
Franchise Agreement

between

City of Madison, Alabama

and

Knology of Huntsville, Inc.

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AGREEMENT

This **AGREEMENT** is effective as of the 11th day of July 2023 (the “Effective Date”), and is between the City of Madison, Alabama (the “Franchising Authority” or the “City”), and Knology of Huntsville, Inc. (the “Company”). For purposes of this Agreement, unless otherwise defined in this Agreement, the capitalized terms, phrases, words, and their derivations, shall have the meanings set forth in Appendix A.

The Franchising Authority, having determined that the financial, legal, and technical ability of the Company is reasonably sufficient to provide the services, facilities, and equipment necessary to meet the current and future cable-related needs of the community and that, as of the Effective Date, the Company is in material compliance with the terms and conditions of the cable franchise preceding this Agreement, desires to enter into this Agreement with the Company for the construction, operation, and maintenance of a cable and broadband system on the terms and conditions set forth herein. In consideration of the mutual covenants and agreements contained in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby covenant and agree as follows:

SECTION 1 GRANT OF AUTHORITY

1.1 Grant of Franchise. The Franchising Authority hereby grants under the Cable Act a nonexclusive franchise (the “Franchise”) to occupy and use the Streets within the Franchise Area in order to construct operate, maintain, upgrade, repair, and remove the cable and broadband system, and provide cable services through the system, subject to the terms and conditions of this Agreement. This Franchise authorizes cable and broad service, and it does not grant or prohibit the right(s) of the Company to provide other services.

1.2 Term of Franchise. This Franchise shall be in effect for a period of five (5) years commencing on the Effective Date, unless renewed or lawfully terminated in accordance with this Agreement and the Cable Act.

1.3 Renewal. Subject to Section 626 of the Cable Act (47 U.S.C. § 546) and such terms and conditions as may lawfully be established by the Franchising Authority, the Franchising Authority reserves the right to grant or deny renewal of the Franchise.

1.4 Reservation of Authority. Nothing in this Agreement shall (i) abrogate or restrict the right of the Franchising Authority to perform any public works or public improvements of any description, except as explicitly provided herein, (ii) be construed as a waiver of any codes or ordinances of the Franchising Authority or of the Franchising Authority’s right to require the Company or any Person utilizing the Cable System to secure the appropriate permits or authorizations for its use, or (iii) be construed as a waiver or release of the rights of the Franchising Authority in and to the Streets. Notwithstanding the above, in the event of any conflict between this Agreement and any code or ordinance adopted by the Franchising Authority, the terms and conditions of this Agreement, which has been adopted by Ordinance, shall prevail, except where such conflict arises from the Franchising Authority’s lawful exercise of its police powers.

1.5 Competitive Equity and Subsequent Action Provisions.

1.5.1 Purposes. The Company and the Franchising Authority acknowledge that there is increasing competition in the video marketplace among cable operators, direct broadcast satellite providers, telephone companies, broadband content providers, and others; new technologies are emerging that enable the provision of new and advanced services to City residents; and changes in the scope and application of the traditional regulatory framework governing the provision of Video Services are being considered in a variety of federal, state, and local venues. To foster an environment where all Cable Service Providers and Video Service Providers using the Streets can compete on a competitively neutral and nondiscriminatory basis; encourage the provision of new and advanced services to City residents; promote local communications infrastructure investments and economic opportunities in the City; and provide flexibility in the event of subsequent changes in the law, the Company and the Franchising Authority have agreed to the provisions in this Section 1.5, and these provisions should be interpreted and applied with these purposes in mind. The parties agree that the Franchising Authority shall not be required to execute a franchise agreement or authorization with a competitive CSP or VSP that is identical, word-for-word, with this Agreement to avoid triggering the provisions of this Section 1.5, so long as the regulatory and financial burdens on and benefits to each CSP or VSP are materially equivalent to the burdens on and benefits to the Company. “Materially equivalent” provisions include but are not limited to franchise fees and the definition of Gross Revenues; system build-out requirements; security instruments; public, education and government access channels and support; customer service standards; and audits.

1.5.2 Fair Terms for All Providers. Notwithstanding any other provision of this Agreement or any other provision of law,

(a) If any VSP or CSP enters into any agreement with the Franchising Authority to provide Video Services or Cable Services to Subscribers in the Franchise Area, the Franchising Authority and the Company, upon written request of the Company, will use best efforts in good faith to negotiate the Company’s proposed Franchise modifications, and such negotiation will proceed and conclude within sixty (60) days, unless that period is reduced or extended by mutual agreement of the parties. If the Franchising Authority and the Company agree to Franchise modifications pursuant to such negotiations, then the Franchising Authority shall amend this Agreement to include the modifications.

If there is no written agreement or other authorization between the new VSP or CSP and the Franchising Authority, the Company and the Franchising Authority shall use the sixty (60) day period to develop and enter into an agreement or other appropriate authorization (to the extent the Company determines an agreement or authorization is necessary) that to the maximum extent possible contains provisions that will ensure competitive equity between the Company and other VSPs or CSPs, taking into account the terms and conditions under which the new VSP or CSP is allowed to provide Video Services or Cable Services to Subscribers in the Franchise Area.

(b) Following the Franchise modification negotiations provided for in Section 1.5.2(a), if the Franchising Authority and the Company fail to reach agreement in

such negotiations, the Company may, at its option, elect to replace this Agreement by opting in to the same franchise agreement or other lawful authorization that the Franchising Authority has granted to the new VSP or CSP. If the Company so elects, the Franchising Authority shall adopt the Company's replacement agreement at the next regularly scheduled City Council meeting.

(c) The Franchising Authority shall at all times enforce the state and federal ban on providing Cable Service without a franchise. The Franchising Authority's enforcement efforts shall be continuous and diligent throughout the term of this Agreement. Should the Franchising Authority not commence enforcement efforts within sixty (60) days of becoming aware of a VSP or CSP providing Video Service or Cable Service within the Franchise Area, the Company shall have the right to petition the Franchising Authority for the relief provided in Section 1.5.2 above.

1.5.3 Subsequent Change in Law. If there is a change in federal, state, or local law that provides for a new or alternative form of authorization, subsequent to the Effective Date, for a VSP or CSP utilizing the Streets to provide Video Services or Cable Services to Subscribers in the Franchise Area, or that otherwise changes the nature or extent of the obligations that the Franchising Authority may request from or impose on a VSP or CSP providing Video Services or Cable Services to Subscribers in the Franchise Area, the Franchising Authority agrees that, notwithstanding any other provision of law, upon the written request and at the option of the Company, the Franchising Authority shall: (i) permit the Company to provide Video Services or Cable Services to Subscribers in the Franchise Area on substantially the same terms and conditions as are applicable to a VSP or CSP under the changed law; (ii) modify this Agreement to comply with the changed law; or (iii) modify this Agreement to ensure competitive equity between the Company and other VSPs or CSPs, taking into account the conditions under which other VSPs or CSPs are permitted to provide Video Services or Cable Services to Subscribers in the Franchise Area. The Franchising Authority and the Company shall implement the provisions of this Section 1.5.3 within sixty (60) days after the Company submits a written request to the Franchising Authority. Should the Franchising Authority fail to implement these provisions within the time specified, this Agreement shall, at the Company's option and upon written notice to the Franchising Authority, be deemed amended as initially requested by the Company under this Section 1.5.3. Notwithstanding any provision of law that imposes a time or other limitation on the Company's ability to take advantage of the changed law's provisions, the Company may exercise its rights under this Section 1.5.3 at any time, but not sooner than thirty (30) days after the changed law goes into effect.

1.5.4 Effect on This Agreement. Any agreement, authorization, right, or determination to provide Cable Services or Video Services to Subscribers in the Franchise Area under this Section 1.5 shall supersede this Agreement.

SECTION 2 THE CABLE SYSTEM

2.1 The System and Its Operations.

2.1.1 Service Area. As of the Effective Date, the Company operates a Cable System within the Franchise Area.

2.1.2 System. As of the Effective Date, the Company maintains and operates a Cable System capable of providing over 250 Channels of Video Programming, which Channels may be delivered by analog, digital, or other transmission technologies, at the sole discretion of the Company.

2.1.3 System Technical Standards. Throughout the term of this Agreement, the Cable System shall be designed, maintained, and operated such that quality and reliability of System Signal will be in compliance with all applicable consumer electronics equipment compatibility standards, including but not limited to Section 624A of the Cable Act (47 U.S.C. § 544a) and 47 C.F.R. § 76.630, as may be amended from time to time.

2.1.4 Testing Procedures; Technical Performance. Throughout the term of this Agreement, the Company shall operate and maintain the Cable System in accordance with the testing procedures and the technical performance standards of the FCC.

2.2 Requirements with Respect to Work on the System.

2.2.1 General Requirements. The Company shall comply with ordinances, rules, and regulations established by the Franchising Authority pursuant to the lawful exercise of its police powers and generally applicable to all users of the Streets. The company specifically agrees to abide by all unemployment compensation laws; the Beason-Hammon Alabama Taxpayer and Citizen Protection Act and all other federal laws governing employment compensation, environmental matters and/or occupational safety. All installation of facilities shall be conducted in a safe and workman like manner. Furthermore, all installation shall be conducted in accordance with current professional engineering standards.

2.2.2 Protection of Underground Utilities. Both the Company and the Franchising Authority shall comply with the Alabama Underground Damage Prevention Act (Ala. Code § 37-15-1, *et seq.*), relating to notification prior to excavation near underground utilities, as may be amended from time to time.

2.2.3 Notice to City. If at any time the Company intends to perform construction work in any right-of-way, the Company shall obtain a right-of-way permit from the City and shall provide the City with notice before commencing any such work as required by the Right-of-Way Permit application process.

2.2.4 Notice to Residents. The Company shall have its employees, representatives and/or all subcontractors identify themselves to residents and/or owners of private property upon inquiry and such employees, representatives and/or subcontractors of the Company shall notify residents and/or owners of private property in advance of entry upon such private property. Furthermore, the Company agrees that its employees, representatives and/or all

subcontractors shall mark their vehicles with markings and/or decals that properly identify anyone attempting to make entry upon private property as an employee, representative and/or subcontractor of the Company.

2.3 Permits and General Obligations.

2.3.1 The Company shall be responsible for obtaining all permits, licenses, or other forms of approval or authorization necessary to construct, operate, maintain, or repair the Cable System, or any part thereof, prior to the commencement of any such activity. The issuance of permits, licenses, or other approvals shall not be unreasonably delayed or withheld by the Franchising Authority. The Company shall be solely responsible, either through its employees or its authorized contractors, for constructing, installing, and maintaining the Cable System in a safe, thorough, and reliable manner in accordance with all applicable standards and using materials of good and durable quality. The Company shall assure that any person installing, maintaining, or removing its facilities is fully qualified and familiar with all applicable standards. No third party shall tamper with, relocate, or otherwise interfere with the Company's facilities in the rights-of-way without the Company's approval and supervision; provided, however, that the Company shall make all reasonable efforts to coordinate with other users of the Streets to facilitate the execution of projects and minimize disruption in the public rights-of-way. All transmission and distribution structures, poles, other lines, and equipment installed by the Company for use in the Cable System in accordance with this Agreement shall be located so as to minimize interference with the proper use of the Streets and the rights and reasonable convenience of property owners who own property adjoining the Streets.

2.3.2 Code Compliance. The Company shall comply with all applicable building, safety, and construction codes. The parties agree that at present, Cable Systems are not subject to the low voltage regulations of the National Electric Code, National Electrical Safety Code, or other such codes or regulations. In the event that the applicable codes are revised such that Cable Systems become subject to low voltage regulations without being grandfathered or otherwise exempted, the Company will thereafter be required to comply with those regulations.

2.4 Conditions on Street Occupancy.

2.4.1 New Grades or Lines. If the grades or lines of any Street within the Franchise Area are lawfully changed at any time during the term of this Agreement, then the Company shall, upon at least forty-five (45) days' advance written notice from the Franchising Authority and at the Company's own cost and expense, protect or promptly alter or relocate the Cable System, or any part thereof, so as to conform with the new grades or lines. If public funds are available to any Person using the Street for the purpose of defraying the cost of any of the foregoing work, the Franchising Authority shall make application for such funds on behalf of the Company. The Company shall be entitled to reimbursement of its costs should any other third party be compensated as a result of a required protection, alteration, or relocation of its facilities.

2.4.2 Relocation at Request of Third Party. The Company shall, upon reasonable prior written request of any Person holding a permit issued by the Franchising Authority to move

any structure, temporarily move its wires to permit the moving of such structure; provided that (i) the Company may impose a reasonable charge on any Person for the movement of its wires, and such charge may be required to be paid in advance of the movement of its wires; and (ii) the Company agrees to arrange for such temporary relocation to be accomplished as soon as reasonably practicable, not to exceed forty five (45) days without the prior agreement of the Franchising Authority.

2.4.3 Restoration of Streets. If in connection with construction, operation, maintenance, or repair of the Cable System, the Company disturbs, alters, or damages any Street, the Company agrees that it shall, at its own cost and expense, restore the Street according to the standards set forth in the Alabama Department of Transportation's Utilities Manual. If the Franchising Authority reasonably believes that the Company has not restored the Street appropriately, then the Franchising Authority, after providing ten (10) business days' advance written notice and a reasonable opportunity to cure, may have the Street restored and bill the Company for the cost of restoration. The Company shall warrant any restoration work performed under this Agreement, including the maintenance of any landscaping or vegetation installed as part of the restoration work, for a period of twenty-four (24) months. This restoration requirement shall survive the expiration, revocation and termination of this Agreement. In any dispute over the adequacy of restoration or maintenance under this Section, the City shall have the authority, in the exercise of its reasonable discretion, to determine the adequacy of the restoration or maintenance.

2.4.4 Trimming of Trees and Shrubbery. The Company shall have the authority to trim trees or other natural growth overhanging any of its Cable System in the Franchise Area so as to prevent contact with the Company's wires, cables, or other equipment, the cost of which trimming shall not be borne by the Franchising Authority.

2.4.5 Aerial and Underground Construction. If at the time of Cable System construction all of the transmission and distribution facilities of all of the respective public or municipal utilities in the construction area are underground, the Company shall place its Cable System's transmission and distribution facilities underground. At the time of Cable System construction, in any place within the Franchise Area where the transmission or distribution facilities of the respective public or municipal utilities are both aerial and underground, the Company shall have the discretion to construct, operate, and maintain all of its transmission and distribution facilities, or any part thereof, aurally or underground; however, at such time as all existing aerial facilities of the respective public or municipal utilities are placed underground, the Company shall likewise place its facilities underground, subject to the provisions of Section 2.4.1. Company facilities placed underground at the property owner's request in any area where any of the transmission or distribution facilities of the respective public or municipal utilities are aerial shall be installed with the additional expense paid by the property owner. Nothing in this Section 2.4.5 shall be construed to require the Company to construct, operate, or maintain underground any ground-mounted appurtenances such as customer taps, line extenders, system passive devices, amplifiers, power supplies, pedestals, or other related equipment. The Company shall be entitled to expand and upgrade its System as it deems reasonably necessary.

2.4.6 New Developments. The Franchising Authority shall provide the Company with written notice, which may be accomplished via electronic mail to the Company's designee,

of the submission for technical review of planned developments within the Franchise Area requiring undergrounding of cable facilities.

2.4.7 Use of Existing Poles. Where possible, the Company shall attach its facilities to existing utility poles and shall use all reasonable efforts to enter into a pole attachment agreement with the owners of such existing utility poles. The Franchising Authority acknowledges that the Company may pass through to Subscribers the costs of attaching to existing utility poles in the Franchise Area and does not object.

2.5 Change in Franchise Area. In the event that the borders of the Franchise Area change, through annexation or otherwise, the Franchising Authority shall provide to the Company written notice of such change, including an updated map and an electronic list of all addresses in the Franchise Area. Franchise fees on gross revenues earned from Subscribers in annexed areas shall not be payable to the Franchising Authority until sixty (60) days after the Company's receipt of such updated map and electronic list of addresses and shall not be remitted to the Franchising Authority until the next regularly scheduled quarterly franchise fee payment as provided in Section 4.1.2 below.

SECTION 3 CUSTOMER SERVICE

Customer Service. The Company shall comply in all respects with the requirements set forth in Appendix B. Individual violations of those requirements do not constitute a breach of this Agreement.

SECTION 4 COMPENSATION AND OTHER PAYMENTS

4.1 Compensation to the Franchising Authority. As compensation for the Franchise, the Company shall pay or cause to be paid to the Franchising Authority the amounts set forth in this Section 4.1.

4.1.1 Franchise Fees—Amount. The Company shall pay to the Franchising Authority franchise fees in an amount equal to five percent (5%) of Gross Revenues derived from the operation of the Cable System to provide Cable Services in the Franchise Area.

4.1.2 Franchise Fees—Payment. Payments of franchise fees shall be made on a quarterly basis and shall be remitted not later than thirty (30) days after the last day of March, June, September, and December throughout the term of this Agreement.

4.1.3 Company to Submit Franchise Fee Report. The Company shall submit to the Franchising Authority, not later than thirty (30) days after the last day of March, June, September, and December throughout the term of this Agreement, a report setting forth the basis for the computation of Gross Revenues on which the quarterly payment of franchise fees is being made, which report shall enumerate, at a minimum, the following revenue categories: limited and expanded basic video service, digital video service, premium video service, pay-per-view and video-on-demand, equipment, installation and activation, franchise fees, guide, late fees, ad sales, home shopping commissions, and bad debt.

4.1.4 Franchise Fee Payments Subject to Audit; Remedy for Underpayment. No acceptance of any franchise fee payment by the Franchising Authority shall be construed as an accord and satisfaction that the amount paid is in fact the correct amount or a release of any claim that the Franchising Authority may have for further or additional sums payable under this Agreement. The Franchising Authority may conduct an audit no more than once annually to ensure payments in accordance with this Agreement. The audit of the Company's records shall take place at a location, in the State of Alabama, determined by the Company. The Franchising Authority is prohibited from removing any records, files, spreadsheets, or any other documents from the site of the audit. In the event that the Franchising Authority takes notes of any documents, records, or files of the Company for use in the preparation of an audit report, all notes shall be returned to the Company upon completion of the audit. The audit period shall be limited to three (3) years preceding the end of the quarter of the most recent payment. Once the Company has provided information for an audit with respect to any period, regardless of whether the audit was completed, that period shall not again be the subject of any audit.

If, as a result of an audit or any other review, the Franchising Authority determines that the Company has underpaid franchise fees in any twelve (12) month period by ten percent (10%) or more, then, in addition to making full payment of the relevant obligation, the Company shall reimburse the Franchising Authority for all of the reasonable costs associated with the audit or review, including all reasonable out-of-pocket costs for attorneys, accountants, and other consultants. The Franchising Authority shall provide the Company with a written notice of audit results and a copy of the final report presented to the Franchising Authority. The Company shall remit any undisputed amounts owed to the Franchising Authority as the result of the audit within forty-five (45) days, or other mutually acceptable timeframe, after the date of an executed settlement and release agreement.

4.2 Payments Not to Be Set Off Against Taxes or Vice Versa. The parties agree that the compensation and other payments to be made pursuant to this Section 4 are not a tax and are not in the nature of a tax. The Company and the Franchising Authority further agree that franchise fee payments required under Section 4.1.1 shall be in lieu of any permit fees, business license fees, and occupational license fees as are or may be required by the Franchising Authority. The Franchising Authority and the Company further agree that no additional taxes, licenses, fees, surcharges, or other assessments shall be assessed on the Company related to the provision of services or the operation of the Cable System, nor shall the Franchising Authority levy any other tax, license, fee, or assessment on the Company or its Subscribers that is not generally imposed and applicable to a majority of all other businesses.

4.3 Interest on Late Payments. If any payment required by this Agreement is not actually received by the Franchising Authority on or before the applicable date fixed in this Agreement, the Company shall pay interest thereon, from the due date to the date paid, at a rate of one percent (1%) per month.

SECTION 5 COMPLIANCE REPORTS

5.1 Compliance. The Franchising Authority hereby acknowledges that as of the Effective Date, the Company is in material compliance with all material laws, rules, and ordinances of the Franchising Authority.

5.2 Reports. Upon written request by the Franchising Authority and subject to Section 631 of the Cable Act, the Company shall promptly submit to the Franchising Authority such information as may be necessary to reasonably demonstrate the Company's compliance with any term or condition of this Agreement.

5.3 File for Public Inspection. Throughout the term of this Agreement, the Company shall maintain and make available to the public those documents required pursuant to the FCC's rules and regulations.

5.4 Treatment of Proprietary Information. The Franchising Authority agrees to treat as confidential, to the maximum extent allowed under the Alabama Public Records Law (Ala. Code § 36-12-40, *et seq.*) or other applicable law, any requested documents submitted by the Company to the Franchising Authority that are labeled as "Confidential" or "Trade Secret" prior to submission. In the event that any such documents submitted by the Company to the Franchising Authority are subject to a request for inspection or production, including but not limited to a request under the Alabama Public Records Law, the Franchising Authority shall notify the Company of the request as soon as practicable and in any case prior to the release of such information, by email or facsimile to the addresses provided in Section 10.6 of this Agreement, so that the Company may take appropriate steps to protect its interests in the requested records, including seeking an injunction against the release of the requested records. Upon receipt of said notice, the Company may review the requested records in the Franchising Authority's possession and designate as "Confidential" or "Trade Secret" any additional portions of the requested records that contain confidential or proprietary information.

5.5 Emergency Alert System. Company shall install and maintain an Emergency Alert System in the Franchise Area only as required under applicable federal and state laws. Additionally, the Franchising Authority shall permit only those Persons appropriately trained and authorized in accordance with applicable law to operate the Emergency Alert System equipment and shall take reasonable precautions to prevent any use of the Company's Cable System in any manner that results in inappropriate use thereof, or any loss or damage to the Cable System. Except to the extent expressly prohibited by law, the Franchising Authority shall hold the Company and its employees, officers, and assigns harmless from any claims arising out of use of the Emergency Alert System, including but not limited to reasonable attorneys' fees and costs.

SECTION 6 ENFORCEMENT

6.1 Notice of Violation. If the Franchising Authority believes that the Company has not complied with the terms of this Agreement, the Franchising Authority shall first informally discuss the matter with the Company. If discussions do not lead to a resolution of the problem within twenty

one (21) days, the Franchising Authority shall notify the Company in writing of the nature of the alleged noncompliance (“Violation Notice”).

6.2 Company’s Right to Cure or Respond. The Company shall have thirty (30) days from the receipt of the Violation Notice, or any longer period specified by the Franchising Authority, to respond; cure the alleged noncompliance; or, if the alleged noncompliance, by its nature, cannot be cured within thirty (30) days, initiate reasonable steps to remedy the matter and provide the Franchising Authority a projected resolution date in writing.

6.3 Meeting with Officials. If the Company fails to respond to the Violation Notice received from the Franchising Authority, or the alleged noncompliance is not remedied within the cure period set forth above, the Franchising Authority shall schedule a meeting with representatives of both the Company and the Franchising Authority to resolve the matter. Such meeting shall be scheduled at a time that is reasonably convenient to both parties. The parties agree that if such a Violation Notice is issued with regard to any employee, representative and/or subcontractor of the Company, that the Company will provide the City the name of such employee, representative and/or subcontractor responsible for the alleged violation. Furthermore, if a subcontractor is identified as the cause of any violation, the Company shall procure a representative of the subcontractor for any meetings held with the City.

6.4 Enforcement. Subject to applicable federal and state law, if after the meeting provided for in Section 6.3, the Franchising Authority determines that the Company is in default of the provisions addressed in the Violation Notice, the Franchising Authority may:

(a) seek specific performance.

(b) commence an action at law for monetary damages or seek other equitable relief; or

(c) in the case of a substantial default of a material provision of this Agreement, seek to revoke the Franchise in accordance with subsection 6.5 below.

6.5 Revocation.

6.5.1 Prior to the revocation or termination of the Franchise, the Franchising Authority shall give written notice to the Company of its intent to revoke the Franchise on the basis of an alleged substantial default of a material provision of this Agreement. The notice shall set forth the exact nature of the alleged default. The Company shall have thirty (30) days from receipt of such notice to submit its written objection to the Franchising Authority or to cure the alleged default. If the Franchising Authority is not satisfied with the Company’s response, the Franchising Authority may seek to revoke the Franchise at a public hearing. The Company shall be given at least thirty (30) days’ prior written notice of the public hearing, specifying the time and place of the hearing and stating the Franchising Authority’s intent to revoke the Franchise.

6.5.2 At the public hearing, the Company shall be permitted to state its position on the matter, present evidence, and question witnesses, after which the Franchising Authority’s governing body shall determine whether or not the Franchise shall be revoked. The public hearing shall be on the record and a written transcript shall be made available to the Company within ten (10) business days. The decision of the Franchising Authority’s

governing body shall be made in writing and shall be delivered to the Company. The Company may appeal such a decision to an appropriate court, which shall have the power to review the decision of the Franchising Authority's governing body. The Company may continue to operate the Cable System until all legal appeals procedures have been exhausted.

6.5.3 Notwithstanding the provisions of this Section 6, the Company does not waive any of its rights under federal law or regulation.

SECTION 7 ASSIGNMENTS AND OTHER TRANSFERS

The Franchise shall be fully transferable to any successor in interest to the Company. A notice of transfer shall be filed by the Company to the Franchising Authority within forty-five (45) days of such transfer. The transfer notification shall consist of an affidavit signed by an officer or general partner of the transferee that contains the following:

(a) an affirmative declaration that the transferee shall comply with the terms and conditions of this Agreement, all applicable federal, state, and local laws, regulations, and ordinances regarding the placement and maintenance of facilities in any public right-of-way that are generally applicable to users of the public right-of-way and specifically including the Alabama Underground Damage Prevention Act (Ala. Code § 37-15-1, *et seq.*);

(b) a description of the transferee's service area; and

(c) the location of the transferee's principal place of business and the name or names of the principal executive officer or officers of the transferee.

No affidavit shall be required, however, for (i) a transfer in trust, by mortgage, hypothecation, or by assignment of any rights, title, or interest of the Company in the Franchise or in the Cable System in order to secure indebtedness, or (ii) a transfer to an entity directly or indirectly owned or controlled by WideOpenWest Finance, LLC.

SECTION 8 INSURANCE, INDEMNITY AND BOND

8.1 Insurance.

8.1.1 Liability Insurance. Throughout the term of this Agreement, the Company shall, at its sole expense, maintain comprehensive general liability insurance, issued by a company licensed to do business in the State of Alabama with a rating of not less than "A minus," designating the Franchising Authority and its officers, boards, commissions, councils, elected officials, agents, and employees as additional insureds, and provide the Franchising Authority certificates of insurance demonstrating that the Company has obtained the insurance required in this Section 8.1.1. This liability insurance policy or policies shall be in the minimum amount of One Million Dollars (\$1,000,000.00) for bodily injury or death of any one person, One Million Dollars (\$1,000,000.00) for bodily injury or death of any two or more persons resulting from one occurrence, and One Million Dollars (\$1,000,000.00) for property damage resulting from any one accident. The policy or policies shall not be canceled except upon thirty (30) days' prior written notice of cancellation to the City.

8.1.2 Workers' Compensation. The Company shall ensure its compliance with the Alabama Workers' Compensation Law.

8.2 Indemnification. The Company shall indemnify, defend, and hold harmless the Franchising Authority, its officers, employees, and agents acting in their official capacities from and against any liability or claims resulting from property damage or bodily injury (including accidental death) that arise out of the Company's construction, operation, maintenance, or removal of the Cable System, including but not limited to reasonable attorneys' fees and costs, provided that the Franchising Authority shall give the Company written notice of its obligation to indemnify and defend the Franchising Authority within ten (10) business days of receipt of a claim or action pursuant to this Section 8.2. Notwithstanding the foregoing, the Company shall not be obligated to indemnify the Franchising Authority for any damages, liability, or claims resulting from the willful misconduct or negligence of the Franchising Authority or for the Franchising Authority's use of the Cable System.

8.3 Liability and Indemnity. In accordance with Section 635A of the Cable Act, the Franchising Authority, its officials, employees, members, or agents shall have no liability to the Company arising from the regulation of Cable Service or from a decision of approval or disapproval with respect to a grant, renewal, transfer, or amendment of this Franchise. Any relief, to the extent such relief is required by any other provision of federal, state, or local law, shall be limited to injunctive relief and declaratory relief.

8.4 Bond, Certificate of Deposit or Letter of Credit. The Company shall obtain and maintain, or cause to be obtained and maintained, during the entire term of the franchise and any extensions and renewals thereof, at its cost and expense, and file with the City Clerk a corporate surety (performance) bond, certificate(s) of deposit assigned to the City or irrevocable, unconditional letter of credit in the amount of Fifty Thousand Dollars (\$50,000), both to guarantee the timely construction and full activation of the Company's system and to secure the faithful performance of the Company and its subcontractors of all its obligations provided under this Franchise Agreement. The amount of such bond, certificate(s) of deposit or letter of credit shall be increased to the amount of One Hundred Thousand Dollars (\$100,000) following the initial term of this Agreement. Failure to timely obtain, file, assign and/or maintain such bond, certificate(s) of deposit or letter of credit at all times at the required amount shall constitute a substantial violation of this Agreement. If the Company elects to deposit and assign for the benefit of the City a certificate(s) of deposit, any interest earned on the principal sum required shall inure to the benefit of the Company and any tax liability on said interest will inure to the Company. The performance bond shall provide, and certificate(s) of deposit and letter of credit shall be subject to, the following conditions:

(1) There shall be recoverable by the City, jointly and severally from the principal and surety, or from the certificate(s) of deposit or letter of credit, any and all fines and penalties due to the City and any and all damages, losses, costs, and expenses suffered, incurred by or resulting from failure of Company and its subcontractors to: faithfully comply with the provisions of the franchise; comply with all applicable orders, permits and directives of any City agency or body having the City over its acts or defaults; pay any claims, liens or taxes due to the City which arise from or by reason of the construction, operation, maintenance or repair of the communications system.

(2) The total amount of the bond, certificate(s) of deposit or letter of credit shall be forfeited in favor of the City in the event:

- (i) Company or any of its subcontractors abandons its system at any time during the term of the franchise or extension thereof or ceases operation of the system for a period in excess of six (6) months; and/or
 - (ii) Company assigns the franchise in violation of the terms of this Agreement.
- (3) The performance bond, certificate(s) of deposit or letter of credit required herein shall be in a form satisfactory to the City Attorney. Any performance bond shall require thirty (30) days' written notice of any non-renewal, alteration or cancellation to both the City and Utility. Company shall, in the event of any such cancellation notice, obtain, pay all premiums for, and file with the City, written evidence of the issuance of a replacement bond within thirty (30) days following the receipt by the City or Company of any notice of cancellation. Failure to do so shall constitute a substantial violation of this Agreement. The performance bond, certificate(s) of deposit or letter of credit shall at all times be maintained at the amount and levels as required in this section and shall be a continuing obligation for the duration of the franchise and thereafter until the Company has liquidated all of its obligations with the City that may have arisen by reason of the construction, operation or maintenance of the system or breach or termination of the franchise. If the bond, certificate(s) of deposit or letter of credit is drawn down for any reason, the bond, certificate(s) of deposit or letter of credit shall be renewed to the amounts required by the City.
- (4) The City shall notify the Company in writing and allow Company thirty (30) days to cure, unless such time to cure is extended by the City, before calling the surety bond or drawing upon the certificate of deposit or letter of credit.

SECTION 9 PUBLIC, EDUCATION, GOVERNMENT ACCESS

9.1 Channel Capacity. At such time as the Company achieves ten percent (10%) market share of the paid Video Programming subscriber market within the Franchise Area, the Company agrees to make available channel capacity, up to one (1) fully dedicated Channel position, on the digital tier, to be designated for non-commercial, non-revenue generating public, educational, or governmental ("PEG") access purposes. Unused time on the PEG Channel positions may be utilized by the Company subject to terms to be mutually agreed upon by the Company and the Franchising Authority.

9.2 Programming Obligations. The Company shall not be required to dedicate a full-time channel for use by the Franchising Authority until it has produced eight (8) hours per week of non-duplicative original programming on the activated PEG Channel for three (3) consecutive months. Once the channel is dedicated for PEG use, the Franchising Authority certifies and commits to continued production at the eight (8) hours per week of non-duplicative original programming threshold throughout the term of the Agreement. Should the Franchising Authority fail to maintain eight (8) hours of programming per week for any period of three (3) consecutive months on any PEG Channel, the Company may reclaim the Channel position for its own use. For purposes of this Agreement, original programming includes programming produced specifically for, about, or by the City of Madison or Madison City Schools. Character-generated messages, video bulletin board messages, traffic cameras, or other passively produced content shall not count towards the programming obligations of this Agreement.

9.3 Channel Positions. At any time during the term of this Agreement and at the Company's sole option and discretion, the Company may (i) change the transmission technology by which PEG access programming is delivered to Subscribers, provided, however, that the quality of PEG access programming transmitted over the Cable System to Subscribers is of a quality comparable to that which was delivered to the Company by the PEG programmer, or (ii) relocate any PEG programming to a Channel position on its lowest digital tier service delivered to all of the Company's Subscribers. The Company shall notify the Franchising Authority at least thirty (30) days in advance of such changes.

9.4 Ownership. The Company does not relinquish its ownership of its ultimate right of control over a Channel position by designating it for PEG access use. A PEG access user, whether such user is an individual, educational, or governmental user, acquires no property or other interest in the Channel position by virtue of the use of a Channel position so designated.

9.5 Equipment. It shall be the sole responsibility of the Franchising Authority to obtain, provide, and maintain any equipment necessary to produce and cablecast PEG programming over the Cable System. The Company shall not be responsible for obtaining, providing, or maintaining any such equipment.

9.6 No Liability. The Company shall have no liability, nor shall it be required to provide indemnification to the Franchising Authority for PEG programming cablecast over the Cable System.

9.7 Complementary Service. The Company agrees to continue its complimentary service to City Hall and Dublin Park. Furthermore, the Company agrees to provide new additional complimentary access to the Company's Cable Service for the City of Madison Community Center located at 1329 Browns Ferry Road for the term of this agreement.

9.7.1 Company and the City acknowledge that the FCC-s Third Report and Order in MB Docket No. 05-311, entitled In the Matter of Implementation of Section 621(a)(I) of the Cable Communication Policy Act of 1984 as Amended by the Cable Television Consumer Protection and Competition Act of 1992, adopted on August 1, 2019 and released on August 2, 2019 ("Third Section 621 Order"), concluded that certain in-kind contributions required

by a franchise agreement to be provided to a franchising authority without charge are franchise fees under federal law, including but not limited to requirements to provide complimentary services. In the event that an appellate court of appropriate jurisdiction, in a final non-appealable order, overturns the FCC's conclusions in the Third Section 621 Order or in the event the FCC conclusions in the Third Section 621 Order are overturned, amended, revised or changed by the FCC or a federal legislative act, such that in-kind contributions required by a franchise agreement are no longer franchise fees under federal law, the City may notify Company in writing that it desires to receive one (1) Drop, one (1) cable outlet, and one (1) converter, if necessary, and Basic Cable Service, to the locations identified herein.

9.7.2 Upon the Company's receipt of such notice, the Company shall have one hundred twenty (120) days from receipt of City's notice to meet its obligations of this Section. Any such obligations shall apply only prospectively upon the end of such one hundred twenty (120) day period, or the end of any mutually agreed extension, and only through the end of the term of this franchise as specified in this Agreement. Notwithstanding the foregoing, the conditional obligations of this Section shall remain at all times subject to applicable law, including Company's right to assert that any such in-kind contributions requested by City remain franchise fees under applicable law.

9.7.3 Company and the City acknowledge that in kind contribution required to be provide to the franchising authority should be assigned a value equal to the Company's marginal cost in providing such contributions.

SECTION 10 MISCELLANEOUS

10.1 Controlling Authorities. This Agreement is made with the understanding that its provisions are controlled by the Cable Act, other federal laws, state laws, and all applicable local laws, ordinances, and regulations. To the extent such local laws, ordinances, or regulations clearly conflict with the terms and conditions of this Agreement, the terms and conditions of this Agreement shall prevail, except where such conflict arises from the Franchising Authority's lawful exercise of its police powers.

10.2 Appendices. The Appendices to this Agreement and all portions thereof are, except as otherwise specified in this Agreement, incorporated by reference in and expressly made a part of this Agreement.

10.3 Enforceability of Agreement; No Opposition. By execution of this Agreement, the Company and the Franchising Authority acknowledge the validity of the terms and conditions of this Agreement under applicable law in existence on the Effective Date and pledge that they will

not assert in any manner at any time or in any forum that this Agreement, the Franchise, or the processes and procedures pursuant to which this Agreement was entered into and the Franchise was granted are not consistent with the applicable law in existence on the Effective Date.

10.4 Governmental Powers. The Franchising Authority expressly reserves the right to exercise the full scope of its powers, including both its police power and contracting authority, to promote the public interest and to protect the health, safety, and welfare of the citizens of the City of Madison, Alabama.

10.5 Entire Agreement. This Agreement, including all Appendices, embodies the entire understanding and agreement of the Franchising Authority and the Company with respect to the subject matter hereof and merges and supersedes all prior representations, agreements, and understandings, whether oral or written, between the Franchising Authority and the Company with respect to the subject matter hereof, including without limitation all prior drafts of this Agreement and any Appendix to this Agreement, and any and all written or oral statements or representations by any official, employee, agent, attorney, consultant, or independent contractor of the Franchising Authority or the Company. All ordinances or parts of ordinances or other agreements between the Company and the Franchising Authority that are in conflict with the provisions of this Agreement are hereby declared invalid and superseded.

10.6 Notices. All notices shall be in writing and shall be sufficiently given and served upon the other party by first class mail, registered or certified, return receipt requested, postage prepaid; by third-party commercial carrier; or via facsimile (with confirmation of transmission) and addressed as follows:

THE FRANCHISING AUTHORITY:

City of Madison, Alabama
Attn: Mayor
100 Hughes Road
Madison, Alabama 35758

With a copy to: City of Madison, Alabama
Attn: City Attorney
100 Hughes Road
Madison, Alabama 35758

COMPANY:

Knology of Huntsville, Inc. d/b/a WOW! Internet-Cable-Phone
Attn: Director of Operations
2401 10th Street SW
Huntsville, Alabama 35805

With a copy to: WOW! Internet-Cable-Phone
Attn: Legal Department
7887 East Belleview Avenue, #500
Englewood, Colorado 80111

10.7 Contacts for Subcontractors. The Company shall provide, upon the City's request, the contact information for any and all sub-contractors utilized by the Company for its work within the City, to include the name, address, office phone number and a means for immediate notification and communication with any such subcontractor and its supervisors in the field by means of a pager, cellular phone or other similar means of communication during all phases of construction.

10.8 Additional Representations and Warranties. In addition to the representations, warranties, and covenants of the Company to the Franchising Authority set forth elsewhere in this Agreement, the Company represents and warrants to the Franchising Authority and covenants and agrees (which representations, warranties, covenants and agreements shall not be affected or waived by any inspection or examination made by or on behalf of the Franchising Authority) that, as of the Effective Date:

10.8.1 Organization, Standing, and Authorization. The Company is a corporation validly existing and in good standing under the laws of the State of Delaware and is duly authorized to do business in the State of Alabama and in the Franchise Area.

10.8.2 Compliance with Law. The Company, to the best of its knowledge, has obtained all government licenses, permits, and authorizations necessary for the operation and maintenance of the Cable System.

10.9 Maintenance of System in Good Working Order. Until the termination of this Agreement and the satisfaction in full by the Company of its obligations under this Agreement, in consideration of the Franchise, the Company agrees that it will maintain all of the material properties, assets, and equipment of the Cable System, and all such items added in connection with any upgrade, in good repair and proper working order and condition throughout the term of this Agreement.

10.10 Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, permitted transferees, and assigns. All of the provisions of this Agreement apply to the Company, its successors, and assigns.

10.11 No Waiver; Cumulative Remedies. No failure on the part of the Franchising Authority or the Company to exercise, and no delay in exercising, any right or remedy hereunder including without limitation the rights and remedies set forth in this Agreement, shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or remedy preclude any other right or remedy, all subject to the conditions and limitations established in this Agreement. The rights and remedies provided in this Agreement including without limitation the rights and remedies set forth in Section 6 of this Agreement, are cumulative and not exclusive of any remedies provided by law, and nothing contained in this Agreement shall impair any of the rights or remedies of the Franchising Authority or Company under applicable law, subject in each case to the terms and conditions of this Agreement.

10.12 Severability. If any section, subsection, sentence, clause, phrase, or other portion of this Agreement is, for any reason, declared invalid, in whole or in part, by any court, agency,

commission, legislative body, or other authority of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent portion. Such declaration shall not affect the validity of the remaining portions of this Agreement, which shall continue in full force and effect.

10.13 No Agency. The Company shall conduct the work to be performed pursuant to this Agreement as an independent entity and not as an agent of the Franchising Authority.

10.14 Governing Law. This Agreement shall be deemed to be executed in the City of Madison, Alabama, and shall be governed in all respects, including validity, interpretation, and effect, by and construed in accordance with the laws of the State of Alabama, as applicable to contracts entered into and to be performed entirely within that state.

10.15 Claims Under Agreement. The Franchising Authority and the Company, agree that, except to the extent inconsistent with Section 635 of the Cable Act (47 U.S.C. § 555), any and all claims asserted by or against the Franchising Authority arising under this Agreement or related thereto shall be heard and determined either in a court of the United States located in Alabama (“Federal Court”) or in a court of the State of Alabama of appropriate jurisdiction (“Alabama State Court”). To effectuate this Agreement and intent, the Company agrees that if the Franchising Authority initiates any action against the Company in Federal Court or in Alabama State Court, service of process may be made on the Company either in person or by registered mail addressed to the Company at its offices as defined in Section 10.6, or to such other address as the Company may provide to the Franchising Authority in writing.

10.16 Modification. The Company and Franchising Authority may at any time during the term of this Agreement seek a modification, amendment, or waiver of any term or condition of this Agreement. No provision of this Agreement nor any Appendix to this Agreement shall be amended or otherwise modified, in whole or in part, except by an instrument, in writing, duly executed by the Franchising Authority and the Company, which amendment shall be authorized on behalf of the Franchising Authority through the adoption of an appropriate resolution, letter of agreement, or order by the Franchising Authority, as required by applicable law.

10.17 Delays and Failures Beyond Control of the Parties. Notwithstanding any other provision of this Agreement, the neither party shall be liable for delay in performance of, or failure to perform, in whole or in part, its obligations pursuant to this Agreement due to strike, war or act of war (whether an actual declaration of war is made or not), insurrection, riot, act of public enemy, accident, fire, flood or other act of God, technical failure, sabotage, or other events, where the party has exercised all due care in the prevention thereof, to the extent that such causes or other events are beyond the control of the parties and such causes or events are without their fault or negligence. In the event that any such delay in performance or failure to perform affects only part of a party’s capacity to perform, the party shall perform to the maximum extent it is able to do so and shall take all steps within its power to correct such cause(s). The parties agree that in correcting such cause(s), they shall take all reasonable steps to do so in as expeditious a manner as possible. The Company shall promptly notify the Franchising Authority in writing of the occurrence of an event covered by this Section 10.16, and the Franchising Authority shall give like notice to the Company.

10.18 Duty to Act Reasonably and in Good Faith. The Company and the Franchising Authority shall fulfill their obligations and exercise their rights under this Agreement in a reasonable manner and in good faith. Notwithstanding the omission of the words “reasonable,” “good faith,” or similar terms in the provisions of this Agreement, every provision of this Agreement is subject to this section.

10.19 Contractual Rights Retained. Nothing in this Agreement is intended to impair the contractual rights of the Franchising Authority or the Company under this Agreement.

10.20 No Third-Party Beneficiaries. Nothing in this Agreement, or any prior agreement, is or was intended to confer third-party beneficiary status on any member of the public to enforce the terms of such agreements or Franchise.

IN WITNESS WHEREOF, the party of the first part, by its Mayor, thereunto duly authorized by the City Council of said Franchising Authority, has caused the name of said Franchising Authority to be hereunto signed and the corporate seal of said Franchising Authority to be hereunto affixed, and the Company, the party of the second part, by its officers thereunto duly authorized, has caused its name to be hereunto signed and its seal to be hereunto affixed as of the date and year first above written.

City of Madison, Alabama

By: _____

Name: Paul Finley

Title: Mayor

(Seal)

Attest: _____

Date: _____

Knology of Huntsville, Inc.

By: _____

Name:

Title:

Attest: _____

Date: _____

APPENDIX A DEFINED TERMS

For purposes of the Agreement to which this Appendix A is appended, the following terms, phrases, words, and their derivations shall have the meanings set forth herein, unless the context clearly indicates that another meaning is intended.

“Agreement” means the Agreement to which this Appendix A is appended, together with all Appendices attached thereto and all amendments or modifications thereto.

“Basic Service” means any service tier that includes the retransmission of local television broadcast Signals and any equipment or installation used in connection with Basic Service.

“Cable Act” means Title VI of the Communications Act of 1934 as amended, 47 U.S.C. § 521, *et seq.*

“Cable Service” means the one-way transmission to Subscribers of Video Programming or other programming service and Subscriber interaction, if any, which is required for the selection or use of such Video Programming or other programming service. “Cable Service” does not include any Video Programming provided by a commercial mobile service provider as defined in 47 U.S.C. §332(d).

“Cable Service Provider” or **“CSP”** means any person or group of persons (A) who provides Cable Service over a Cable System and directly or through one or more affiliates owns a significant interest in such Cable System, or (B) who otherwise controls or is responsible for, through any arrangement, the management and operation of such a Cable System.

“Cable System” means a facility, consisting of a set of closed transmission paths and associated Signal generation, reception, and control equipment, which is designed to provide Cable Service, which includes Video Programming and which is provided to multiple Subscribers within a community, but “Cable System” 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 as defined herein.

(C) a facility of a common carrier which is subject, in whole or in part, to the provisions of 47 U.S.C. §§201–276, 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 system.

“**Channel**” means a “cable channel” or “channel” as defined in 47 U.S.C. § 522(4).

“**Company**” means Knology of Huntsville, Inc., a corporation validly existing under the laws of the State of Delaware, or lawful successor, transferee, designee, or assignee thereof.

“**FCC**” means the Federal Communications Commission, its designee, or any successor thereto.

“**Franchise Area**” means the incorporated areas of the City of Madison, Alabama, including any areas annexed by the Franchising Authority during the term of the Franchise.

“**Franchising Authority**” means the City of Madison, Alabama, a municipal corporation, or lawful successor, transferee, designee, or assignee thereof.

“**Gross Revenues**” means:

(A) all revenues received from Subscribers in the Franchise Area for providing Cable or Video Services, and all revenues received from nonsubscribers in the Franchise Area for advertising services and as commissions from home shopping services, as allocated pursuant to subdivision (B); provided, that the advertising or home shopping services are disseminated through Cable or Video Services. Gross Revenues shall be determined according to Generally Accepted Accounting Principles (“GAAP”). “Gross Revenues” shall not include any:

- (i) tax, surcharge, or governmental fee, including franchise fees.
- (ii) revenue not actually received, even if billed, such as bad debt.
- (iii) revenue received by any affiliate or any other person in exchange for supplying goods or services to the service provider.
- (iv) amounts attributable to refunds, rebates, or discounts.
- (v) revenue from services provided over the Cable System or Video Service system that are associated with or classified as non-Cable or non-Video Services under federal law, including but not limited to revenues received from providing telecommunications services, information services other than Cable or Video Services, Internet access services, directory or Internet advertising services, including but not limited to yellow pages, white pages, banner, and electronic publishing advertising. Where the sale of any such non-Cable or non-Video Service is bundled with the sale of any Cable or Video Service or Services and sold for a single non-itemized price, the term “Gross Revenues” shall include only those revenues that are attributable to Cable or Video Services based on the provider’s books and records.

(vi) revenue attributable to financial charges, such as returned check fees, late fees or interest.

(vii) revenue from the sale or rental of property, except for such property the consumer is required to buy or rent exclusively from the service provider.

(viii) revenues from providing or maintaining an inside wiring plan.

(ix) revenue from sales for resale with respect to which the purchaser is required to pay a franchise fee, and the purchaser certifies in writing that it will resell the service and pay a franchise fee with respect thereto; and

(x) amounts attributable to a reimbursement of costs, including but not limited to the reimbursements by programmers of marketing costs incurred for the promotion or introduction of Video Programming; and

(B) with regard to Gross Revenues attributable to advertising revenues, or video home shopping services, the amount that is allocable the Franchise Area is equal to the total amount of the service provider's revenue received from the advertising and home shopping services multiplied by the ratio of the number of the provider's Subscribers located in the Franchise Area to the total number of the provider's Subscribers. The ratio shall be based on the number of the provider's Subscribers as of January 1 of the preceding year or more current Subscriber count at the provider's discretion, except that, in the first year in which services are provided, the ratio shall be computed as of the earliest practical date.

“Person” means any natural person or any association, firm, partnership, joint venture, corporation, or other legally recognized entity, whether for-profit or not-for-profit, but shall not mean the Franchising Authority.

“Signal” means any transmission of radio frequency energy or of optical information.

“Streets” means the surface of, and the space above and below, any and all streets, avenues, highways, boulevards, concourses, driveways, bridges, tunnels, parks, parkways, waterways, docks, bulkheads, wharves, piers, public grounds, and public places or waters within and belonging to the Franchising Authority and any other property within the Franchise Area to the extent to which there exist public easements or public rights-of-way.

“Subscriber” means any Person lawfully receiving Video Service from a Video Service Provider or Cable Service from a Cable Service Provider.

“Video Programming” means programming provided by or generally considered comparable to programming provided by a television broadcast station, as set forth in 47 U.S.C. § 522(20).

“Video Service” means the provision of Video Programming through wireline facilities located at least in part in the public rights-of-way without regard to delivery technology,

including Internet protocol technology. This definition does not include any Video Programming provided by a commercial mobile service provider as defined in 47 U.S.C. § 332(d) or Video Programming provided as part of, and via, a service that enables users to access content, information, electronic mail, or other services offered over the public Internet.

“Video Service Provider” or **“VSP”** means an entity providing Video Service as defined herein but does not include a Cable Service Provider.

APPENDIX B
CUSTOMER SERVICE STANDARDS

Code of Federal Regulations

Title 47, Volume 4, Parts 70 to 79

Revised as of October 1, 1998

From the U.S. Government Printing Office via GPO Access

47 C.F.R. § 76.309

Page 561–63

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

§ 76.309 Customer service obligations.

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

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

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

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

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

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

(c) Effective July 1, 1993, a cable operator shall be subject to the following customer service standards:

(1) Cable system office hours and telephone availability—

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

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

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

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

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

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

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

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

(i) Standard installations will be performed within seven (7) business days after an order has been placed. "Standard" installations are those that are located up to 125 feet from the existing distribution system.

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

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

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

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

(3) Communications between cable operators and cable subscribers—

(i) Notifications to subscribers—

(A) The cable operator shall 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:

- (1) Products and services offered.
- (2) Prices and options for programming services and conditions of subscription to programming and other services.
- (3) Installation and service maintenance policies.
- (4) Instructions on how to use the cable service.
- (5) Channel positions programming carried on the system; and,
- (6) Billing and complaint procedures, including the address and telephone number of the local franchise authority's cable office.

(B) Customers will be notified of any changes in rates, programming services or channel positions as soon as possible in writing. Notice must be given to subscribers for a minimum of thirty (30) days in advance of such changes if the change is within the control of the cable operator. In addition, the cable operator shall notify subscribers thirty (30) days in advance of any significant changes in the other information required by paragraph (c)(3)(i)(A) of this section. Notwithstanding any other provision of Part 76, a cable operator 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 franchising authority on the transaction between the operator and the subscriber.

(ii) Billing—

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

(B) In case of a billing dispute, the cable operator must respond to a written complaint from a subscriber within 30 days.

(iii) Refunds—Refund checks will be issued promptly, but no later than either—

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

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

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

(4) Definitions—

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

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

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

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