

TOWN OF CEREDO  
CABLE TELEVISION SYSTEM AGREEMENT

ENTERED INTO this 2nd day of August, 1999, by and between the Town of Ceredo, Wayne County, WV (the "Town").

AND

ARMSTRONG UTILITIES, INC., a Pennsylvania corporation, duly authorized to conduct business in the Commonwealth of Pennsylvania, with principal offices located at One Armstrong Place, Butler, Pennsylvania 16001 (the "Grantee").

WHEREAS, the Town has determined that it would be in the public interest for the Grantee to have, in accordance with the terms hereof, the right, license and privilege of constructing and operating a cable television system within the Town, and

WHEREAS, the Grantee and the Town have agreed to be bound by the terms and provisions herein set forth and have further agreed that such terms and provisions may be modified or amended only by written agreement of both parties, and

WHEREAS, the entering into this Agreement by the Town and the terms and conditions hereof were duly authorized, approved and ratified by the Town Council pursuant to Ordinance ~~XXXXXX~~ enacted on 2nd Day of August, 1999

NOW, THEREFORE, the parties hereto, intending to be legally bound, do hereby covenant and agree as follows:

## SECTION 1. Definitions

For the purpose of this Agreement, each of the following terms shall have the meaning ascribed below. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory.

(A) "Town" shall mean Town of Ceredo, Wayne County, West Virginia.

(B) "Town Council" shall mean the present governing body of the Town, including the mayor, or any future board constituting the legislative body of the Town.

(C) "Grantee" shall mean the person, firm or corporation to whom or to which a franchise under this Agreement and Town Ordinance is granted by the Town Council, the lawful successor and assignee of such person, firm or corporation.

(D) "Cable Television System" or "System" means a system of poles, wires, cables, fibers, lines, underground conduits, converters, equipment, appliances and/or facilities designed, constructed or used for the purpose of producing, receiving, amplifying, transmitting and distributing radio, television, telephone, data and two-way interactive impulses and energy and other information or matter to residential or commercial customers of the Grantee within the Town.

(E) "Gross Annual Receipts", for the purpose of the calculation of the franchise fee, shall mean any and all compensation in the form of gross rental, received directly or indirectly from subscribers or users in payment for basic cable television system services received within the Town. Gross annual receipts shall not include converter or like device, remote control rental fees, installation charges, pay television, other tiers of service, other telecommunications services or advertising revenues, nor shall gross annual receipts include any taxes on services furnished by the Grantee imposed directly on any subscriber or user by any Town, state or other governmental unit and collected by the Grantee for such governmental unit.

## **SECTION 2. Grant**

(A) In consideration of the within undertakings by the Grantee, the Town agrees that the Grantee shall have, and hereby confirms and grants unto the Grantee, the right, license and privilege to construct and reconstruct, to install, maintain, repair, replace and remove, and solicit and sell customers, subscribers, users and advertisements for, and otherwise to own, promote and operate, a cable television system within the Town.

(B) The right, license and privilege hereby granted shall not be exclusive, and the Town reserves the right to grant a similar franchise to any person at any time.

(C) The right, license and privilege herein granted and confirmed shall be deemed to include a continuing right to enter upon and to use and occupy the surface, subsurface and space above or below any public streets, lanes, alleys, paths, ways, bridges and viaducts within the Town, when and to the extent necessary to carry out the intent and purposes of this Agreement, subject, however, to limitations and qualifications herein contained.

(D) In exercising the right, license and privilege granted and confirmed hereby, the Grantee shall be and remain subject to and shall comply with all federal, state and local laws, rules and regulations applicable to it in the conduct of the activities contemplated hereby.

### **SECTION 3. Construction and Maintenance Activities**

A) In cases where existing poles or other structures, conduits or other facilities owned or leased by public utilities or other third parties having the right to permit attachment thereto or location therein or thereon of the system by the Grantee are not available or are impractical for that purpose, then the proposed means of attachment, construction or conduit shall be submitted to the Mayor or Town Engineer or Chairman or Town Councilperson or designated person by drawings, plans and explanatory addenda at least thirty (30) days before such proposed attachment, installation or construction, and shall be subject to his approval in writing before commencement of such attachment, installation or construction, and such approval shall not be unreasonably withheld and the Mayor or Town Engineer or Chairman or Town Councilperson or designated person shall advise



the Grantee of its determination within twenty (20) days after receipt of the Grantee's proposed means of attachment, construction or conduit.

#### **SECTION 4. Conditions on Use and Occupancy of Streets**

(A) Use. Pole attachments and the construction, installation, repair and replacement of basic system hardware and the operation and removal of the system and all parts thereof by the Grantee within the Town shall be conducted in such manner as to cause minimum interference with the proper use of streets, lanes, alleys, bridges and viaducts and other public places, and to cause minimum interference with the rights or reasonable convenience of the property owners, tenants or occupants who adjoin any of said streets, lanes, alleys, bridges, viaducts and other public places.

(B) Restoration. In the event of any disturbance caused by the Grantee's activities hereunder to the pavement, sidewalk, driveway or other surfacing as to which the Town is responsible, the Grantee, at its own cost and expense, shall replace and restore all such paving, sidewalk, driveway or surface so disturbed in a good and workmanlike manner and to as functionally sound a condition as before said activities were commenced, and shall be completed within 60 days of the disturbance or such longer period as may be approved by the Town Council. All such replacement and restoration by the Grantee shall be subject to the approval of the Town Engineer or designated person and such approval shall not be unreasonably withheld.

(C) Relocation. In the event that, at any time during the existence of the within right, license and privilege to the Grantee, the Town elects to alter or change the grade, alignment or paved width of any street, lane, alley, bridge or viaduct or other public way, the Grantee, upon notice by the Town, at its own expense, shall remove and relocate any affected part of the system within thirty (30) days of the date of notice or such reasonable extension thereof as may be granted by the Town Representative considering the circumstances of the case.

(D) Placement of Fixtures. The Grantee shall not place the system or any part thereof where the same will interfere with any gas, electric, telephone or telegraph line or fixture, water hydrant or main, nor in such manner as would interfere with the usual travel on the streets, lanes, alleys, bridges and viaducts and other public places of the Town.

(E) Temporary Removal. Upon the request of any person, firm or corporation holding a moving permit issued by the Town or other governmental regulatory agency having jurisdiction of the matter, by which permit any building or buildings, large pieces of equipment or structural materials or the like are to be moved from place to place, the Grantee shall temporarily raise or lower its system as and to the extent necessary to permit the moving of such buildings, equipment, structural materials and the like, provided the expense of such temporary raising or lowering of the system or any part thereof shall have been paid or tendered by the person, firm or corporation requesting the same. The Grantee shall be given not less than fifteen (15) days advance notice to arrange for such temporary changes to its system.

(F) Protective Barriers. Any opening or obstruction in the streets or other public ways made by the Grantee in the course of the installation, operation, maintenance or removal of equipment, structures, facilities, apparatus and appurtenances shall be guarded and protected at all times by the placement of adequate barriers, fences or boarding or as otherwise directed by the Town Representative. Whenever it is deemed necessary by the Town, the Grantee shall install steel plates to allow a public way to remain usable while openings or obstructions exist.

(G) Tree Trimming. The Grantee shall have the authority to trim trees which are located on or which overhang streets, alleys, sidewalks and public places of the Town to the extent that such trimming activities are minor in nature or required to be performed without delay due to the risk of danger to personal or property damage arising by reason of the location of such trees. The Grantee shall have the authority to perform all other tree trimming activities only with the prior approval of the Town and such approval shall not be unreasonably withheld. All trimming shall be at the expense of the Grantee.

(H) Underground Requirements. In such sections, if any, of the Town in which all cables, wires and other like facilities of public utilities are required to be and are placed underground, the Grantee shall place its cables, wires and other like facilities underground.

(I) Moving of System for Traffic, Safety or Other Utilities. The Grantee shall, at its expense, protect, support, temporarily disconnect, relocate in the same street or other streets or remove from the street any property of the Grantee when required by the Town by reason of traffic conditions, public safety, street vacation, freeway and street construction, change or establishment of street grade, installation of sewers, drains, gas or water pipes, power lines, signal lines and tracks and other types of improvements by the Town or public agencies.

(J) Inspection. The Town shall have the right to inspect all pole attachments, installation, construction, repair and replacement of basic system in hardware, and the removal of the system or any part thereof to insure compliance with Section 4(A) of this Agreement.

#### **SECTION 5. Fees and Reports**

(A) In consideration of the right, license and privilege granted hereby and in order to defray any costs and expenses of the Town in connection with the execution, delivery, performance and administration of this Agreement, the Grantee shall pay to the Town, on or before December 31st of each calendar year during the term of this Agreement, an amount equal to five percent (5%) of the gross annual receipts of the Grantee as defined in Section 1, Paragraph (E). The Town reserves the right, during the term of this Agreement, to increase or decrease the annual fee upon sixty (60) days written notice to the Grantee. Any such increase or decrease shall comply with all federal and state laws and all federal and state regulations.

(B) Not later than sixty (60) days after the close of each fiscal year of the Grantee during the term of this Agreement, the Grantee shall file with the Town Representative a written report, certified by the Grantee's chief accounting officer, setting forth the amount of basic subscriber service receipts and premium subscriber service receipts paid to the Grantee during such fiscal year.

(C) The Town shall have the right to inspect and audit the Grantee's records from which the payments hereunder are computed and to recompute the amount of such payments to correct errors in the computation and reporting of same. The Grantee's records shall be made available at the Corporation's Headquarters. Such requests to inspect the records shall be made in writing by the Town and scheduled by the Grantee's Corporate Accounting Staff.

#### **SECTION 6. Safety Measures**

(A) Construction and maintenance of the system shall be in accordance with the provisions of the National Electric Safety Code of the National Board of Fire Underwriters, and such other applicable laws of the State of West Virginia, Wayne County, and regulations of the Town which may be lawfully in effect from time to time.

(B) All structures, lines, equipment and connections in, over, under and upon the streets of the Town, wherever situated or located, shall at all times be kept and maintained in a safe, suitable condition and in good order and repair.

## **SECTION 7. Voluntary Subscriptions**

All subscriptions for services under any Franchise shall be on a voluntary basis, and may be terminated at any time by the customer except in circumstances whereby a mutually agreed upon contract has been executed.

## **SECTION 8. System Services**

(A) The Grantee, at all times, shall provide all subscriber service as and to the extent required to be provided by applicable federal and state rules and regulations from time to time in effect.

(B) If Grantee operates a Citizens Awareness Channel, or similar programming option, it shall post, free of charge, any notices properly submitted by the Town Council.

(C) Additional services may, at the sole discretion of the Grantee, be provided by the Grantee, including services for which a per-program, per-service or per-channel charge is made consistent with applicable federal and state rules and regulations.

## **SECTION 9. Operation and Maintenance of System**

Grantee shall make reasonable efforts to assess subscriber need and viewing preferences. If any existing service becomes unavailable, or the Grantee decides to discontinue a service, Grantee shall endeavor to provide substitute programming. Grantee may combine programming into composite channels to improve efficiency of channel utilization or to attract a larger viewing audience.

## **SECTION 10. Service Standards**

(A) The Grantee will investigate and resolve all subscriber complaints regarding the quality of service, equipment malfunctions and similar matters expeditiously and in accordance with the following procedure:

(i) The Grantee shall have qualified personnel available during normal working hours to investigate and resolve subscriber complaints;

(ii) Upon notification of a service complaint, the Grantee shall dispatch a qualified employee to investigate the complaint and adjust, repair or replace Grantee equipment as necessary to resolve the complaint. The Grantee shall not be responsible for malfunctions of any television receivers or other equipment owned or operated by any subscriber;

(iii) All complaints shall be investigated and resolved in accordance with the Cable Television Consumer Protection Act of 1992; and

(iv) The Grantee shall maintain a service log in which an entry shall be made of each complaint, the date of notification thereof, the nature of the complaint and the means by which it was resolved.

(B) In the construction, maintenance and operation of the system, the Grantee shall, at a minimum, at all times, fully comply with technical standards which have been or which hereafter may be adopted by the Federal Communications Commission, including (without limitations), if applicable, requirements relating to channel capacity, bandwidth and periodic testing. Further, should any federal, state or local governmental unit with jurisdiction establish technical standards that exceed those of the Federal Communications Commission, the Grantee will comply therewith when and to the extent required by such governmental unit, unless to require the Grantee to do so would be held invalid by the Federal Communications Commission or a court of administrative tribunal of competent jurisdiction. The technical quality of the service provided by the Grantee shall be sufficient to provide subscribers with uniformly high quality television reception. The Grantee shall maintain the system in good repair and working order at all times.



## **SECTION 11. Subscriber Rates and Charges**

(A) Installation charges, monthly service rates and any other residential rates charged by Grantee related to the basic service tier, as defined by the Federal Communications Commission ("FCC"), for its subscribers may be regulated under this Franchise only to the extent permitted by the Communications Act of 1934, as amended in 1984 and 1992, and applicable FCC rules and regulations. Commercial installation charges and monthly service rates are negotiable and not covered by Federal regulations.

(B) The Grantee shall offer the services of the system within the Town on terms and conditions which are uniform and nondiscriminatory to the fullest extent practicable. The provisions of the Section 11(B) will not apply in any area of the Town in which another multi-channel video distributor, excluding direct broadcast satellite and direct-to-home satellite services, also provides video service.

(C) The rates and charges for all system services (specifically including but not limited to basic subscriber service, any additional service provided pursuant to Section 8, or any connection, maintenance or similar service) and equipment shall be subject to adjustment from time to time, at the sole discretion of the Grantee

**SECTION 12. Discrimination Practices Prohibited**

The Grantee shall not, as to rates, charges, service, service facilities, rules, regulations, or in any other respect, make or grant unlawful undue preference or advantage to any person, nor subject any person to any unlawful prejudice or disadvantage, provided that nothing in this Franchise shall be deemed to prohibit the establishment of a graduated scale of charges and classified rate schedules to which any customer coming within such classification would be entitled. Connection and/or service charges may be waived or modified during promotional campaigns of the Grantee.

**SECTION 13. Insurance**

(A) The Grantee shall, at all times during the term of this Agreement, maintain in full force and effect, at its own cost and expense, a general comprehensive liability insurance policy protecting its representatives, officials and employees, against liability for loss or damage for personal injury, death and property damage, occasioned by the operations of the Grantee under this Agreement with minimum liability limits of:

One Million Dollars (\$1,000,000.00) for  
personal injury or death of any one person,  
and

One Million Dollars (\$1,000,000.00) for  
personal injury or death of two (2) or more  
persons in any one occurrence, and

Such policy of insurance, and any certificate evidencing same, shall name the Town, its representatives, officials and employees as additional insureds and shall also provide that thirty (30) days prior written notice of intention not to renew, cancel or material change, be given to the Town.

**SECTION 14. Effective Date and Term of Franchise**

The right and privilege herein granted shall take effect and be in force from and after July 1, 1999 and shall continue in force and effect for a period of fifteen (15) years with a ten (10) year renewal from the effective date of this Agreement. Upon the expiration of said period and provided that the Grantee has complied with the terms and conditions hereof, the grant and provisions hereof shall be renewed under the provisions of the Cable Communications Act of 1984, Section 626.

**SECTION 15. Federal Regulation**

In the event and to the extent that the terms and provisions hereof shall be superseded and preempted by or become inconsistent with state law or federal law (including rules and regulations promulgated by the Federal Communications Commissions, then and in each such event, it shall be the right of each party hereto to take such action including the execution and delivery of written instruments and the adoption of ordinances and resolutions) within sixty (60) days after such event as shall be reasonably necessary and may be reasonably requested to so amend or modify in writing this Agreement and to preserve the written

contract for rights and benefits of the Grantee and fulfill the intent and purposes of this Agreement.

**SECTION 16. Separability**

Subject to the provisions of Section 12 hereof, if any section, subsection, sentence, clause, phrase or portion of this Agreement is for any reason held invalid or unconstitutional by any court or administrative tribunal of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions hereof.

**SECTION 17. Interpretation**

Notwithstanding any provision of this Agreement to the contrary, the Town agrees that in the event of any ambiguity with respect to the terms and conditions of this franchise, or dispute as to meaning, the Town shall, in conjunction with the Grantee, make a good faith effort to establish the meaning of such terms and conditions in a manner consistent with the parties' original intent of the language.

**SECTION 18. Conflict of Interest**

The Grantee shall not engage in the business of selling, leasing or repairing television or radio receivers in connection with the operation of its cable television system; nor shall the Grantee and its employees require or attempt to direct its subscribers to deal with any particular firm or person engaged in such business.

**SECTION 19. Grantee's Inability To Perform**

In the event Grantee's performance of any of the terms, conditions, obligations or requirements of this Franchise Agreement is prevented or impaired due to any cause beyond its control or not foreseeable, such inability to perform shall be deemed to be excused and no penalties or sanctions shall be imposed as a result thereof, provided Grantee has notified the Town in writing within thirty (30) days of its discovery of the occurrence of such an event.

This section shall not be construed to relieve Grantee of the obligation for adjustments contained in Section 11. Such causes beyond Grantee's control or not foreseeable shall include, but shall not be limited to, acts of God, civil emergencies, and possible labor unrest or strikes including by telephone or power company owners of said poles.

**SECTION 20. Favored Nations**

In the event the Town enters into a Franchise, permit, license, authorization or any other agreement of any kind with any other person or entity other than the Grantee for the purpose of constructing or operating a cable television system or providing Cable Television Service to any part of the Franchise Area, and such Franchise, permit, license, authorization, or agreement contains terms which are more favorable than this Agreement, Grantee may request that the Town Council amend this Agreement, so as to give the Grantee the benefit of any such more favorable terms. The Town shall rule on such request using its reasonable discretion.

**SECTION 21. Binding Effect**

This Agreement shall bind and inure to the benefit of the Town and the Grantee, and their respective successors and assigns; provided, however, that without the written consent of the Town, which consent shall not be unreasonably withheld or delayed, the Grantee shall not assign the right, license or privilege herein granted to any person, firm or corporation other than a person, firm or corporation affiliated with it. The terms and provisions of this Agreement may not be amended or modified, by ordinance or otherwise, except as agreed upon in writing by both parties hereto.

**TOWN OF CEREDO**

Attest:

Sam Walls

By Mose R. Napier

Title Mayor

**ARMSTRONG UTILITIES, INC.**

Attest:

Steven J. Hansen

By Melvin W. Yeff Sr.

Title General Manager