Government Access Channels shall serve as a means for a Mayor, Judge/Executive, City and County Officials to communicate with the citizens of the Grantor and the TBNK Member Governments whenever they find it valuable.

I. **Educational Access.** The Educational Access Channel's capacity for elementary and secondary education shall be for the use of local elementary and secondary schools and districts, other independent school districts, and private schools located in the geographical confines of the TBNK Member Governments and their respective boards of education for non-commercial educational programming.

J. **Non-Access Programming.** The TBNK Member Governments, or their designated agent will, as provided in Section 611(d) of the Cable Act (47 U.S.C. § 531), prescribe rules and procedures under which the Grantee will be permitted to use Educational and Governmental Access Channel capacity for the provision of other services if such channel capacity is not being used for purposes designated in this Franchise, but in the case of the Public Access Channels such rules and procedures are set forth in Article II, Section 15(F) (Usage Requirement and Review).

K. **Inspection of Books.** The Grantee shall have the right to inspect the books, records, reports, plans and other like materials of the Community Programming Center respecting public access at any time during normal business hours of the Cable Board and upon reasonable notice.

L. **Rules and Regulations.** The TBNK Member Governments, their designated agent and/or the Community Programming Center, shall establish and enforce rules for the use of the Public Access Channels (i) to assure non-discriminatory access to the Channels to similarly situated Users; and (ii) to promote use and viewership of the Access Channels, consistent with the obligation to provide non-discriminatory access to similarly situated Users. The Access Channels shall be available without charge to the TBNK Member Governments or Subscribers.

M. **Editorial Control.** Subject to Subsection 15(I) (Educational Access) above and Applicable Law, the Grantee may not exercise any editorial control over the lawful content of programming on the Access Channels.

N. **Signal Quality.** The Grantee shall assure that signal quality and reliability for (a) all Upstream Transmissions from origination points specified in this Franchise, including the Interconnection Line, and (b) all Downstream Transmissions over the Access Channels meet the same technical and performance standards as are required for the entire subscriber network pursuant to this Franchise and FCC Regulations. There shall be no significant deterioration in signal quality on the Access Channels from the Community Programming Center to the point of reception Downstream over the Access Channels.

O. **Public, Educational and Government Access Indemnity.**

1. **Indemnity.** To the extent permitted by law, the TBNK Member Governments, their designated agent and/or the Community Programming Center, as the case may be, shall at all times defend, indemnify, protect, save harmless and exempt the Grantee, its officers, agents, and employees, from any and all liabilities, penalties,

damages or charges arising out of or in any way connected with claims, suits, demands, causes of action or judgments or awards of damages, whether compensatory or punitive, or expenses arising therefrom, either at law or in equity, which might be claimed now or in the future, which may arise out of, or be caused by:

- i. Any material or media carried on the Access Channels including, but not limited to, any claim for an infringement of any copyright, trademark, trade name, service mark or patent, for defamation of any Person, firm or corporation, for invasion of the right of privacy, or for failure by the TBNK Member Governments, their designated agent or Community Programming Center to secure consents from the owners or authorized distributors of programs to be delivered over the Access Channels; or
- ii. The operation of the Community Programming Center or the scheduling of Public, Educational or Government access programming by the TBNK Member Governments, their designated agent or the Community Programming Center.

2. **Appointment of Counsel.** With respect to any claim, suit, demand or cause of action made or brought against the Grantee by reason of any event to which reference is made in this Section 15(O) (Public, Educational and Government Access Indemnity), the TBNK Member Governments, their designated agent or the Community Programming Center, as the case may be, shall obtain counsel for the Grantee. The Grantee shall have the option to also retain its own counsel at its cost.

3. **Notice.** Grantee shall give the Cable Board, its designated agent or the Community Programming Center timely written notice of the making of any claim or the commencement of any action, suit or other proceeding covered by the indemnity in Section 15(O) (Public, Educational and Government Access Indemnity). In the event any such claim arises, the Grantee shall tender the defense thereof to the TBNK Member Governments, their designated agent or the Community Programming Center, as the case may be, and said TBNK Member Governments, their designated agent or the Community Programming Entity, shall have the right and duty to defend any claim arising hereunder, and the Grantee shall cooperate fully therein.

P. **Parental Control.** Upon request and as required by Federal law, the Grantee shall provide all Subscribers receiving channels showing first-run movies and special entertainment events with a parental control device that prevents the unauthorized viewing of such channels.

Q. **Emergency Alert System.** Grantee shall install, operate and maintain an Emergency Alert System (“EAS”) in compliance with all Federal Emergency Alert System requirements, including all requirements set forth in 47 CFR Part 11: Emergency Alert System (“EAS Regulations”). In the event the TBNK Member Governments or any one of them organize an Emergency Communication Center, the Grantee shall provide such center with access to the Cable System so that it can communicate emergency messages and alerts to residents in

accordance with EAS Regulations applicable to local governments. The TBNK Member Governments shall indemnify the Grantee for all liability in connection with its use of the EAS in contradiction or violation of the EAS Regulations, but not for the Grantee's failure to install, operate or maintain the EAS.

R. **Isolation of PEG Channels.**

1. **Upon Termination of Membership.** In the event the Grantor or one or more of the TBNK Member Governments terminates its membership and participation in the Interlocal Agreement, the Cable Board may give notice to the Grantee to isolate, at the Cable Board's cost, the Subscribers within the respective jurisdiction terminating its participation in the Interlocal Agreement from receiving the PEG programming from the Cable Board. In such a case, the Grantee shall prepare a cost estimate to achieve the requested isolation and if payment to achieve the isolation is approved by the Cable Board, the Grantee shall isolate the Subscribers within the jurisdiction terminating its participation in the Interlocal Agreement from receiving the PEG programming from the Cable Board, within a reasonable time after receiving notice from the Cable Board approving payment of the required cost.

2. **Upon Entry to Membership.** In addition, should a city within Kenton County that is not a participant in the Interlocal Agreement decide to join the Interlocal Agreement, the Grantee shall, at the Cable Board's cost, allow subscribers within the jurisdiction joining the Interlocal Agreement to receive the PEG programming from the Cable Board. In such an event the Grantee shall prepare a cost estimate to allow the Subscribers to receive the PEG programming, and if approved for payment by the Cable Board, the Grantee shall, within a reasonable time after notice of approval by the Cable Board take the necessary steps to allow the said Subscribers to receive the PEG programming from the Cable Board.

S. **Public/Complimentary Service Installations.** As required by the terms and conditions of the Prior Franchise, Grantor could request complimentary Cable Services to be provided without charge by Grantee to Grantor and its various agencies and departments, including the police and fire departments, schools, libraries and the Cable Board ("**Grantor Agencies**"). However, pursuant to the FCC Third Report and Order, complimentary Cable Services are now deemed to be an "in-kind" contribution giving Grantee the right to charge the Grantor Agencies, or offset such cost or charge against Franchise Fees required to be paid under this Franchise Agreement, but as of the Effective Date Grantee has not exercised such right. Should Grantee choose to exercise its right to charge and offset such charges and costs, Grantee shall first provide the prior written notice and comply with the other provisions set forth in Section 15(C) (Franchise Fee Offset) of this Franchise Agreement, which actions will trigger Grantor's responsive actions provided under the aforesaid section. Notwithstanding anything to the contrary contained in the foregoing, in the event the "in-kind" contribution aspect set forth in the FCC Third Report and Order is reversed or withdrawn by the FCC, or is overturned in a court of law, or otherwise becomes nonbinding or null and void, then (a) Grantee's right to claim "in-kind" treatment and charge for or offset such maintenance cost from or against Franchise Fees shall become automatically and immediately inoperative or voided, and (b) Grantee shall promptly make available to the Grantor Agencies such Cable Services.

T. **Treatment of PEG Access Channels.** Any cost or expense (particularly “**capital costs**” as defined in the FCC Third Report and Order) to Grantee associated with the provision of PEG Access Channels pursuant to this Franchise, including channel capacity being provided by Grantee in accordance with Section 15 (Required Services and Facilities – PEG Access) of this Franchise Agreement, (1) shall not be deducted from the Franchise Fee, if applicable, and (2) shall not be considered or treated as a franchise fee or tax under 47 U.S.C. § 542; subject, however, to any further or subsequent ruling and/or finding by the FCC with respect to the cost of “**channel capacity.**”³ The Access Channels and Downstream Transmissions of PEG Access programming over the aforesaid Access Channels shall be available for use, as provided in this Franchise, without charge or cost to the Authority, its designated agent, TBNK, or the Community Programming Center. All such associated cost for any period of time may be treated as external costs by Grantee pursuant to the rate regulations of the FCC and shall be allocated proportionately to the governmental units comprising the TBNK Member Governments on a per subscriber basis for rate base purposes, but only if such costs are not deducted from the Franchise Fees owed by Grantee to Grantor for that period of time.

ARTICLE III. ADMINISTRATION AND REGULATION.

SECTION 1. RULES AND REGULATIONS

The Grantor, or their designated agent may adopt regulations at the request of the Grantee upon application.

SECTION 2. DEFAULT OF FRANCHISE; REVOCATION, TERMINATION AND CANCELLATION OF FRANCHISE

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

1. The Grantee has knowingly, or with the knowledge of an officer of Grantee, made a material, false statement as provided in Article II, Section 14(E) (False Entry); or Grantee’s failure to make the required payments or failure to file the required reports as provided under this Franchise; unless the Grantee is lawfully and actively contesting the legality or applicability of such payments or reports in a federal or State court of law located within the State; or

2. Effecting a Transfer without the prior written approval of the Authority and its designated agent pursuant to Article II, Section 11 (Transfer of Ownership or Control) of the Franchise, or failure to notify pursuant to Article II, Section 11(G)(2) (Intra-Company Transfers); or

³ In the FCC Third Report and Order, the FCC deferred the question of whether or not “channel capacity” costs should be excluded from the franchise fee cap as a capital cost under the exemption in 47 U.S.C. §542(g)(2)(C). See Paragraph 44 of the FCC Third Report and Order.

3. The Grantee knowingly and consistently violates any FCC Regulation, order, or ruling concerning technical or performance standards, or any other standards or requirements in the aforesaid FCC Regulation, order, or ruling, including, without limitation, FCC customer service obligations or standards; unless the Grantee is lawfully and actively contesting the legality or applicability of such regulation, order or ruling in a federal or State court of law located within the State; or

4. The Grantee knowingly violates a material provision of this Franchise, or

5. Failure to restore service after one hundred twenty-six (126) hours of interrupted service, except when approval of such interruption is obtained from the Grantor, or its designated agent, or when the interruption occurs as a result of an event of force majeure as provided in Article II, Section 4 (Force Majeure) of this Franchise; or

6. Failure to provide, make available and maintain on a continuous basis (a) the Interconnection Line, (b) Upstream Transmissions from the Community Programming Center to the Headend over the Interconnection Line, (c) the Access Channels, or (d) the signal quality, all as provided in Article II, Section 15 (Required Services and Facilities – PEG Access); or

7. Grantee knowingly and repeatedly fails to comply with, or violates a provision of this Franchise Agreement, regardless of whether any single provision not complied with or violated is deemed material; or

8. Grantee fails to comply with provisions set forth in Article II, Section 4 (Construction and Technical Standards), or Article II, Section 5 (Use of Streets), or failure to comply with Applicable Law of Grantor pertaining to right-of-way usage, construction and repair vis-à-vis utility companies, cable television systems and other users of the Streets.

B. **Enforcement of Competitively Neutral Basis.** The Grantor agrees that it or its designated agent will enforce the terms of this Franchise and other franchise agreements for Cable Systems and Cable Services on a competitively neutral basis. For purposes of giving rise to the opportunity to cure, the date of violation will be the date the Grantee receives notice of the violation from the Grantor, or its designated agent and not the date of the event.

C. **Notice of Violation; Cure.** In all events, the Grantor, or its designated agent shall be obligated to notify the Grantee in writing in a reasonably timely manner of any violation as soon as it has reasonable cause to believe that a violation has occurred. Under such circumstances, the Grantor, or its designated agent shall notify the Grantee, in writing, of the specific breach, and direct the Grantee to comply with all such provisions of this Franchise. The Grantee shall have fifteen (15) days as to monetary violations and thirty (30) days as to non-monetary violations subsequent to receipt of the Notice in which to cure the violation before the Grantor or its designated agent may impose sanctions. If the non-monetary violation is of such a nature so as to require more than thirty (30) days to cure and the Grantee proceeds diligently within the thirty (30) days to cure the violation, the Grantee must proceed diligently within the next thirty (30) days to cure the violation, or as promptly as possible thereafter to cure the

violation. In any case where the non-monetary violation is not cured within sixty (60) days of notice of said violation from the Grantor, or their designated agent, and such cure has not been diligently pursued by the Grantee within said time, or such other time as the Grantee and Grantor, or their designated agent, may mutually agree to, the Grantor or its designated agent may proceed to impose sanctions as hereinafter provided.

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

E. **Procedures.** At the time of the public due process hearing, the Grantee may present information on the current status of the alleged breach of the Franchise. If the situation has been resolved, or steps are being taken to resolve the situation, the Grantee may present such information at the hearing. Upon the conclusion of the hearing, the Grantor, or its designated agent, may determine that the Grantee has cured any violation and thereby dismiss the matter, or may determine from the evidence presented therein, that there was a continuing violation subsequent to the correction period which could have been prevented by the Grantee. The Grantor, or its designated agent, shall notify the Grantee of any finding that the Grantee failed to cure a noticed violation within the time provided above, while not being excusable under Article III, Section 4) (Force Majeure), the reasons therefor and the evidence in support thereof. The Grantor, or its designated agent, may engage the services of an attorney, who does not have a client-attorney relationship with the Grantor, or its designated agent, to serve as a hearing officer or administrative law judge for the public hearing.

F. **Termination.** In addition to all other sanctions, rights and remedies available to the Grantor or its designated agent, the Grantor may revoke, terminate or cancel the Franchise by repealing the authorizing ordinance and the Franchise Agreement by which it was granted, with an effective date of not less than six (6) months thereafter. The exercise of one remedy shall not foreclose use of another. The Grantee may exercise any rights it has under law or at equity.

G. **Saving Clause.** Notwithstanding any other provision of this Franchise, it is the intent of the Grantor, and its designated agent, not to subject the Grantee to penalties, fines, forfeitures, or revocation of the Franchise in any of the following instances:

1. The violation was not intentional by the Grantee and the effect thereof on the Grantor or Subscribers was de minimis; or
2. There is no pattern of violation or the occurrence of repeated violations of the same matter over time is discontinued after notification of the Grantee thereof by the Grantor, or their designated agent.

SECTION 3. SALE OR REMOVAL OF CABLE SYSTEM

Upon termination or revocation of the Franchise Agreement or failure to renew this franchise in accordance with Section 626 of the Cable Act (U.S.C. §546), Grantee shall either (i) sell the Cable System within eighteen (18) months of the Authority's, or the Board's determination of revocation or termination, subject, however, to the Transfer provisions set forth in Section Article

II, Section 11 (Transfer of Ownership or Control), or (ii) remove the Cable System from the Streets of Grantor within two (2) years of said determination.

SECTION 4. FORCE MAJEURE

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

SECTION 5. NO THIRD-PARTY BENEFICIARIES

This Franchise Agreement is not intended to and does not create any rights or benefits on behalf of any Person other than the parties to this Franchise Agreement.

SECTION 6. DELEGATION OF GRANTOR RIGHTS

The Grantor reserves the right to delegate and re-delegate, from time to time, and to the extent permitted by law, any of its rights or obligations under this Franchise to any governmental body or organization, or official of any other governmental body or other Person, and to revoke any such delegation or re-delegation. Any such delegation or re-delegation by Grantor shall be effective upon written notice by Grantor to Grantee of such delegation or re-delegation. Upon receipt of such notice by Grantee, the Grantee shall be bound by all terms and conditions of the delegation or re-delegation. Any such delegation, revocation or re-delegation, no matter how often made, shall not be deemed an amendment to this Franchise or require Grantee's consent. Grantor has delegated and does hereby delegate and authorize TBNK to manage and oversee the activities, functions and duties set forth in the Interlocal Agreement, including, without limitation, those set forth in Sections 4, 6, 8 and 20 thereof: (1) the administration and negotiation of franchise agreements, (2) the provision of Access Functions, (3) overseeing compliance by Cable Operators of franchise agreement provisions, including, without limitation, all technical, performance and consumer protection matters, (4) the administration and payment of Franchise Fees, and (5) all matters pertaining to PEG Access. TBNK is not responsible for the daily oversight and control of (i) construction and other activities on, in, over or under the Streets and (ii) all other governmental matters not covered by the Interlocal Agreement.

SECTION 7. MISCELLANEOUS PROVISIONS

A. **Entire Agreement.** This Franchise Agreement and any Appendices hereto constitute the entire agreement between Grantee and Grantor, and they supersede all prior or

contemporaneous agreements, representations or understandings (whether written or oral) of the Parties regarding the subject matter hereof.

B. **Administration of Franchise.** This Franchise is a contract and neither Party may take any unilateral action that materially changes the explicit mutual promises and covenants contained herein, except as otherwise provided in this Franchise Agreement. Any changes, modifications or amendments to this Franchise Agreement must be made in writing, signed by the Grantor, or the Board, and the Grantee.

IN WITNESS WHEREOF, the Parties hereto have caused this Franchise to be executed as of the day and year first above written.

GRANTOR:

KENTON COUNTY, KENTUCKY

By: _____

Print Name: Kris A. Knochelmann

Title: Judge / Executive

Authority: Pursuant to Ordinance No. _____ duly adopted and passed by the Fiscal Court on _____, 2021

Date: _____, 2021

GRANTEE:

CINCINNATI BELL EXTENDED TERRITORIES LLC

By: _____

Theodore W. Heckmann

Title: Senior Director, Regulatory & Government Affairs & Assistant Secretary

Authority: Pursuant to a duly authorized resolution

Date: _____, 2021

The Telecommunication Board joins in this Franchise Agreement for purposes of accepting and evidencing the agent designation made in Article III, Section 6 (Delegation of Grantor Rights) of this Franchise Agreement and for those purposes and functions that are set forth in both (1) this Franchise Agreement and assumed herein by the Telecommunications Board and (2) the Interlocal Agreement.

TBNK – DESIGNATED AGENT:

**THE TELECOMMUNICATION BOARD OF
NORTHERN KENTUCKY**

By: _____
Timothy M. Broering, Executive Director

By: _____
Steven Goodpaster, Chairman

Date: _____, 2021

APPENDIX 1

[TBNK MEMBER GOVERNMENTS]

1. Bromley
2. Covington
3. Crestview Hills
4. Edgewood
5. Elsmere
6. Fort Mitchell
7. Fort Wright
8. Independence
9. Kenton County
10. Kenton Vale
11. Lakeside Park
12. Ludlow
13. Park Hills
14. Ryland Heights
15. Taylor Mill
16. Villa Hills

APPENDIX 2

[Commencement Agreement Form]

COMMENCEMENT AGREEMENT

THIS COMMENCEMENT AGREEMENT (this “**Agreement**”), dated as of [REDACTED], 2021, by and between the **TELECOMMUNICATIONS BOARD OF NORTHERN KENTUCKY**, a public agency formed under the Interlocal Cooperation Act of Kentucky (KRS 65.210 – 65.300) (hereinafter referred to as “**TBNK**”), and **CINCINNATI BELL EXTENDED TERRITORIES LLC**, an Ohio limited liability company authorized to transact business within the Commonwealth of Kentucky (hereinafter referred to as “**CBET**”). Except as otherwise defined herein, terms defined in the Franchise Agreement (hereinafter defined) are used herein as therein defined, and TBNK and CBET are referred to individually as a “**Party**” and collectively as the “**Parties**.”

WHEREAS, reference is hereby made to those several Competitive Cable Television Franchise Agreements, dated as of July 1, 2021, by and between CBET and all of the TBNK Member Governments (collectively, referred to as the “**Franchise Agreements**,” and, individually, a “**Franchise Agreement**”), providing for, among other things, the (1) construction, upgrade, maintenance, operation, and ownership of a Cable System, (2) renewal of the Prior Franchise, and (3) provision of Cable Services in and to the geographical confines (also referred as the Franchise Area) of each of the TBNK Member Governments; and

WHEREAS, pursuant to the terms and conditions of the Interlocal Agreement, TBNK negotiated for and on behalf of, and recommended to each TBNK Member Government, the approval and adoption of their respective Franchise Agreement; and

WHEREAS, Article I, Section 6 (Duration and Acceptance of Franchise) of the Franchise Agreements, provides that the Effective Date of each of the Franchise Agreements shall be the last date of adoption by a TBNK Member Government of a Franchise Agreement substantially the same as the Franchise Agreements described herein; and

WHEREAS, consistent with the preceding recitals, the Franchise Agreements were legally approved and adopted by each of the TBNK Member Governments in accordance with the Kentucky Constitution and the laws of the Commonwealth of Kentucky by separate and distinct ordinances and on separate dates during the past several months, with the last date of adoption of the Franchise Agreements occurring on [REDACTED], 2021 by the **City/County** of [REDACTED], 2021; and

WHEREAS, in accordance with Article I, Section 6 (Duration and Acceptance of Franchise), TBNK and CBET desire (1) to establish and evidence the Effective Date of the Franchise Agreements and (2) to formally accept and confirm their respective representation set forth below:

NOW, THEREFORE, in consideration of the mutual promises and other good and valuable consideration hereby given, and as provided in Article I, Section 6 (Duration and Acceptance of Franchise) of the Franchise Agreements, TBNK, acting for and on behalf of each TBNK Member Government, and CBET agree as follows:

1. **Effective Date.** The Parties agree and confirm that the Effective Date of each of the Franchise Agreements shall be and is [REDACTED], 2021.
2. **Acceptance of Franchise Agreements.** CBET hereby confirms and affirms its unconditional acceptance of each of the Franchise Agreements granted and issued by each of the TBNK Member Governments to CBET, and CBET further covenants and agrees to comply with and abide by all of the provisions, terms, and conditions of the Franchise Agreements.
3. **Confirmation of Adoption of Franchise Agreements.** TBNK hereby represents and warrants that each TBNK Member Government has approved and adopted by ordinance, and is authorized to grant and issue, its respective Franchise Agreement to CBET.

IN WITNESS WHEREOF, the Parties have executed and delivered this Agreement as of the date set forth above.

**THE TELECOMMUNICATIONS BOARD
OF NORTHERN KENTUCKY**

By: _____
Timothy M. Broering, Executive Director

By: _____
Steven Goodpaster, Chairman

**CINCINNATI BELL EXTENDED
TERRITORIES LLC**

By: _____
Theodore W. Heckmann

Title: Senior Director, Regulatory &
Government Affairs & Assistant Secretary

[Acknowledgments of Signatures Follow on Next Page]

[Acknowledgments to Commencement Agreement between TBNK and CBET]

STATE OF _____)
) SS
COUNTY OF _____)

The forgoing Commencement Agreement was acknowledged before me this ___ day of _____, 2021, by Timothy M. Broering, as Executive Director of The Telecommunications Board of Northern Kentucky, a public agency formed under the Interlocal Cooperation Act of Kentucky, on behalf of the aforesaid public agency.

[SEAL]

Notary Public
Serial Number: _____
Commission expires: _____

STATE OF _____)
) SS
COUNTY OF _____)

The forgoing Commencement Agreement was acknowledged before me this ___ day of _____, 2021, by Steven Goodpaster, as Chairman of The Telecommunications Board of Northern Kentucky, a public agency formed under the Interlocal Cooperation Act of Kentucky, on behalf of the aforesaid public agency.

[SEAL]

Notary Public
Serial Number: _____
Commission expires: _____

STATE OF _____)
) SS
COUNTY OF _____)

The forgoing Commencement Agreement was acknowledged before me this ___ day of _____, 2021, by Theodore W. Heckmann, as Senior Director, Regulatory & Government Affairs & Assistant Secretary of Cincinnati Bell Extended Territories LLC, an Ohio limited liability company, on behalf of the aforesaid company.

[SEAL]

Notary Public
Serial Number: _____
Commission expires: _____

APPENDIX 3
[Opt-Out Governments]

Prior to the Effective Date of the Franchise Agreement the following TBNK Member Governments have Opt-Out of the State Hold Harmless Distribution Fund:

1. Bromley
2. Crestview Hills
3. Edgewood
4. Elsmere
5. Fort Mitchell
6. Fort Wright
7. Independence
8. Kenton Vale
9. Ludlow
10. Park Hills
11. Taylor Mill
12. Ryland Heights
13. Villa Hills

[Opt-In Governments]

Prior to the Effective Date of this Franchise Agreement, the following TBNK Member Governments have Opt-In the State Hold Harmless Distribution Fund:

1. Covington
2. Lakeside Park
3. Kenton County