

ORDINANCE NO. 3182

AN ORDINANCE GRANTING A NON-EXCLUSIVE FRANCHISE TO POINT BROADBAND OF OPELIKA, LLC TO CONSTRUCT, OPERATE, MAINTAIN AND UPGRADE A CABLE SYSTEM IN THE CITY OF AUBURN, ALABAMA SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OF THE FRANCHISE; PROVIDING FOR REGULATION AND USE OF THE SYSTEM AND THE PUBLIC RIGHTS-OF-WAY AND PRESCRIBING PENALTIES FOR THE VIOLATION OF THE PROVISIONS HEREIN.

Whereas, Point Broadband of Opelika, LLC has stated its interest in constructing, operating and maintaining a cable system within the City of Auburn ("City") for the purpose of providing cable services to the citizens of Auburn and the businesses operating within the city limits of the City of Auburn; and

Whereas, the City's authority to franchise and regulate a cable system is subject to the provisions of the Communications Act of 1934 and rules and orders promulgated by the FCC; and

Whereas, the City Council of the City of Auburn has determined that the development of another cable system within the City is in the public interest; and

Whereas, the City Council of the City of Auburn has conducted a public hearing concerning the grant of a non-exclusive cable system franchise to Point Broadband of Opelika, LLC ("Grantee") on October 15, 2019 and has determined that, as a result of such public hearing that:

1. Grantee's technical ability, financial condition, legal qualifications, and character were considered, and
2. Grantee's plans for constructing, operating, maintaining and upgrading the Cable System were considered, and
3. The non-exclusive franchise granted to Point Broadband of Opelika, LLC by this Ordinance complies with all applicable City, state and federal laws.

Now, therefore, be it ordained by the City Council of the City of Auburn, Alabama, as follows:

Section 1. Short Title and Definitions.

- a. *Short Title*. This Franchise Ordinance shall be known and cited as the Point Broadband Cable Service Franchise Ordinance.
- b. *Definitions*. For the purposes of this Franchise, the following terms, phrases, words, and their derivations shall have the meaning given herein. When not inconsistent with the context, words in the singular number include the plural number, and words in the plural number include the singular number. The word "shall" is always mandatory and not merely directory. The word "may" is directory and discretionary and not mandatory. Words not defined shall be given their common and ordinary meaning.

- (1) "Applicable Laws" means any law, statute, charter, ordinance, rule, regulation, code, license, certificate, franchise, permit, writ, ruling, award, executive order, directive, requirement,

injunction (whether temporary, preliminary or permanent), judgment, decree or other order issued, executed, entered or deemed applicable by any governmental authority.

- (2) "Basic Cable Service" means any Service tier which includes the lawful retransmission of local television broadcast signals and any public, educational, and governmental access programming required by the Franchise to be carried on the basic tier. Basic Cable Service as defined herein shall be the definition set forth in 47 U.S.C. § 543(6)(7).
- (3) "Cable Service" or "Service" shall be defined as set forth in 47 U.S.C. §522(6).
- (4) "Cable System" or "System" means a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes Video Programming, and which is provided to multiple Subscribers within a community, but such term does not include:
 - (a) A facility that serves only to retransmit the television signals of one (1) or more television broadcast stations;
 - (b) A facility that serves Subscribers without using any public Right-of-Way;
 - (c) A facility of common carrier which is subject, in whole or in part, to the provisions of 47 U.S.C. § 201 et seq., except that such facility shall be considered a Cable System (other than for purposes of 47 U.S.C. § 541(c)) to the extent such facility is used in the transmission of Video Programming directly to Subscribers, unless the extent of such use is solely to provide interactive on-demand services;
 - (d) An open video system that complies with 47 U.S.C. § 573; or
 - (e) Any facilities of any electric utility used solely for operating its electric utility systems.
- (5) "Channel" or "Cable Channel" means a portion of the electromagnetic frequency spectrum which is used in a Cable System and which can deliver a television Channel as defined by the FCC. Cable Channel as defined herein shall be the definition set forth in 47 U.S.C. § 522(4).
- (6) "City" means City of Auburn, a municipal corporation, in the State of Alabama, acting by and through its City Council, or its lawfully appointed designee.
- (7) "City Council" means the governing body of the City of Auburn Alabama.
- (8) "Converter" means an electronic device which converts signals to a frequency acceptable to a television receiver of a Subscriber.

- (9) "Drop" means the cable that connects the ground block on the Subscriber's residence or other building to the nearest feeder cable of the System.
- (10) "FCC" means the Federal Communications Commission and any legally appointed, designated or elected agent or successor.
- (11) "Franchise" or "Franchise Ordinance" means this Franchise Ordinance and the regulatory and contractual relationship established hereby.
- (12) "Franchise Fee" includes any tax, fee, or assessment of any kind imposed by the City or other governmental entity on Grantee or Subscriber, or both, solely because of their status as such. It does not include any tax, fee, or assessment of general applicability (including any such tax, fee, or assessment imposed on both utilities and cable operators or their services but not including a tax, fee, or assessment which is unduly discriminatory against cable operators or cable Subscribers); capital costs which are required by the Franchise to be incurred by Grantee for public, educational, or governmental access facilities; requirements or charges incidental to the awarding or enforcing of the Franchise, including payments for bonds, security funds, letters of credit, insurance, indemnification, penalties, or liquidated damages; or any fee imposed under Title 17 of the United States Code. Franchise Fee defined herein shall be the definition set forth in 47 U.S.C. § 542(g).
- (13) "Grantee" is Point Broadband of Opelika, LLC, its lawful successors, transferees or assignees.
- (14) "Gross Revenue" means any and all revenue derived by Grantee from the operation of its Cable System to provide Cable Service within the City that are 1) all Cable Service fees, 2) Franchise Fees, 3) late fees and returned check fees, 4) Installation and reconnection fees, 5) upgrade and downgrade fees, 6) local, state and national advertising revenue, 7) home shopping commissions, 8) equipment rental fees, and 9) written or electronic Channel guide revenue. The term "Gross Revenue" shall not include launch fees, bad debts or any taxes or fees on Services furnished by Grantee imposed upon Subscribers by any municipality, state or other governmental unit, including the FCC regulatory fee, credits, refunds and any amounts collected from Subscribers for deposits, PEG fees or PEG support. City and Grantee acknowledge and agree that Grantee will maintain its books and records in accordance with generally accepted accounting principles (GAAP).
- (15) "Initial Service Area" means the area identified in Exhibit B, which is incorporated herein by reference.
- (16) "Installation" means any connection of the System from feeder cable to the point of connection including Standard Installations and custom Installations with the Subscriber Converter or other terminal equipment.

- (17) "Lockout Device" means an optional mechanical or electrical accessory to a Subscriber's terminal which inhibits the viewing of a certain program, certain Channel, or certain Channels provided by way of the Cable System.
- (18) "Normal Business Hours" means those hours during which most similar businesses in the City are open to serve customers. In all cases, "Normal Business Hours" must include some evening hours, at least one (1) night per week and/or some weekend hours. Normal Business Hours as defined herein shall be the definition set forth in 47 C.F.R. § 76.309.
- (19) "Normal Operating Conditions" means those Service conditions which are within the control of Grantee. Those conditions which are not within the control of Grantee include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Those conditions which are ordinarily within the control of Grantee include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of the Cable System. Normal Operating Conditions as defined herein shall be the definition set forth in 47 C.F.R. § 76.309.
- (20) "Other Programming Service" means information that a cable operator makes available to all Subscribers generally. Other Programming Services as defined herein shall be the definition set forth in 47 U.S.C. § 522 (14).
- (21) "PEG" means public, educational and governmental.
- (22) "Person" is any Person, firm, partnership, association, corporation, company, limited liability entity or other legal entity.
- (23) "Right-of-Way" or "Rights-of-Way" means the area on, below, or above any real property in the City in which the City has an interest including, but not limited to any street, road, highway, alley, sidewalk, parkway, utility easements or any other place, area, or real property owned by or under the control of the City which are dedicated for compatible use.
- (24) "Right-of-Way Ordinance" means any ordinance or other applicable code requirements regarding regulation, management and use of Rights-of-Way in the City, including registration and permitting requirements.
- (25) "Service Area" or "Franchise Area" means the entire geographic area Within the City as it is now constituted or may in the future be constituted.
- (26) "Service Interruption" means the loss of picture or sound on one (1) or more Cable Channels. Service Interruption as defined herein shall be the definition set forth in 47 C.F.R. § 76.309.

- (27) "Standard Installation" means any residential or commercial Installation which can be completed using a Drop of one hundred fifty (150) feet or less.
- (28) "Subscriber" means any Person who receives broadcast Programming distributed by a Cable System and does not further distribute it. Subscriber as defined herein shall be the definition set forth in 47 C.F.R. § 76.5(ee).
- (29) "Video Programming" means programming provided by, or generally considered comparable to programming provided by, a television broadcast station. Video Programming as defined herein shall be the definition set forth in 47 U.S.C.

Section 2. Grant of Authority and General Provisions.

- a. *Grant of Franchise.* This Franchise is granted pursuant to the terms and conditions contained herein. Failure of Grantee to provide a System as described herein, or meet the obligations and comply with all provisions herein, shall be deemed a violation of this Franchise. This grant of Franchise does not constitute authorization from the City to the Grantee to use the Rights of Way to provide any service other than the Service defined Section 1(b)(3) of this Ordinance. To the extent Grantee uses its Cable System or other facilities to provide any services other than Cable Service, this Ordinance shall not be construed to waive or otherwise forfeit any rights the City otherwise has with respect to the franchising of, or imposing fees upon, Grantee's provision of other services. Notwithstanding the foregoing, nothing in this Ordinance shall be deemed or construed as a waiver or forfeiture of Grantee's right to claim that the Cable Act or other federal law preempts the City's ability to franchise, or impose fees upon, such other services provided by Grantee.
- b. *Grant of Non-exclusive Authority.*
- (1) The Grantee shall have the right and privilege, subject to Applicable Laws, including the permitting and other lawful requirements of City ordinance, rule or procedure, to construct, erect, and maintain, in, upon, along, across, above, over and under the Rights-of-Way in the City a Cable System and shall have the right and privilege to provide Cable Service. The System constructed and maintained by Grantee or its agents shall not interfere with other uses of the Rights-of-Way. Grantee shall make use of existing poles and other above and below ground facilities available to Grantee to the extent it is technically and economically feasible to do so.
- (2) Notwithstanding the above grant to use Rights-of-Way, no Right-of-Way shall be used by Grantee if the City determines, in its sole discretion, that such use is inconsistent with the terms, conditions, or provisions by which such Right-of-Way was created or dedicated, or with the present use of the Right-of-Way.
- (3) This Franchise shall be nonexclusive, and the City reserves the right to grant use of said Rights-of-Way to any Person at any time during the period of this Franchise for the provision of Cable Service in accordance with Applicable Laws.

- (4) The Franchise granted pursuant to this Franchise Ordinance is subject to the City's Wireline Ordinance as modified from time to time during the term herein. The City and Grantee agree that the following provisions of the Wireline Ordinance do not apply to the Grantee: Sections 27; 31; Section 55, paragraphs M.8. through Q; Sections 68; 77; 79; 80; 81; 83; 84; 85; 86; 87; 93; and 94. In addition, if there is a conflict between the provisions herein and the provisions of the Wireline Ordinance, the provisions of this Ordinance will prevail.
- c. *Lease or Assignment Prohibited.* No Person may lease Grantee's System for the purpose of providing Cable Service until and unless such Person shall have first obtained and shall currently hold a valid franchise or other lawful authorization containing substantially similar burdens and obligations to this Franchise. Any assignment of rights under this Franchise shall be subject to and in accordance with the requirements of Section 9.4 of this Franchise. This provision shall not prevent Grantee from complying with any commercial leased access requirements or any other provisions of Applicable Laws.
- d. *Franchise Term.* This Franchise shall be in effect for a period of eight (8) years from the date of execution by the City, unless sooner renewed, revoked or terminated as herein provided. The Grantee and the City agree that the City may establish a process to evaluate Grantee's compliance with the Franchise and the Grantee's expansion of its network following the elapse of five years from the date of execution of this Franchise.
- e. *Compliance with Applicable Laws, Resolutions and Ordinances.*
- (1) The terms of this Franchise shall define the contractual rights and obligations of Grantee with respect to the provision of Cable Service and operation of the System in the City. However, Grantee shall at all times during the term of this Franchise be subject to all lawful exercise of the police power, statutory rights, and local ordinance-making authority of the City. This Franchise may also be modified or amended with the written consent of the City and Grantee as provided in Section 12. c. herein.
- (2) Grantee shall comply with the terms of any City ordinance or regulation of general applicability which addresses usage of the Rights-of-Way within the City, which may have the effect of superseding, modifying or amending the terms herein, except that Grantee shall not, through application of such City ordinance or regulation of Rights-of-Way, be subject to additional burdens with respect to usage of Rights-of-Way which exceed burdens on similarly situated Rights-of-Way users.
- (3) In the event of any conflict between this Franchise and any City ordinance or regulation which addresses usage of the Rights-of-Way, the terms of this Franchise shall govern, provided however Grantee shall at all times comply with City ordinances of general applicability promulgated by the City in accordance with its police powers.
- f. *Rules of Grantee.* 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 said Grantee to exercise its rights and perform its obligations under this Franchise and to assure uninterrupted Service to each and all of its Subscribers; provided that such rules, regulations, terms and conditions shall not be in conflict with Applicable Laws.

- g. *Territorial Area Involved.* This Franchise is granted for the corporate boundaries of the City, as they exist from time to time. Access to Cable Service shall not be denied to any group of potential cable Subscribers because of the income of the potential cable Subscribers or the area in which such group resides.
- h. *Written Notice.* All notices, reports, or demands required to be given in writing under this Franchise shall be sent via registered or certified mail or shall be deemed to be given when delivered personally to any officer of Grantee or City or forty-eight (48) hours after it is deposited in the United States mail in a sealed envelope, postage prepaid thereon, addressed to the party to whom notice is being given, as follows:

If to City: City Manager
 City of Auburn, AL
 144 Tichenor Ave
 Auburn, AL 36830

Finance Director
City of Auburn, AL
144 Tichenor Ave
Auburn, AL 36830

If to Grantee: Point Broadband of Opelika, LLC
 Attn: General Counsel
 1791 O.G. Skinner Dr.
 West Point, GA 31833

Such addresses may be changed by either party upon notice to the other party given as provided in this section.

- i. *Ownership of Grantee.* Grantee represents and warrants to the City that the names of the shareholders, partners, members or other equity owners of the Grantee and any of the shareholders, partners, members and/or other equity owners of Grantee are as set forth in Exhibit A hereto.

Section 3. Construction Standards.

- a. *Registration, Permits, Construction Codes, and Cooperation.*
 - (1) Grantee shall comply with the construction requirements of local, state and federal laws; Grantee shall comply with the City’s Wireline Ordinance, except as otherwise provided herein.
 - (2) Grantee agrees to obtain a permit as required by the City prior to removing, abandoning, relocating or reconstructing, if necessary, any portion of its facilities. Notwithstanding the foregoing, the City understands and acknowledges there may

be instances when Grantee is required to make repairs, in compliance with federal or state laws, that are of an emergency nature. Grantee will notify the City prior to such repairs, if practicable, and will obtain the necessary permits in a reasonable time after notification to the City.

- (3) Fees paid through the permitting process are separate and in addition to any other fees included in the Franchise. Grantee, at the time of or prior to submitting construction plans, shall provide the City with a description of the type of Service to be provided by the Grantee in sufficient detail for the City to determine compliance with the Franchise and Applicable Laws.
- (4) The City may issue reasonable policy guidelines to all grantees to establish procedures for determining how to control issuance of engineering permits to multiple grantees for the use of the same Rights-of-Way for their facilities. Grantee shall cooperate with the City in establishing such policy and comply with the procedures established by the City Manager or his or her designee to coordinate the issuance of multiple engineering permits in the same Right-of-Way segments.
- (5) Grantee shall first obtain the written approval of the City prior to commencing any construction or reconstruction on the Rights-of-Way and public places of the City.
- (6) Failure to obtain permits or comply with permit requirements shall subject Grantee to all enforcement remedies available to the City under Applicable Laws or this Franchise.
- (7) Grantee shall meet with developers and be present at pre-construction meetings to ensure that the newly constructed Cable System facilities are installed in new developments within the City in a timely manner.
- (8) If requested by the City, Grantee shall hold an annual meeting with the City to coordinate construction plans of both parties for the upcoming year.

b. *Ongoing Construction.* Grantee shall notify the City at least thirty (30) days prior to the commencement of any construction in any Rights-of-Way. Grantee shall provide to the City a detailed site plan of any proposed construction or excavation. Grantee shall not open or disturb the surface of any Rights-of-Way or public place for any purpose without first having obtained a permit to do so in the manner provided by law. All excavation shall be coordinated with other utility excavation or construction so as to minimize disruption to the public. Any excavation shall be backfilled without delay and lawns, berms, gardens, shrubs, and flower beds returned and restored in as good a condition as before work involving such disturbance was done. Any excessive or loose dirt, gravel, mud or sand shall be removed from the property and deposited at an approved disposal site.

c. *Use of Existing Poles or Conduits.*

- (1) Grantee shall utilize existing and/or replacement poles, conduits and other facilities whenever commercially

reasonable and shall not construct or install any new, different or additional poles, conduits or other facilities on public property until the written approval of the City is obtained. No location or any pole or wire-holding structure of Grantee shall be a vested interest, and such poles or structures shall be removed or modified by Grantee at its own expense whenever the City determines that the public convenience would be enhanced thereby.

- (2) The facilities of Grantee shall be installed underground in those areas of the City where existing telephone and electric services are both underground at the time of construction by Grantee. In areas where either telephone or electric utility facilities are installed aerially at the time of System construction, Grantee may install its facilities aerially; however, at such time as the existing aerial facilities are placed underground, Grantee shall likewise place its facilities underground at its sole cost. If the City requires utilities to bury lines which are currently overhead, and the City financially participates in said undergrounding, then the City will consider providing the same cost sharing to the Grantee.
- (3) To the extent permitted under Grantee's pole attachment agreements, the City shall have the right to over-lash additional cable and related attachments to Grantee's System free of charge. Where such over-lashing is pursuant to a planned large-scale construction project, the City shall provide a minimum of ten (10) days advance notice to the Grantee. For all other over-lashing, the City shall provide notice that is reasonably practicable under the circumstances. The City's rights to over-lash facilities on Grantee's System shall be limited to City owned facilities which are to be used for noncommercial, governmental/educational applications.

d. *Minimum Interference.*

- (1) Grantee shall use its best efforts to give reasonable prior notice to any adjacent private property owners who will be negatively affected or impacted by Grantee's work in the Rights-of-Way.
- (2) All transmission and distribution structures, lines and equipment erected by Grantee shall be located so as to cause minimum interference with the unencumbered use of Rights-of-Way and other public places and minimum interference with the rights and reasonable convenience of property owners who adjoin any of the Rights-of-Way and public places.
- (3) Except as may be reasonably required to gain access to easements, Grantee shall provide advance notice to any private property owner and shall obtain authorization prior to commencing work on private property. The City acknowledges that it may be impractical to provide such notice with regard to work in an easement running along the back of a lot.

e. *Disturbance or Damage.* Any and all Rights-of-Way, or public or private property, which are disturbed or damaged during the construction, repair, replacement, relocation, operation, maintenance, expansion,

extension or reconstruction of the System shall be promptly and fully restored by Grantee, at its expense, to a condition as good as that prevailing prior to Grantee's work, as determined by the City. If Grantee shall fail to promptly perform the restoration required herein, after written request of the City and reasonable opportunity to satisfy that request, The City shall have the right to put the Rights-of-Way back into condition as good as that prevailing prior to Grantee's work. In the event the City determines that Grantee is responsible for such disturbance or damage, Grantee shall be obligated to fully reimburse the City for such restoration within thirty (30) days after its receipt of the City's invoice thereof.

f. *Temporary Relocation.*

(1) At any time during the period of the Franchise, Grantee shall, at its own expense, protect, support, temporarily disconnect, relocate or remove any of its property when, in the opinion of the City, (a) the same is required by reason of traffic conditions, public safety, Rights-of-Way vacation, freeway or Rights-of-Way construction, alteration to or establishment of any Rights-of-Way or any facility within the Rights-of-Way, sidewalk, or other public place, including but not limited to, installation of sewers, drains, waterlines, power lines, traffic signal lines or transportation facilities; or (b) a City project or activity makes disconnection, removal, or relocation necessary or less expensive for the City.

(2) Grantee shall, on request of any Person holding a permit to move a building, temporarily raise or lower its wires to permit the movement of such buildings. The expense of such temporary removal or raising or lowering of wires shall be paid by the Person requesting the same, and Grantee shall have the authority to require such payment in advance. Grantee shall be given not less than five (5) days advance notice to arrange such temporary wire alterations.

g. *Emergency.* Whenever, in case of fire or other emergency, it becomes necessary in the judgment of the City Manager or his delegates, to remove or damage any of Grantee's facilities, no charge shall be made by Grantee against the City for restoration, repair or damages.

h. *Tree Trimming.* Grantee shall comply with all applicable provisions of the Code of Ordinances of the City regarding the trimming of any trees on public property or in the Rights-of-Way.

i. *Protection of Facilities.* Nothing contained in this section shall relieve any Person from liability arising out of the failure to exercise reasonable care to avoid damaging Grantee's facilities while performing any work connected with grading, regrading or changing the line of any Rights-of-Way or public place or the construction or reconstruction of any sewer or water system.

j. *Installation Records.* Grantee shall keep accurate Installation records of the location of all facilities in the Rights-of-Way and public ways and furnish them to the City upon reasonable request. Grantee shall cooperate with the City to furnish such information in an electronic mapping format, if reasonably possible compatible with the then-

current City electronic mapping format. Upon completion of new or relocation construction of underground facilities in the Rights-of-Way and public ways, Grantee shall provide the City with Installation records in an electronic format, if reasonably possible, compatible with the then-current City electronic mapping format showing the location of the underground and above ground facilities.

k. *Locating Facilities.*

(1) If, during the design process for public improvements, the City discovers a potential conflict with proposed construction, Grantee shall either: (a) locate and, if necessary, expose its facilities in conflict or (b) use a location service under contract with the City to locate or expose its facilities. Grantee is obligated to furnish the location information in a timely manner, but in no case longer than thirty (30) days.

(2) The City reserves the prior and superior right to lay, construct, erect, install, use, operate, repair, replace, remove, relocate, regrade, widen, realign, or maintain any Rights-of-Way and public ways, aerial, surface, or subsurface improvement, including but not limited to water mains, traffic control conduits, cable and devices, sanitary or storm sewers, subways, tunnels, bridges, viaducts, or any other public construction within the Rights-of-Way of City limits.

l. *City's Rights.* Subject to Applicable Laws, when the City uses its prior superior right to the Rights-of-Way and public ways, Grantee shall move its property that is located in the Rights-of-Way and public ways, at its own cost, to such a location as the City directs. Nothing in this Franchise shall be construed to prevent the City from constructing, maintaining, repairing or relocating sewers; grading, paving, maintaining, repairing, relocating and/or altering any Right-of-Way; constructing, laying down, repairing, maintaining or relocating any water mains; or constructing, maintaining, relocating, or repairing any sidewalk or other public work.

m. *Relocation Delays.*

(1) Subject to Grantee's compliance with Section 3. l. above, if Grantee's relocation effort so delays construction of a public project causing the City to be liable for delay damages, Grantee shall reimburse the City for those damages attributable to the delay created by Grantee. In the event Grantee should dispute the amount of damages attributable to Grantee, the matter shall be referred to the City Engineer for a decision. In the event that Grantee disagrees with the City Engineer's decision, the matter shall be submitted to the City Manager for determination, whose decision shall be final and binding upon Grantee as a matter of City review, but nothing herein waives any right of appeal to the courts.

(2) In the event the City becomes aware of a potential delay involving Grantee's facilities, the City shall promptly notify Grantee of this potential delay.

n. *Interference with City Facilities.* The Installation, use and maintenance of the Grantee's facilities within the Rights-of-Way and public ways

authorized herein shall be in such a manner as not to interfere with the City's placement, construction, use and maintenance of its Rights-of-Way and public ways, Rights-of-Way lighting, water pipes, drains, sewers, traffic signal systems or other City systems that have been, or may be, installed, maintained, used or authorized by the City.

o. Interference with Utility Facilities.

(1) Grantee agrees not to install, maintain or use any of its facilities in such a manner as to damage or interfere with any existing facilities of another utility located within the Rights-of-Way and public ways of the City and agrees to relocate its facilities, if necessary, to accommodate City facility relocation.

(2) Nothing in this section is meant to limit any rights Grantee may have under Applicable Laws to be compensated for the cost of relocating its facilities from the utility that is requesting the relocation.

p. Co-location. To maximize public and employee safety, to minimize visual clutter of aerial plant, and to minimize the amount of trenching and excavation in and along City Rights-of-Way and sidewalks for underground plant, Grantee shall make every commercially reasonable effort to co-locate compatible facilities within the Rights-of-Way subject to the engineering requirements of the owners of utility poles and other facilities.

q. Safety Requirements.

(1) Grantee shall at all times employ ordinary and reasonable care and shall install and maintain in use nothing less than commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage or injuries.

(2) Grantee shall install and maintain its System and other equipment in accordance with the City's codes and the requirements of the National Electric Safety Code and all other applicable FCC, state and local regulations, and in such manner that they will not interfere with City communications technology related to health, safety and welfare of the residents.

(3) Cable System structures, and lines, equipment and connections in, over, under and upon the Rights-of-Way of the City, wherever situated or located, shall at all times be kept and maintained in good condition, order, and repair so that the same shall not menace or endanger the life or property of the City or any Person.

Section 4. Design Provisions.

a. System Construction: Minimum Channel Capacity.

(1) Grantee shall operate and maintain for the term of this Franchise a System providing a minimum of 750 MHz capacity.

(2) Grantee shall operate and maintain a System capable of providing non- video services such as high-speed data

transmission, Internet access, and Other Programming Services.

- (3) All final programming decisions remain within the discretion of Grantee in accordance with this Franchise, provided that Grantee notifies the City and Subscribers in writing thirty (30) days prior to any Channel additions, deletions, or realignments, and further subject to Grantee's signal carriage obligations hereunder and pursuant to 47 U.S.C. § 531-536, and further subject to the City's rights pursuant to 47 U.S.C. § 545. Location and relocation of the PEG Channels shall be governed by Section 6.
- b. *Initial Service Area.* The Initial Service Area made part of this Franchise is identified in Exhibit B. The time for construction of the System and activation of Cable Service to the Initial Service Area is further described in Exhibit B.
- c. *System Construction.* On or about thirty (30) days prior to any system construction, Grantee shall provide affected Subscribers with a letter notifying them of same, which letter shall include Grantee's telephone number that Subscribers can use to contact Grantee with any questions or concerns they may have. No less than forty-eight (48) hours before construction, Grantee shall provide to all affected houses written notification regarding Grantee's construction schedule which will also include the scope of work to be performed and Grantee's telephone number. Nothing shall prohibit Grantee from consolidating the notices required in this subparagraph.
- d. *Interruption of Service.* Grantee shall interrupt Service only for good cause and for the shortest time possible. Such interruption shall occur during periods of minimum use of the System. If Service is interrupted for a total period of more than twenty-four (24) continuous hours in any thirty (30) day period, Subscribers shall be credited pro rata for such interruption.
- e. *Emergency Alert Capability.* Grantee shall immediately provide the System capability to allow the City to transmit from the Emergency Operation Center, 911 Communications Parkway, or other said location at the City's discretion, an emergency alert signal to all participating Subscribers, in the form of an audio message on all Channels within the City simultaneously in the event of disaster or public emergency. The City shall be solely responsible for the content of any message which the City generates on the emergency alert system. Grantee shall only be responsible for the proper functioning of the emergency alert system. In addition, Grantee shall at all times comply with the Emergency Alert System standards pursuant to Title 47, Section 11, Subparts A-E of the Code of Federal Regulations, as may be amended or modified from time to time.
- f. *Technical Standards.* The technical standards used in the operation of the System shall comply, at minimum, with the technical standards promulgated by the FCC relating to Cable Systems pursuant to Title 47, Section 76, Subpart K of the Code of Federal Regulations, as may be amended or modified from time to time, which regulations are expressly incorporated herein by reference.

g. Special Testing.

- (1) The City shall have the right to inspect and test all construction or Installation work performed pursuant to the provisions of the Franchise. In addition, the City may require special testing of a location or locations within the System as desired at any time during the term of this Franchise. Demand for such special tests may be made on the basis of complaints received or other evidence indicating an unresolved controversy or noncompliance or for routine verification of Grantee's compliance with FCC technical standards. The City shall endeavor to so arrange its request for such special testing so as to minimize hardship or inconvenience to Grantee or to the Subscribers caused by such testing.
 - (2) Before ordering such tests, Grantee shall be afforded thirty (30) days advance written notice. The City shall meet with Grantee prior to requiring special tests to discuss the need for such and, if possible, visually inspect those locations which may be the focus of concern. If, after such meetings and inspections, the City wishes to require special tests and the thirty (30) days have elapsed, the tests shall be conducted by Grantee at Grantee's expense and may be observed by a qualified engineer selected by the City. Grantee shall participate and cooperate in such testing and shall not assess the City or Subscribers any additional fees or costs associated with time or labor Grantee may incur as a result of its participation in such testing.
- h. FCC Reports.* The results of any tests required to be filed by Grantee with the FCC shall upon request of the City also be filed with City or its designee within ten (10) days of the date of request.
- i. Interconnection.* At the request of the City, Grantee shall interconnect with adjacent Cable Systems to facilitate the two-way distribution of PEG Access Channels and/or Institutional Network. All decisions regarding whether to interconnect and the terms and conditions of any such interconnection shall be a matter of agreement between the cable operators involved. If the cable operators are unable to reach agreement the City shall, in its sole discretion, have authority to impose reasonable interconnection requirements and the costs of such interconnection shall be proportionately divided between the cable operators.
- j. Annexation.* Upon the annexation of any additional land area by the City, if the annexed area is not currently served by a cable operator it will be subject to the other provisions of this Section 4. If the annexed area is served by a cable operator, Grantee has the option to extend its Cable System to the newly annexed area if Grantee determines that it is economically feasible to do so. Upon the annexation of any additional land area by the City, the annexed area shall be subject to all the terms of this Franchise upon sixty (60) days of written notification by the City to Grantee. A cable operator other than Grantee whose Cable System already passes homes in an annexed area shall not extend its Cable System beyond those homes which it passes at the time the annexation occurs unless it otherwise holds or obtains a franchise from the City.

- k. *Build-Out and Line Extension.* Grantee shall construct and operate its Cable System so as to provide Cable Service to all parts of the Franchise area as provided in this Franchise and having a density equivalent of thirty (30) residential units per cable mile of System, as measured from the nearest tap on the Cable System. Grantee may enter into cost sharing arrangements with City residents in order to extend cable service to those areas that do not meet the density standards. Upon request, Grantee shall provide to the City a good faith estimate of its cost and proposed schedule for extension and activation of its System. Notwithstanding anything herein to the contrary, Grantee shall only be required to extend its Services or its System if the density requirement above is met and, upon a request for service by either (1) an individual potential subscriber located within one hundred twenty-five (125) feet of Grantee's distribution cable or, (2) from a platted development which is located within 1,230 cable-bearing strand feet (one-quarter cable mile) of Grantee's trunk facilities. Grantee shall extend its Cable System to an individual potential subscriber as provided in sub-section (1) above at no cost for extension, other than the usual connection fees. The costs for commercial installations, developments and multi-family dwelling units will be negotiated between Grantee and the potential Customer, landlord or developer. No extension of the System shall be required if such extension is commercially impracticable. Nothing in this section shall be construed as a limitation on the rights of Grantee to voluntarily extend its System within the city limits of the City, absent the foregoing distance and density conditions. The City encourages Grantee to extend its cable Systems as quickly as practicable and without regard to whether a formal request for service has been made in any particular area. Notwithstanding anything to the contrary, Grantee shall not be required to construct its network or provide any services where there are two alternative providers of Cable Services to potential customers.
- l. *Lockout Device.* Upon the request of a Subscriber, Grantee shall make available by sale or lease a Lockout Device allowing Channels on the System to be blocked.

Section 5. Service Provisions.

- a. *Regulation of Service Rates.* The City may regulate rates for the provision of Cable Service, equipment, or any other communications service provided over the System in accordance with applicable federal law, in particular 47 C.F.R. Part 76 subpart N. In the event the City has the legal authority to regulate rates and chooses to regulate rates it shall, in accordance with 47 C.F.R. § 76.910, obtain certification from the FCC, if applicable. The City shall follow all applicable FCC rate regulations and shall ensure that appropriate personnel are in place to administer such regulations. The City reserves the right to regulate rates for any future Services to the extent permitted by law.
- b. *Non-Standard Installations.* Grantee shall install and provide Cable Service to any Person requesting other than a Standard Installation provided that said Cable Service can meet FCC technical specifications and all payment and policy obligations are met. In such case, Grantee may charge for the incremental increase in material and labor costs incurred beyond the Standard Installation.
- c. *Sales Procedures.* Grantee shall not exercise deceptive sales procedures when marketing any of its Services within the City. Grantee will provide a potential Subscriber with access to information

on all levels of Service available, including the lowest priced Basic Cable Service tier and free Service tiers. Grantee shall have the right to market door-to-door during reasonable hours consistent with local ordinances and regulation.

- d. *Consumer Protection and Service Standards.* Grantee shall maintain a convenient local customer service and bill payment location in the City for receiving Subscriber payments, handling billing questions, equipment replacement and customer service information. The Grantee shall comply with the standards and requirements for customer service set forth below and shall comply with all applicable regulations relating to customer service obligations, including any amendments to 47 C.F.R. § 76.309 during the term of this Franchise. The City agrees that a local customer service and bill payment location shall not be required until the earlier of twenty four months from date of this Agreement or when the Grantee has 5,000 subscribers.

(1) Cable System office hours and telephone availability.

- (a) Grantee will maintain a local, toll-free or collect call telephone access line which will be available to its Subscribers twenty-four (24) hours a day, seven (7) days a week.
- (i) Trained Grantee representatives will be available to respond to customer telephone inquiries during Normal Business Hours.
- (ii) After Normal Business Hours, the access line may be answered by a service or an automated response system, including an answering machine. Inquiries received after Normal Business Hours must be responded to by a trained Grantee Representative on the next business day.
- (b) Under Normal Operating Conditions, telephone answer time by a customer representative, including wait time, shall not exceed thirty (30) seconds when the connection is made. If the call needs to be transferred, transfer time shall not exceed thirty (30) seconds. These standards shall be met no less than ninety percent (90%) of the time under Normal Operating Conditions, measured on a quarterly basis.
- (c) Grantee shall not be required to acquire equipment or perform surveys to measure compliance with the telephone answering standards above unless an historical record of complaints indicates a clear failure to comply.
- (d) Under Normal Operating Conditions, the customer will receive a busy signal less than three percent (3%) of the time.

(2) Installations, Outages and Service Calls. Under Normal Operating Conditions, each of the following standards will be met no less than ninety-five percent (95%) of the time

measured on a quarterly basis.

- (a) Standard Installations will be performed within seven (7) business days after an order has been placed. "Standard" Installations are those that are located up to one hundred fifty (150) feet from the existing distribution system.
- (b) Excluding conditions beyond the control of Grantee, Grantee will begin working on "Service Interruptions" promptly and in no event later than twenty-four (24) hours after the interruption becomes known. Grantee must begin actions to correct other Service problems the next business day after notification of the Service problem.
- (c) The "appointment window" alternatives for Installations, Service calls, and other Installation activities will be either a specific time or, at maximum, a four (4) hour time block during Normal Business Hours. (Grantee may schedule Service calls and other Installation activities outside of Normal Business Hours for the express convenience of the customer.)
- (d) Grantee may not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment.
- (e) If Grantee's representative is running late for an appointment with a customer and will not be able to keep the appointment as scheduled, Grantee shall contact the customer and the appointment will be rescheduled, as necessary, at a time which is convenient for the customer.

(3) Communications between Grantee and Subscribers.

(a) Notifications to Subscribers:

- (i) Grantee will provide written information on each of the following areas at the time of Installation of Service, at least annually to all Subscribers, and at any time upon request:
 - (A) Products and Services offered;
 - (B) Prices and options for programming Services and conditions of subscription to programming and other Services;
 - (C) Installation and Service maintenance policies;
 - (D) Instructions on how to use the Cable Service;

(E) Channel positions of programming carried on the System; and

(F) Billing and complaint procedures, including the address and telephone number of Grantee's business office within the City.

(ii) Grantee shall notify Subscriber of any changes in rates, programming Services or Channel positions as soon as possible in writing. Notice must be given to Subscribers a minimum of thirty (30) days in advance of such changes if the change is within the control of the Grantee. In addition, the Grantee shall notify Subscribers thirty (30) days in advance of any significant changes in the other information required by Section 5. d.(3)(a)(i).

(iii) In addition to the requirement of subparagraph (ii) of this section regarding advance notification to Subscribers of any changes in rates, programming services or Channel positions, Grantee shall give thirty (30) days written notice to both Subscribers and the City before implementing any rate or Service change. Such notice shall state the precise amount of any rate change and briefly explain in readily understandable fashion the cause of the rate change (e.g., inflation, change in external costs or the addition/deletion of Channels). When the change involves the addition or deletion of Channels, each Channel added or deleted must be separately identified. For purposes of the carriage of digital broadcast signals, the Grantee need only identify for Subscribers, the television signal added and not whether that signal may be multiplexed during certain dayparts.

(iv) To the extent Grantee is required to provide notice of Service and rate changes to Subscribers, the Grantee may provide such notice using any reasonable written means at its sole discretion.

(v) Notwithstanding any other provision of this section, Grantee shall not be required to provide prior notice of any rate change that is the result of a regulatory fee, Franchise Fee, or any other fee, tax, assessment, or charge of any kind imposed by any federal agency, state, or City on the transaction between the Grantee and the Subscriber.

(b) Billing:

(i) Consistent with 47 C.F.R. § 76.1619, bills will be

clear, concise and understandable. Bills must be fully itemized, with itemizations including, but not limited to, Basic Cable Service and premium Service charges and equipment charges. Bills will also clearly delineate all activity during the billing period, including optional charges, rebates and credits.

- (ii) In case of a billing dispute, the Grantee must respond to a written complaint from a Subscriber within thirty (30) days.
 - (c) Refunds: Refund checks will be issued promptly, but no later than either:
 - (i) The Subscriber's next billing cycle following resolution of the request or thirty (30) days, whichever is earlier, or
 - (ii) The return of the equipment supplied by Grantee if Service is terminated.
 - (d) Credits: Credits for Service will be issued no later than the Subscriber's next billing cycle following the determination that a credit is warranted.
 - (e) Grantee shall provide the City with a quarterly compliance report Specific to the System in the Service Area, which report information shall describe in detail Grantee's compliance with each and every term and provision of this section.
- e. *Subscriber Contracts.* Grantee shall make available to the City, upon the City's request, any standard form residential Subscriber contract utilized by Grantee. If no such written contract exists, Grantee shall file with the City a document completely and concisely stating the length and terms of the Subscriber contract offered to customers. The length and terms of any Subscriber contract(s) shall be available for public inspection during Normal Business Hours. A list of Grantee's current Subscriber rates and charges for Cable Service shall be maintained on file with the City and shall be available for public inspection.
- f. *Refund Policy.* If a Subscriber's Cable Service is interrupted or discontinued without cause, for twenty-four (24) or more consecutive hours, the Grantee shall, upon request by Subscriber, credit such Subscriber pro rata for such interruption. For this purpose, every month will be assumed to have thirty (30) days.
- g. *Late Fees.* Grantee shall comply with all applicable state and federal laws with respect to any assessment, charge, cost, fee or sum, however characterized, that the Grantee imposes upon a Subscriber for late payment of a bill. The City reserves the right to enforce Grantee's compliance with all Applicable Laws to the maximum extent legally permissible.
- h. *Local Office Policy.*

(1) Grantee shall either:

- a. Maintain an office at a location convenient for its subscribers for Receiving Subscriber inquiries, bill payments, and equipment transfers, as described in Section 5 paragraph d; or
- b. It shall, upon Subscriber request, arrange for the pickup and/or replacement of converters or other equipment at no cost at Subscriber's address or by a satisfactory equivalent (such as the provision of a pre-paid shipping envelope/box). In addition the Grantee shall maintain at least one drop box location within the Service Area for receiving Subscriber payments that is available twenty-four (24) hours a day seven days a week. Payments at a Grantee's drop box location(s) shall be deemed received on the date the payments are picked up by the Grantee which shall occur no less than twenty-four (24) hours after each and every due date for Subscriber's bills.

Section 6. Access Channel(s) Provisions and Public Buildings Service.

- a. *PEG Access – General Provisions.* Grantee shall provide PEG access channels, funding, facilities and equipment with carriage of programming on its System available to all subscribers of Cable Service. Initially one (1) Channel will be provided for those purposes designated as channel 16. Additional PEG access channels will be made available by Grantee at the request of the City within six (6) months after such request, if the initial PEG access channel is programmed with non-repeat programming for eighty percent (80%) of the time between 8:00 a.m. and 8:00 p.m. for five (5) days per week during a sixty (60) consecutive day period.

- b. *Minimum PEG Access Requirements.*

(1) Grantee acknowledges that it will be the operator and manager of PEG Access requirements, functions, and responsibilities related to PEG Access Channels and programming on its System, in coordination with City, including control as to the content, scheduling, administration, and all other programming aspects of PEG Access Channels. Grantee shall not exercise any editorial control over PEG Access Channel programming, except as otherwise required or permitted by law.

- (a) Reservation, dedication, and use of one PEG Access Channel carried as part of Basic Cable Service. In the event Grantee fully converts its System to digital, the City may direct that PEG Access Channels shall be carried on Basic Cable or such other tier of services as agreed to.

- (b) No charges may be assessed by Grantee for Channel time or playback of pre-recorded programming on the

pecially designated PEG Access Channels. Each user of the PEG Access Channels shall be responsible for the programming content and pay their own costs of programming.

(c) Grantee shall comply with the City's reasonable requests to construct facilities to the origination points of the PEG Access Channel programming ("Origination Points"). The Grantee shall, at a minimum, provide return capability to its System to enable live program origination from one of the Origination Points on the PEG Access Channels. The cost of construction and equipment to each Origination Point up to the demarcation point of approximately twelve (12) inches outside of the designated Origination Point (Demark Point) shall be borne by Grantee. The Origination Point locations currently are Auburn High School, located at 405 South Dean Road; and the Douglas J. Watson Municipal Complex, located at 171 North Ross Street. The City will work in good faith with Grantee to allow origination at any mutually agreed upon location that minimizes the cost to Grantee to reach one of the Origination Points. If the Grantee uses any City facility to reduce the costs of such origination, Grantee shall not use such City facilities for any commercial purpose.

(d) Grantee will include PEG Access Channels on its program guide channels. Any content that may be required for such listing will be the responsibility of the City, based on the reasonable requirements for the furnishing of such content to Grantee.

- c. *Same Channel Designation.* Grantee, by acceptance of a Franchise, agrees that on the date of adoption of its Franchise, the PEG Access Channels on the Basic Cable Service activated and used by the City will have the same Channel designations as other grantees.
- d. *City Approval Required to Change PEG Channel Designation.* Unless permitted by Applicable Laws, Grantee may not change PEG Access Channel designations on the Basic Cable Service without City approval during the term of a Franchise, except to the extent that such Channel designations are changed by other grantees as approved by the City; provided, however, that such consent shall not be unreasonably withheld and shall be deemed granted unless the City Council acts to deny the request within ninety (90) days of receipt.
- e. *Interconnection -- Access Program Sharing.* Grantee shall in good faith and with reasonable efforts ensure that the transmission of Public, Educational, and Governmental Access programming and channel designations for PEG Access Channels between Cable Systems within the City be accomplished in a reasonable and cost-effective manner through interconnection. The City may exercise

all lawful authority it has pursuant to Applicable Laws to assure that the goals of this paragraph are accomplished if the Grantees are unable to reach an agreement. Grantee shall be obligated to participate in good faith with the City to accomplish the goals of this paragraph.

- f. *Use of PEG Access Channels Must Conform with Law and Rules Enacted.* The use of PEG Access Channels by City shall be in accordance with and subject to the rules and procedures adopted by the City and as authorized under the *Cable Act*.
- g. *PEG Access Channels.* Grantee shall include PEG Access Channel(s) in all Cable Services packages.
- h. *Non-commercial Use of PEG Access Channels.* PEG Access Channels shall be for noncommercial, noncompetitive use, except for programming sponsorship acknowledgements or for credit courses offered by Alabama accredited educational institutions located in the City.
- i. *PEG Access Channels to Meet FCC Technical Standards.* Grantee shall ensure that all Access Channels meet the technical standards of the FCC; provided, however, Grantee shall not be responsible for defects, flaws, or other impairments in the PEG Access programming delivered to Grantee and shall only be responsible for maintenance up to the point twelve (12) inches beyond where the connection enters the building ("Demark Point") location agreed to with City.
- j. *City Notification of Changes to Cable System.* If Grantee makes changes to its Cable System that necessitate modifications to PEG Access signal transmission Facilities and equipment (including but not limited to the upstream paths), Grantee shall provide reasonable advance notice of such changes to the City and shall provide, at Grantee's expense, any additional or modified headend Facilities necessary to implement such modifications within a reasonable period of time prior to the date that the system changes are to be made.
- k. *Digital Format.* The PEG Access Channels shall be made available in digital formats comparable to commercial offerings at the time a Grantee converts its system to all digital transmission.
- l. *Cable Service to Public Buildings.* Grantee, upon request, shall provide without charge, installation of one (1) outlet and free Basic Cable to those administrative buildings owned and occupied by the City and K-12 public and private school(s) that are within two hundred (200) feet of its Cable System. The City shall take reasonable precautions to prevent any use of Grantee's Cable System in any manner that results in the inappropriate use thereof or any loss or damage to the Cable System. The City shall hold Grantee harmless from any and all liability or claims arising out of the provision and use of Cable Service required by this subsection. Grantee shall not be required to provide an outlet to such buildings where a nonstandard installation is required, unless the City, county, or building owner/occupant agrees to pay the incremental cost of any necessary extension and/or nonstandard installation. If additional outlets of

Basic Cable are provided to such buildings, the building owner/occupant shall pay the actual cost associated therewith. See Exhibit C, Service to Public Buildings, which listing may from time to time be amended by the City.

Section 7. Operation and Administration Provisions.

- a. *Administration of Franchise.* The City Manager or other designee shall have continuing regulatory jurisdiction and supervision over the System and the Grantee's operation under the Franchise; provided, however, that the City Council shall retain the sole authority to take enforcement action pursuant to this Franchise.
- b. *Franchise Fee.*
 - (1) During the term of the Franchise, Grantee shall pay quarterly to the City a Franchise Fee in an amount equal to five percent (5%) of its quarterly Gross Revenues, or such other amounts as are subsequently permitted by federal statute.
 - (2) Any payments due under this provision shall be payable quarterly. The payment shall be made within forty-five (45) days of the end of each of Grantee's fiscal quarters together with a report showing the basis for the computation. In the event that a Franchise Fee payment or other sum due is not received by the City on or before the date due, or is underpaid, Grantee shall pay in addition to the payment, or sum due, interest from the due date at an annual rate equal to prime plus two percent (2%).
 - (3) All amounts paid shall be subject to audit and recomputation by the City and acceptance of any payment shall not be construed as an accord that the amount paid is in fact the correct amount. In the event the City should conduct a review of Grantee's books and records pursuant to Section 7. e. of this Franchise and such review indicates a Franchise Fee underpayment of five percent (5%) or more, the Grantee shall assume all reasonable documented costs of such audit, and pay same upon demand by the City.
 - (4) Notwithstanding anything to the contrary in any other provision of this Ordinance, the City and Grantee agree that the City, by the granting of this Franchise, has not waived any right, and reserves whatever right it may have under Applicable Law, to impose, through adoption of an ordinance, a lawful franchise fee on Grantee's use of the City's Rights of Way to provide any service other than Cable Service. The City and Grantee likewise agree that Grantee, by accepting the grant of this Franchise, does not waive, and reserves whatever right it may have under the Cable Act or other federal law, to claim that the Cable Act or other federal law preempts the City's ability to impose a franchise fee on Grantee's use of the Rights of Way to provide any service other than Cable Service.
- c. *Discounted Rates.*
 - (1) The City and Grantee acknowledge that Grantee offers non-cable services to its customers over its Systems and that City

receives Franchise Fees based upon Grantee's Gross Revenue generated by Cable Service. The City has expressed a concern that Grantee may unfairly discount Cable Service to reduce or eliminate the payment of Franchise Fees to the City. Grantee agrees to price Cable Services in response to consumer demand, competitive responses or other valid business purposes and that Grantee shall not discount Cable Services unfairly to reduce or eliminate Franchise Fees. The City and Grantee acknowledge that the City does not have jurisdiction to regulate or direct Grantee's price for Cable Service.

- (2) In no event shall Grantee be permitted to evade or reduce applicable franchise fee payments required to be made to the City due to discounted bundled services.

d. Franchise Fees are not Taxes.

- (1) Grantee acknowledges and agrees that the Franchise Fees payable by Grantee to the City pursuant to this section shall take precedence over all other payments, contributions, services, equipment, facilities, support, resources or other activities to be provided or performed by Grantee with regard to the City pursuant to this Franchise and that the Franchise Fees provided for in this section of this Franchise shall not be deemed to be in the nature of a tax, and shall be in addition to any and all taxes of general applicability and other fees and charges which Grantee shall be required to pay to the City and/or to any other governmental authority, all of which shall be separate and distinct obligations of Grantee.
- (2) Grantee shall not apply or seek to apply or make any claim that all or any part of the Franchise Fees or other payments or contributions to be made by Grantee to the City pursuant to this Franchise shall be deducted from or credited or offset against any taxes, fees or assessments or general applicability levied or imposed by the City or any other governmental authority, including any such tax, fee or assessment imposed on both utilities and cable operators or their services.
- (3) Grantee shall not apply or seek to apply all or any part of any taxes, fees or assessments or general applicability levied or imposed by the City or any other governmental authority (including any such tax, fee or assessment imposed on both utilities and cable operators or their services) as a deduction or other credit from or against any of the Franchise Fees or other payments or contributions to be paid or made pursuant by Grantee to the City to this Franchise which shall be deemed to be separate and distinct obligations of Grantee.

- e. *Access to Records.* The City shall have the right to inspect, upon reasonable notice and during Normal Business Hours, or require Grantee to provide within a reasonable time copies of any records maintained by Grantee which relate to System operations including specifically Grantee's accounting and financial records. The City acknowledges that some of the records which may be provided by Grantee may be classified as confidential and therefore may subject Grantee to competitive disadvantage if made public. The City shall therefore maintain the confidentiality of any and all records provided

to it by Grantee which are not required to be made public pursuant to Applicable Laws.

f. *Reports and Maps to be Filed with City.*

- (1) Grantee shall file with the City, at the time of payment of the Franchise Fee, a report of all Gross Revenues.
- (2) If required by the City, Grantee shall use commercially reasonable efforts to provide the City with a written or computer-stored record of all service calls and interruptions or degradation of Service experienced for the preceding two (2) years, provided that such complaints result in or require a service call, subject to the Subscriber's right of privacy.
- (3) The City and Grantee shall mutually agree, at the times and in the form prescribed, such other reasonable reports with respect
- (4) to Grantee's operations pursuant to this Franchise.

g. *Periodic Evaluation.*

- (1) The City may require evaluation sessions at any time during the term of this Franchise, upon fifteen (15) days written notice to Grantee.
- (2) Topics which may be discussed at any evaluation session may include, but are not limited to, application of new technologies, System performance, programming offered, access Channels, facilities and support, municipal uses of cable, Subscriber rates, customer complaints, amendments to this Franchise, judicial rulings, FCC rulings, line extension policies and any other topics the City deems relevant.
- (3) As part of any periodic evaluation proceeding the City shall have the right to visit and/or inspect the Grantee's headend facility, customer service center and any other facilities of Grantee whether or not located in the City to the extent such facilities are in any way related to Grantee's ability to provide Cable Services to the City.
- (4) As a result of a periodic review or evaluation session, upon notification from the City, Grantee shall meet with the City and undertake good faith efforts to reach agreement on changes and modifications to the terms and conditions of the Franchise which are both economically and technically feasible as measured over the remaining life of the Franchise.

Section 8. General Financial and Insurance Provisions.

a. *Letter of Credit.*

- (1) In the event that the City has reason to believe that the Grantee has defaulted in the performance of any provision of this Franchise, except as excused by force majeure, the City shall notify the Grantee in writing, by certified mail, of the provision or provisions of which the City believes Grantee to be in default and the details relating thereto ("Alleged Default Notice").

- (2) The Grantee shall have thirty (30) days from the receipt of an Alleged Default Notice to:
- (a) Respond to the City in writing, contesting the City's assertion of default and providing such information or documentation as may be necessary to support the Grantee's position; or
 - (b) Cure any such default. The time for Grantee to correct any violation or liability shall be extended by the City if the necessary action to correct such violation or liability is of such a nature or character as to require more than thirty (30) days within which to perform, provided Grantee provides written notice that it requires more than thirty (30) days to correct such violations or liability, commences the corrective action within the thirty (30) day period and thereafter uses reasonable diligence to correct the violation or liability.
- (3) In the event that the City finds that Grantee failed to respond to such an Alleged Default Notice to cure the default or to take reasonable steps to cure the default, the City shall promptly schedule a public hearing to consider that matter. The City shall provide written notice at least fourteen (14) days prior to the date of the hearing. The Grantee shall be provided reasonable opportunity to offer evidence and be heard at such public hearing.
- (4) In the event that the City, after public hearing, determines that a continuing state of default exists and that its cure is unlikely or untimely, the City may determine to pursue one (1) of the following:
- (a) Assess liquidated damages in accordance with the schedule set forth in Section 8. b. below;
 - (b) Determine the amount of actual damages to the City of the Default and draw upon all or any appropriate part of the letter of credit provided herein;
 - (c) Seek specific performance of any provision in this Franchise which reasonably lends itself to such remedy, as an alternative to damages;
 - (d) Pursue a separate action for damages in a court of competent jurisdiction;
 - (e) Pursue the procedures for revocation of the Franchise under Section 9. b. herein; or
 - (f) Invoke any other lawful remedy available to the City.
- (5) If the City determines that a default exists after a public hearing, the Grantee shall have the right to a review of such decision in any court of competent jurisdiction.

b. Liquidated Damages.

- (1) For the violation of any of the following provisions of this Franchise, liquidated damages shall be paid by the Grantee to the City, subject to the due process provisions of Section 8. a. above. Any such liquidated damages shall be assessed as of the date the Grantee received the Alleged Default Notice.
 - (a) For failure to provide documents, reports, maps or information required by the terms of this Franchise, one hundred dollars (\$100) for each day that such failure occurs or continues.
 - (b) For failure to provide the Cable Services that Grantee has agreed to provide, including the requirements to maintain and operate the Cable System in accordance with Section 4 herein, one hundred dollars (\$100) per day, for each day that such failure occurs or continues.
 - (c) For failure to comply with Section 6 regarding PEG Channels, one hundred fifty dollars (\$150) per day for each day that such violation exists.
 - (d) For failure to materially comply with Customer Service Standards set forth in Section 5 herein, one hundred dollars (\$100) per day for each day the violation continues, except where compliance is measured quarterly, in which case liquidated damages shall be as follows: (a) Franchisee shall be liable for liquidated damages in the amount of two thousand dollars (\$2,000) for the first offense for each quarter in which such standards were not met; four thousand dollars (\$4,000) for the second offense for each quarter in which such standards were not met; and six thousand dollars (\$6,000) for the third offense for each quarter in which such standards were not met.
- (2) Each of the above-mentioned cases of non-compliance result in damage to the City, its residents, businesses and institutions, compensation for which will be difficult or impossible to ascertain. The Grantee agrees that the liquidated damages in the amounts set forth above are fair and reasonable compensation for such damage. The Grantee agrees that said foregoing amounts are liquidated damages, not a penalty or forfeiture, and are within one (1) or more exclusions to the term "Franchise Fee" provided by Section 622(g)(2)(A)-(D) of the Cable Act.
- (3) Payment of liquidated damages mandated by the City in accordance with the terms of this Franchise shall be considered a cure and full and final resolution of the alleged violation for the time period specified and shall not thereafter be considered, for any purpose, as an event of noncompliance for such specified period. Nothing herein shall prevent the City from initiating another violation proceeding pursuant to the terms of this Franchise in the event another alleged violation of such provision of the Franchise should arise.

m. *Liability Insurance.*

(1) Upon the effective date, Grantee shall, at its sole expense take out and maintain during the term of this Franchise commercial general liability insurance with a company licensed to do business in the State of Alabama with a rating by A.M. Best & Co. of not less than "B" that shall protect the Grantee, the City and its officials, officers, directors, employees and agents from claims which may arise from operations under this Franchise, whether such operations be by the Grantee, its officials, officers, directors, employees and agents or any subcontractors of Grantee. This liability insurance shall include, but shall not be limited to, protection against claims arising from bodily and personal injury and damage to property, resulting from Grantee's vehicles, products and operations. Grantee shall maintain, throughout the term of the Franchise, liability insurance insuring Grantee and the City in the minimum amounts of:

- (a) Three million dollars (\$3,000,000) for bodily injury or death to any one (1) Person;
- (b) Three million dollars (\$3,000,000) for bodily injury or death resulting from any one accident;
- (c) Five million dollars (\$5,000,000) in the form of an umbrella policy.

(2) The following endorsements shall be attached to the liability policy:

- (a) The policy shall provide coverage on an "occurrence" basis.
- (b) The policy shall cover personal injury as well as bodily injury.
- (c) The policy shall cover blanket contractual liability subject to the standard universal exclusions of contractual liability included in the carrier's standard endorsement as to bodily injuries, personal injuries and property damage.
- (d) Broad form property damage liability shall be afforded.
- (e) The City shall be named as an additional insured on the policy.
- (f) An endorsement shall be provided which states that the coverage is primary insurance and that no other insurance maintained by the City will be called upon to contribute to a loss under this coverage.
- (g) Standard form of cross-liability shall be afforded.
- (h) An endorsement stating that the policy shall not be canceled without thirty (30) days advanced written

notice of such cancellation given to the City.

- (i) Statutory workers' compensation and employers' liability limits of \$1,000,000 each accident, \$1,000,000 disease – each employee and \$1,000,000 disease policy limit.

- (3) Grantee shall submit to the City documentation of the required insurance, including a copy of the policy showing that the City is an additional insured, as well as all properly executed endorsements.

n. Indemnification.

- (1) Grantee shall indemnify, defend and hold the City, its officers, boards, commissions, agents and employees (collectively the "Indemnified Parties") harmless from and against any and all lawsuits, claims, causes of action, actions, liabilities, demands, damages, judgments, settlements, disability, losses, expenses (including attorney's fees and disbursements of counsel) and costs of any nature that any of the Indemnified Parties may at any time suffer, sustain or incur arising out of, based upon or in any way connected with the Grantee's operations, the exercise of the Franchise, the breach of Grantee of its obligations under this Franchise and/or the activities of Grantee, its subcontractors, employees and agents hereunder. Grantee shall be solely responsible for and shall indemnify, defend and hold the Indemnified Parties harmless from and against any and all matters relative to payment of Grantee's employees, including compliance with Social Security and withholdings. Grantee shall not be required to provide indemnification to the City for programming cablecast over the PEG Access Channels administered by the City. Grantee shall not be required to indemnify the City for negligence or misconduct on the part of the City or its officials, boards, commissions, agents, or employees.
- (2) The indemnification obligations of Grantee set forth in this Franchise are not limited in any way by the amount or type of damages or compensation payable by or for Grantee under Workers' Compensation, disability or other employee benefit acts, acceptance of insurance certificates required under this Franchise or the terms, applicability or limitations of any insurance held by Grantee.
- (3) The City does not, and shall not, waive any rights against Grantee which it may have by reason of the indemnification provided for in this Franchise, because of the acceptance by the City, or the deposit with the City by Grantee, of any of the insurance policies described in this Franchise.
- (4) The indemnification of the City by Grantee provided for in this Franchise shall apply to all damages and claims for damages of any kind suffered by reason of any of the Grantee's operations referred to in this Franchise, regardless of whether or not such insurance policies shall have been determined to be applicable to any such damages or claims for damages.

o. Grantee's Insurance.

- (1) Grantee shall not commence any Cable System construction work or permit any subcontractor to commence work until all insurance required under this Franchise has been obtained. Said insurance shall be maintained in full force and effect until the expiration of this Franchise.
- (2) In order for the City to assert its rights to be indemnified, defended, and held harmless, the City must, with respect to each claim:
 - (a) Promptly notify Grantee in writing of any claim or legal Proceeding which gives rise to such right;
 - (b) Afford Grantee the opportunity to participate in and fully control Any compromise, settlement or other resolution or disposition of any claim or proceeding; and
 - (c) Fully cooperate with reasonable requests of Grantee, at Grantee's expense, in its participation in, and control, compromise, settlement or resolution or other disposition of such claim or proceeding subject to subparagraph (b) above.

Section 9. Sale, Abandonment, Transfer and Revocation of Franchise.

a. City's Right to Revoke.

- (1) In addition to all other rights which the City has pursuant to law or equity, the City reserves the right to commence proceedings to revoke, terminate or cancel this Franchise, and all rights and privileges pertaining thereto, if it is determined by the City that after notice and an opportunity to cure as reordered herein;
 - (a) Grantee has violated material provisions(s) of this Franchise and has not cured; or
 - (b) Grantee has attempted to evade any of the provisions of the Franchise; or
 - (c) Grantee has practiced fraud or deceit upon the City.
- (2) The City may revoke this Franchise without the hearing otherwise required herein if Grantee is adjudged a bankrupt.

b. Procedures for Revocation.

- (1) The City shall provide Grantee with written notice of a Franchise violation consistent with Section 8 of this Franchise and shall allow Grantee thirty (30) days subsequent to receipt of the notice in which to correct the violation or to provide adequate assurance of performance in compliance with the Franchise.
- (2) Should the City determine to proceed with a revocation

proceeding Grantee shall be provided the right to a public hearing affording due process before the City Council prior to the effective date of revocation. The City shall provide Grantee with written notice of its decision together with written findings of fact supplementing said decision.

(3) Only after the public hearing and upon written notice of the determination by the City to revoke the Franchise may Grantee appeal said decision with an appropriate state or federal court or agency.

(4) During the appeal period, the Franchise shall remain in full force and effect unless the term thereof sooner expires or unless continuation of the Franchise would endanger the health, safety and welfare of any Person or the public.

c. *Abandonment of Service.* Grantee may not abandon the System or any portion thereof without having first given three (3) months written notice to the City. Grantee may not abandon the System or any portion thereof without compensating the City for damages resulting from the abandonment, including all costs incident to removal of the System.

d. *Sale or Transfer of Franchise.*

(1) No sale or transfer of the Franchise, or sale, transfer, or fundamental corporate change of or in Grantee, including, but not limited to, a fundamental corporate change in Grantee's parent corporation or any entity having a controlling interest in Grantee, the sale of a controlling interest in the Grantee's assets, a merger including the merger of a subsidiary and parent entity, consolidation, or the creation of a subsidiary or affiliate entity, shall take place until a written request has been filed with the City requesting approval of the sale, transfer, or corporate change and such approval has been granted or deemed granted; provided, however, that said approval shall not be required where Grantee grants a security interest in its Franchise and/or assets to secure an indebtedness.

(2) Any sale, transfer, exchange or assignment of stock in Grantee, or Grantee's parent corporation or any other entity having a controlling interest in Grantee, so as to create a new controlling interest therein, shall be subject to the requirements of this Section 9.d. The term "controlling interest" as used herein is not limited to majority stock ownership but includes actual working control in whatever manner exercised. In any event, as used herein, a new "controlling interest" shall be deemed to be created upon the acquisition through any transaction or group of transactions of a legal or beneficial interest of fifteen percent (15%) or more by one (1) Person. Acquisition by one (1) Person of an interest of five percent (5%) or more in a single transaction shall require notice to the City.

(3) The Grantee shall file, in addition to all documents, forms and information required to be filed by Applicable Laws, the following:

(a) All contracts, agreements or other documents that constitute the proposed transaction and all exhibits,

attachments, or other documents referred to therein which are necessary to understand the terms thereof; and

(b) A list detailing all documents filed with any state or federal agency related to the transaction including, but not limited to the FCC, the FTC, the FEC, the SEC or applicable state departments and agencies. Upon request, Grantee shall provide the City with a complete copy of any such document; and

(c) Any other documents or information related to the transaction as may be specifically requested by the City.

(4) The City shall have such time as is permitted by Applicable Laws in which to review a transfer request.

(5) The Grantee shall reimburse the City for all the legal, administrative, and consulting costs and fees associated with the City's review of any request to transfer. Nothing herein shall prevent Grantee from negotiating partial or complete payment of such costs and fees by the transferee. Grantee may not itemize any such reimbursement on Subscriber bills but may recover such expenses in its Subscriber rates.

(6) In no event shall a sale, transfer, corporate change, or assignment of ownership or control pursuant to subparagraph (1) or (2) of this section be approved without the transferee becoming a signatory to this Franchise and assuming all rights and obligations thereunder, and assuming all other rights and obligations of the transferor to the City including, but not limited to, any adequate guarantees or other security instruments required by the City.

(7) In the event of any proposed sale, transfer, corporate change, or assignment pursuant to subparagraph (a) or (b) of this section, the City shall have the right to purchase the System.

(8) The City shall be deemed to have waived its right to purchase the System pursuant to this section only in the following circumstances:

(a) If the City does not indicate to Grantee in writing, within sixty (60) days of receipt of written notice of a proposed sale, transfer, corporate change, or assignment as contemplated in Section 9.4(g) above, its intention to exercise its right of purchase; or

(b) It approves the assignment or sale of the Franchise as provided within this section.

(9) No Franchise may be transferred if the City determines Grantee is in noncompliance with the Franchise unless an acceptable compliance program has been approved by the City. The approval of any transfer of ownership pursuant to this section shall not be deemed to waive any rights of the City to subsequently enforce noncompliance issues relating to this

Franchise even if such issues predated the approval, whether known or unknown to the City.

Section 10. Protection of Individual Rights.

- a. *Discriminatory Practices Prohibited.* Grantee shall not deny Service, deny access, or otherwise discriminate against Subscribers or general citizens based on race, color, religion, national origin, sex, age, status as to public assistance, affectional preference, or disability. Grantee shall comply at all times with all other Applicable Laws, and all executive and administrative orders relating to nondiscrimination.
- b. *Subscriber Privacy.*
 - (1) No signals may be transmitted from a Subscriber terminal for purposes of monitoring individual viewing patterns or practices without the express written permission of the Subscriber. Such written permission shall be for a limited period of time not to exceed one (1) year which may be renewed at the option of the Subscriber. No penalty shall be invoked for a Subscriber's failure to provide or renew such authorization. The authorization shall be revocable at any time by the Subscriber without penalty of any kind whatsoever. Such permission shall be required for each type or classification of activity planned for the purpose of monitoring individual viewing patterns or practices.
 - (2) No lists of the names and addresses of Subscribers or any lists that identify the viewing habits of Subscribers shall be sold or otherwise made available to any party other than to Grantee or its agents for Grantee's service business use or to the City for the purpose of Franchise administration, and also to the Subscriber subject of that information, unless Grantee has received specific written authorization from the Subscriber to make such data available. Such written permission shall be for a limited period of time not to exceed one (1) year which may be renewed at the option of the Subscriber. No penalty shall be invoked for a Subscriber's failure to provide or renew such authorization. The authorization shall be revocable at any time by the Subscriber without penalty of any kind whatsoever.
 - (3) Written permission from the Subscriber shall not be required for the conducting of system-wide or individually addressed electronic sweeps for the purpose of verifying System integrity or monitoring for the purpose of billing. Confidentiality of such information shall be subject to the provision set forth in subparagraph (2) of this section.
 - (4) Subscribers and non-Subscribers may request to be put on a list to prevent solicitations from Grantee.
 - (5) Grantee shall not include any mandatory arbitration provisions of any kind in any Subscriber contracts.

Section 11. Unauthorized Connections and Modifications.

a. *Unauthorized Connections or Modifications Prohibited.* It shall be unlawful for any firm, Person, group, company, corporation, or governmental body or agency, without the express consent of the Grantee, to make or possess, or assist anybody in making or possessing, any unauthorized connection, extension, or division, whether physically, acoustically, inductively, electronically or otherwise, with or to any segment of the System or receive Services of the System without Grantee's authorization.

b. *Removal or Destruction Prohibited.* It shall be unlawful for any firm, Person, group, company, or corporation to willfully interfere, tamper, remove, obstruct, or damage, or assist in the interference, removal, obstruction or damage, of any part or segment of the System for any purpose whatsoever.

c. *Penalty.* Any firm, Person, group, company, or corporation found guilty of violating this section may be fined not less than twenty dollars (\$20) and the costs of the action nor more than five hundred dollars (\$500) and the costs of the action for each and every subsequent offense. Each continuing day of the violation shall be considered a separate occurrence.

Section 12. Miscellaneous Provisions.

a. *Franchise Renewal.* Any renewal of this Franchise shall be performed in accordance with Applicable Laws. The term of any renewed Franchise shall be limited to a period not to exceed fifteen (15) years.

b. *Work Performed by Others.* All applicable obligations of this Franchise shall apply to any subcontractor or others performing any work or services pursuant to the provisions of this Franchise; however, in no event shall any such subcontractor or other performing work obtain any rights to maintain and operate a System or provide Cable Service. Grantee shall provide notice to the City of the name(s) and address(es) of any entity, other than Grantee, which performs substantial services pursuant to this Franchise.

c. *Amendment of Franchise Ordinance.* Grantee and City may agree, from time to time, to amend this Franchise. Such written amendments may be made subsequent to a review session pursuant to Section 7 or at any other time if the City and Grantee agree that such an amendment will be in the public interest or if such an amendment is required due to changes in federal, state or local laws; provided, however, nothing herein shall restrict the City's exercise of its police powers.

d. *Compliance with Federal, State and Local Laws.*

(1) If any federal or state law or regulation shall require or permit the City or Grantee to perform any service or act or shall prohibit the City or Grantee from performing any service or act which may be in conflict with the terms of this Franchise, then as soon as possible following knowledge thereof, either party shall notify the other of the point in conflict believed to exist between such law or regulation. Grantee and the City shall conform to state and federal laws and regulations and rules regarding cable communications as they become effective.

(2) If any term, condition or provision of this Franchise or the application thereof to any Person or circumstance shall, to any

extent, be held to be invalid or unenforceable, the remainder hereof and the application of such term, condition or provision to Persons or circumstances other than those as to whom it shall be held invalid or unenforceable shall not be affected thereby, and this Franchise and all the terms, provisions and conditions hereof shall, in all other respects, continue to be effective and complied with, provided the loss of the invalid or unenforceable clause does not substantially alter the agreement between the parties. In the event such law, rule or regulation is subsequently repealed, rescinded, amended or otherwise changed so that the provision which had been held invalid or modified is no longer in conflict with the law, rules and regulations then in effect, said provision shall thereupon return to full force and effect and shall thereafter be binding on Grantee and the City.

- e. *Non-enforcement by City.* Grantee shall not be relieved of its obligations to comply with any of the provisions of this Franchise by reason of any failure or delay of the City to enforce prompt compliance. The City may only waive its rights hereunder by expressly so stating in writing and with approval of the City Council. Any such written waiver by the City of a breach or violation of any provision of this Franchise shall not operate as or be construed to be a waiver of any subsequent breach or violation.
- f. *Rights Cumulative.* All rights and remedies given to the City by this Franchise or retained by the City herein shall be in addition to and cumulative with any and all other rights and remedies, existing or implied, now or hereafter available to the City, at law or in equity, and such rights and remedies shall not be exclusive, but each and every right and remedy specifically given by this Franchise or otherwise existing or given may be exercised from time to time and as often and in such order as may be deemed expedient by the City and the exercise of one or more rights or remedies shall not be deemed a waiver of the right to exercise at the same time or thereafter any other right or remedy.
- g. *Grantee Acknowledgment of Validity of Franchise.* Grantee acknowledges that it has had an opportunity to review the terms and conditions of this Franchise and that under current law Grantee believes that said terms and conditions are not unreasonable or arbitrary, and that Grantee believes the City has the power to make the terms and conditions contained in this Franchise.
- h. *Force Majeure.* Neither party shall be liable for any failure of performance hereunder due to causes beyond its reasonable control including but not limited to; acts of God, fire, explosion, vandalism, storm or other similar catastrophes; national emergencies; insurrection; riots or wars.
- i. *Venue.* Legal action arising from this contract shall be filed in the Circuit Court of Lee County, Alabama located in Opelika, Alabama or the Federal District Court for, the Middle District of Alabama. – Eastern Division located in Opelika, Alabama.

Section 13. Publication, Effective Date, Acceptance and Exhibits.

- a. *Publication, Effective Date.* This Franchise shall be published in

accordance with applicable local and state law. The effective date of this Franchise shall be the date of acceptance by Grantee in accordance with the provisions of Section 13.2.

b. *Acceptance.*

- (1) Grantee shall accept this Franchise within thirty (30) days of its enactment by the City Council, unless the time for acceptance is extended by the City. Such acceptance by the Grantee shall be deemed the grant of this Franchise for all purposes; provided, however, this Franchise shall not be effective until all City ordinance adoption procedures are complied with and all applicable timelines have run for the adoption of a City ordinance. In the event acceptance does not take place or should all ordinance adoption procedures and timelines not be completed, this Franchise and all rights granted hereunder to Grantee shall be null and void.
- (2) Upon acceptance of this Franchise, Grantee and the City shall be bound by all the terms and conditions contained herein.
- (3) Grantee shall accept this Franchise in the following manner:
 - (a) This Franchise Ordinance will be properly executed and acknowledged by Grantee and delivered to the City.
 - (b) With its acceptance, Grantee shall also deliver any insurance certificates as required herein that have not previously been delivered.

Adopted and approved by the City Council of the City of Auburn, Alabama, this the 15th day of October, 2019.

/s/Ron Anders, Jr.
Mayor

ATTEST:

/s/James C. Buston, III
City Manager

ACCEPTED: This Franchise is accepted, and we agree to be bound by its terms and conditions.

POINT BROADBAND OF OPELIKA, LLC

ATTEST:

By:_____

By: _____

Its:_____

Its: _____

Date: _____, 2019

SWORN TO BEFORE ME this
____ day of _____, 2019

SEAL

NOTARY PUBLIC

EXHIBIT A
APPLICATION AND OWNERSHIP

EXHIBIT B
INITIAL SERVICE AREA, CONSTRUCTION COMPLIANCE AND SYSTEM ACTIVATION
SCHEDULE

EXHIBIT C
SERVICE TO PUBLIC BUILDINGS

NOT APPLICABLE