

CITY OF GAUTIER
CITY MANAGER MEMORANDUM

To: Honorable Mayor and Council
From: Samantha D. Abell, City Manager
Date: March 29, 2016
Subject: Consideration of a Cable Television Franchise Agreement with Cable One, Inc.

REQUEST:

Consideration of a negotiated Cable Television Franchise Agreement with Cable One, Inc. The City Council authorized the City Manager and Local Government Services to negotiate a new franchise agreement.

SUMMARY:

The purpose of this summary is to highlight some of the key provisions that are proposed for a new Cable Television Franchise with Cable One. This summary was drafted in part by Local Government Services. The following provisions are proposed for the City's new Franchise:

- The proposed Agreement incorporates the minimum Federal Customer Service Standards, increases insurance requirements and includes extensive construction standards.
- The proposed term of the agreement is Ten (10) years.
- The proposed Agreement includes the definition of "Gross Revenues" and the requirement for Cable One to pay the City 5% of Gross Revenues on a quarterly basis rather than semi-annually with extensive documentation requirements. The City will now receive franchise fee payments on Home Shopping and Advertising revenue and franchise fee revenue will also be included in the calculation of Gross Revenues. This will increase the City's annual cable franchise fee revenue by approximately 20% or approximately \$25,000.00 more annually.
- In the event that a Franchise Fee payment is not received by the City on or before the date due, or is underpaid, Cable One shall pay the City in addition to the payment, or sum due, \$100.00 per day or part thereof that the violation continues.

- If any audit reveals an underpayment by Cable One of more than 5% or more during any audit period, Cable One shall be responsible for City's reasonable costs associated with the audit.
- The proposed Agreement incorporates all rights and regulatory authority allowed under the Cable Act and applicable FCC regulations.
- Provisions are included to require compliance with FCC's technical performance standards to insure picture quality and sound delivered over the system.
- The agreement provides for free cable television service to all City owned buildings and public and parochial elementary and secondary schools. .
- Cable One has agreed to reimburse the City \$5,000.00 for costs associated with negotiating the renewal.
- Cable One shall maintain payment locations within the Service Area for receiving Subscriber payments after hours.
- Cable One shall construct and operate its Cable System so as to provide Service to all parts of its Franchise area as provided in this Franchise and having a density equivalent of thirty (30) residential units per cable mile of System, as measured from the nearest tap on the Cable System.
- An audit was performed of Cable One for the period July 1, 2012 through June 30, 2015 and the City recovered \$3,427.00 in underpaid franchise fees.

RECOMMENDATION:

The City Manager recommends City Council approve the Cable Television Franchise Agreement. The Council may:

- Approve the franchise agreement; or
- Reject the franchise agreement.

CABLE TELEVISION FRANCHISE ORDINANCE

FOR THE

CITY OF GAUTIER, MISSISSIPPI

AND

CABLE ONE, INC.

ORDINANCE NO. _____

AN ORDINANCE GRANTING A FRANCHISE TO CABLE ONE, INC., TO CONSTRUCT, OPERATE, AND MAINTAIN A CABLE SYSTEM IN THE CITY OF GAUTIER, MISSISSIPPI; SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OF THE FRANCHISE; PROVIDING FOR REGULATION AND USE OF THE SYSTEM AND THE PUBLIC RIGHTS-OF-WAY AND PRESCRIBING PENALTIES FOR THE VIOLATION OF THE PROVISIONS HEREIN;

The City Council of the City of Gautier Mississippi ordains:

STATEMENT OF INTENT AND PURPOSE

City intends, by the adoption of this Franchise, to bring about the further development of a Cable System, and the continued operation of it. Such development can contribute significantly to the communication needs and desires of the residents and citizens of City and the public generally. Further, City may achieve better utilization and improvement of public services and enhanced economic development with the development and operation of a Cable System.

Adoption of this Franchise is, in the judgment of the City Council, in the best interests of City and its residents.

FINDINGS

In the review of the request for renewal by Grantee and negotiations related thereto, and as a result of a public hearing, the City Council makes the following findings:

1. Grantee's technical ability, financial condition, legal qualifications, and character were considered and approved in a full public proceeding after due notice and a reasonable opportunity to be heard;
2. Grantee's plans for constructing, upgrading, and operating the Cable System were considered and found adequate and feasible in a full public proceeding after due notice and a reasonable opportunity to be heard;
3. The Franchise granted to Grantee by City complies with the existing applicable state statutes, federal laws and regulations; and
4. The Franchise granted to Grantee is nonexclusive.

**SECTION 1.
SHORT TITLE AND DEFINITIONS**

1. Short Title. This Franchise Ordinance shall be known and cited as the Cable Television Franchise Ordinance.
2. Definitions. For the purposes of this Franchise, the following terms, phrases, words, and their derivations shall have the meaning given herein. When not inconsistent with the context, words in the singular number include the plural number, and words in the plural number include the singular number. The word "shall" is always

mandatory and not merely directory. The word “may” is directory and discretionary and not mandatory. Words not defined shall be given their common and ordinary meaning.

- a. “Applicable Laws” means any law, statute, charter, ordinance, rule, regulation, code, license, certificate, franchise, permit, writ, ruling, award, executive order, directive, requirement, injunction (whether temporary, preliminary or permanent), judgment, decree or other order issued, executed, entered or deemed applicable by any governmental authority.
- b. “Basic Cable Service” means any Service tier which includes the lawful retransmission of local television broadcast signals and any public, educational, and governmental access programming required by the Franchise to be carried on the basic tier. Basic Cable Service as defined herein shall not be inconsistent with 47 U.S.C. § 522(3).
- c. “Cable Service” or “Service” means (A) the one-way transmission to Subscribers of (i) Video Programming or (ii) Other Programming Service, and (B) Subscriber interaction, if any, which is required for the selection or use of such Video Programming or Other Programming Service. Cable Service as defined herein shall not be inconsistent with the definition set forth in 47 U.S.C. § 522(6).
- d. “Cable System” or “System” means a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes Video Programming and which is provided to multiple Subscribers within a community, but such term does not include:
 - i. a facility that serves only to retransmit the television signals of one (1) or more television broadcast stations;
 - ii. a facility that serves Subscribers without using any public Right-of-Way;
 - iii. a facility of common carrier which is subject, in whole or in part, to the provisions of 47 U.S.C. § 201 et seq., except that such facility shall be considered a Cable System (other than for purposes of 47 U.S.C. § 541(c)) to the extent such facility is used in the transmission of Video Programming directly to Subscribers, unless the extent of such use is solely to provide interactive on-demand services;
 - iv. an open video system that complies with 47 U.S.C. § 573; or
 - v. any facilities of any electric utility used solely for operating its electric utility systems.

Cable System as defined herein shall not be inconsistent with the definition set forth in 47 U.S.C. § 522(7).

- e. “Channel” or “Cable Channel” means a portion of the electromagnetic frequency spectrum which is used in a Cable System and which is capable of delivering a television Channel as defined by the FCC. Cable Channel as defined herein shall not be inconsistent with the definition set forth in 47 U.S.C. § 522(4).
- f. “City” means City of Gautier, a municipal corporation, in the State of Mississippi, acting by and through its City Council, or its lawfully appointed designee.
- g. “City Council” means the governing body of the City of Gautier, Mississippi.
- h. “Converter” means an electronic device which converts signals to a frequency acceptable to a television receiver of a Subscriber.
- i. “Drop” means the cable that connects the ground block on the Subscriber’s residence to the nearest feeder cable of the System.
- j. “FCC” means the Federal Communications Commission and any legally appointed, designated or elected agent or successor.
- k. “Franchise” or “Cable Franchise” means this franchise ordinance and the regulatory and contractual relationship established hereby.
- l. “Franchise Fee” includes any tax, fee, or assessment of any kind imposed by the City or other governmental entity on Grantee or Subscriber, or both, solely because of their status as such. It does not include any tax, fee, or assessment of general applicability (including any such tax, fee, or assessment imposed on both utilities and cable operators or their services but not including a tax, fee, or assessment which is unduly discriminatory against cable operators or cable Subscribers); requirements or charges incidental to the awarding or enforcing of the Franchise, including payments for bonds, security funds, letters of credit, insurance, indemnification, penalties, or liquidated damages; or any fee imposed under Title 17 of the United States Code. Franchise Fee defined herein shall not be inconsistent with the definition set forth in 47 U.S.C. § 542(g).
- m. “Grantee” is Cable One, Inc., its lawful successors, transferees or assignees.
- n. “Gross Revenue” means any and all revenue derived by Grantee from the operation of its Cable System to provide Cable Service within the City including, but not limited to, 1) all Cable Service fees, 2) Franchise Fees 3) late fees and returned check fees, 4) Installation and reconnection fees, 5) upgrade and downgrade fees, 6) local, state and national advertising revenue, 7) home shopping commissions, 8) equipment rental fees, and 9) written or electronic Channel guide revenue. The term “Gross Revenue” shall not include bad debts or any taxes or fees on Services furnished by Grantee imposed upon Subscribers by any municipality, state or other governmental unit, including credits, refunds and any amounts collected from Subscribers for deposits or EG fees. The term “Gross Revenue” shall not include home wire maintenance charges until such time as all other franchised cable system

operators in the City are also required to include home wire maintenance charges in their calculation of Gross Revenues.

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

- x. “Service Interruption” means the loss of picture or sound on one (1) or more Cable Channels. Service Interruption as defined herein shall not be inconsistent with the definition set forth in 47 C.F.R. § 76.309.
- y. “Standard Installation” means any residential or commercial Installation which can be completed using a Drop of one hundred fifty (150) feet or less.
- z. “Subscriber” means any Person who is authorized to receive broadcast programming distributed by a Cable System and does not further distribute it. Subscriber as defined herein shall not be inconsistent with the definition set forth in 47 C.F.R. § 76.5(ee).
- aa. “Video Programming” means programming provided by, or generally considered comparable to programming provided by, a television broadcast station. Video Programming as defined herein shall not be inconsistent with the definition set forth in 47 U.S.C. § 522(20).

**SECTION 2.
GRANT OF AUTHORITY AND GENERAL PROVISIONS**

1. Grant of Franchise. This Franchise is granted pursuant to the terms and conditions contained herein. Failure of Grantee to provide a System as described herein, or meet the obligations and comply with all provisions herein, shall be deemed a violation of this Franchise.
2. Grant of Nonexclusive Authority.
 - a. The Grantee shall have the right and privilege, subject to the permitting and other lawful requirements of City ordinance, rule or procedure, to construct, erect, and maintain, in, upon, along, across, above, over and under the Rights-of-Way in City a Cable System and shall have the right and privilege to provide Cable Service. The System constructed and maintained by Grantee or its agents shall not interfere with other uses of the Rights-of-Way but Grantee shall have priority over later non-public users. In all cases the City shall have priority use of the Right-of-Way. Grantee shall make use of existing poles and other above and below ground facilities available to Grantee to the extent it is technically and economically feasible to do so.
 - b. Notwithstanding the above grant to use Rights-of-Way, no Right-of-Way permit shall be issued by City if City determines, in its sole but reasonable discretion, that such use is inconsistent with the terms, conditions, or provisions by which such Right-of-Way was created or dedicated, or with the present use of the Right-of-Way.
 - c. This Franchise shall be nonexclusive, and City reserves the right to grant use of said Rights-of-Way to any Person at any time during the period of this Franchise for the provision of Cable Service. Should City grant a franchise to another wireline video service provider for the provision of Cable Service, such franchise shall be on terms that are reasonably comparable to the terms of this Franchise so that no party will have an unfair competitive advantage over the other. The Grantee and City agree that this section does not require a

word for word identical franchise or agreement for a new video service provider so long as the regulatory and financial burdens on each entity are materially equivalent.

3. Lease or Assignment Prohibited. No Person may lease Grantee's System for the purpose of providing Cable Service until and unless such Person shall have first obtained and shall currently hold a valid franchise or other lawful authorization containing substantially similar burdens and obligations to this Franchise. Any assignment of rights under this Franchise shall be subject to and in accordance with the requirements of Section 10.5 of this Franchise. This provision shall not prevent Grantee from complying with any commercial leased access requirements or any other provisions of Applicable Law.
4. Franchise Term. This Franchise shall be granted for a period of Ten years, from the date of adoption unless sooner renewed, revoked or terminated as herein provided.
5. Previous Franchises. Upon acceptance by Grantee as required by Section 13.2 herein, this Franchise shall supersede and replace any previous ordinance or other authorization granting a franchise to Grantee.
6. Compliance with Applicable Laws, Resolutions and Ordinances.
 - a. The terms of this Franchise shall define the contractual rights and obligations of Grantee with respect to the provision of Cable Service and operation of the System in City. However, Grantee shall at all times during the term of this Franchise be subject to all lawful exercise of the police power, statutory rights, local ordinance-making authority of the City. This Franchise may also be modified or amended with the written consent of City and Grantee as provided in Section 11.3 herein.
 - b. Grantee shall comply with the terms of any City ordinance or regulation of general applicability which addresses usage of the Rights-of-Way within City, which may have the effect of superseding, modifying or amending the terms herein, except that Grantee shall not, through application of such City ordinance or regulation of Rights-of-Way, be subject to additional burdens with respect to usage of Rights-of-Way.
 - c. In the event of any conflict between this Franchise and any City ordinance or regulation which addresses usage of the Rights-of-Way, the conflicting terms of this Franchise shall be superseded by such City ordinance or regulation, except that Grantee shall not, through application of such City ordinance or regulation of Rights-of-Way, be subject to additional burdens with respect to usage of Rights-of-Way.
7. Rules of Grantee. Grantee shall have the authority to promulgate such rules, regulations, terms and conditions governing the conduct of its business as shall be reasonably necessary to enable said Grantee to exercise its rights and perform its obligations under this Franchise and to assure uninterrupted Service to each and all of its Subscribers; provided that such rules, regulations, terms and conditions shall not be in conflict with Applicable Laws.

8. Territorial Area Involved. This Franchise is granted for the corporate boundaries of City, as they exist from time to time. Access to Cable Service shall not be denied to any group of potential cable Subscribers solely because of the income of the potential cable Subscribers or the area in which such group resides. Grantee may take into account such standard measures of payment reliability such as credit reports, history with the Grantee and other objective indicators.
9. Written Notice. All notices, reports, or demands required to be given in writing under this Franchise shall be sent via registered or certified mail or overnight mail or shall be deemed to be given when delivered personally to any officer of Grantee or City Clerk or to the party to whom notice is being given, as follows:

If to City: City Manager
 3330 Highway 90
 Gautier, Mississippi 39553

If to Grantee: Mr. Charlie Oakes
 Cable One
 General Manager
 5100 Macphelah Rd.
 Pascagoula, MS 39567

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

SECTION 3. CONSTRUCTION STANDARDS

1. Registration, Permits, Construction Codes, and Cooperation.
 - a. Grantee shall comply with the construction requirements of local, state and federal laws.
 - b. Grantee agrees to obtain a permit as required by City prior to removing, abandoning, relocating or reconstructing, if necessary, any portion of its facilities. Notwithstanding the foregoing, City understands and acknowledges there may be instances when Grantee is required to make repairs, in compliance with federal or state laws, that are of an emergency nature. Grantee will notify City prior to such repairs, if practicable, and will obtain the necessary permits in a reasonable time after notification to City.
 - c. Grantee, at the time of or prior to submitting construction plans, shall provide City with a description of the type of Service to be provided by the Grantee in sufficient detail for City to determine compliance with the Franchise and Applicable Laws.
 - d. City may issue reasonable policy guidelines to all grantees to establish procedures for determining how to control issuance of engineering permits to multiple grantees for the use of the same Rights-of-Way for their facilities. Grantee shall cooperate with City in establishing such policy and comply with

the procedures established by the City Manager or designee to coordinate the issuance of multiple engineering permits in the same Right-of-Way segments.

- e. Grantee shall first obtain the written approval of City prior to commencing any construction or reconstruction on the Rights-of-Way and public places of City which approval shall not be unreasonably withheld.
 - f. Failure to obtain permits or comply with permit requirements shall subject Grantee to all enforcement remedies available to City under Applicable Laws or this Franchise.
 - g. Grantee shall meet with developers and be present at pre-construction meetings to ensure that the newly constructed Cable System facilities are installed in new developments within City in a timely manner.
2. Ongoing Construction. Grantee shall notify City at least ten (10) days prior to the commencement of any construction in any Rights-of-Way. Grantee shall provide to City a detailed site plan of any proposed construction or excavation. Grantee shall not open or disturb the surface of any Rights-of-Way or public place for any purpose without first having obtained a permit to do so in the manner provided by law. All excavation shall be coordinated with other utility excavation or construction so as to minimize disruption to the public. Any excavation shall be backfilled without delay and lawns, berms, gardens, shrubs, and flower beds returned and restored in as good a condition as before work involving such disturbance was done. Any excessive or loose dirt, gravel, mud or sand shall be removed from the property and deposited at an approval disposal site.
3. Use of existing poles or conduits.
- a. Grantee shall utilize existing and/or replacement poles, conduits and other facilities whenever commercially reasonable and shall not construct or install any new, different or additional poles, conduits or other facilities on public property until the written approval of City is obtained.
 - b. The facilities of Grantee shall be installed underground in those areas of City where existing telephone and electric services are both underground at the time of construction by Grantee. In areas where either telephone or electric utility facilities are installed aerially at the time of System construction, Grantee may install its facilities aerially; however, at such time as the existing aerial facilities are placed underground, Grantee shall likewise place its facilities underground at its sole cost. If City requires utilities to bury lines which are currently overhead, and the City financially participates in said undergrounding, then the City will provide the same cost sharing to the Grantee.
4. Minimum Interference.
- a. Grantee shall use its best efforts to give reasonable prior notice to any adjacent private property owners who will be negatively affected or impacted by Grantee's work in the Rights-of-Way.

- b. All transmission and distribution structures, lines and equipment erected by Grantee shall be located where reasonably feasible so as to cause minimum interference with the unencumbered use of Rights-of-Way and other public places and minimum interference with the rights and reasonable convenience of property owners who adjoin any of the Rights-of-Way and public places.
 - c. Grantee shall provide advance notice to any private property owner and shall obtain authorization prior to commencing work on private property.
5. Disturbance or damage. Any and all Rights-of-Way, or public or private property, which are disturbed or damaged during the construction, repair, replacement, relocation, operation, maintenance, expansion, extension or reconstruction of the System shall be promptly and fully restored by Grantee, at its expense, to a condition as good as that prevailing prior to Grantee's work, as reasonably determined by City. If Grantee shall fail to promptly perform the restoration required herein, after written request of City and reasonable opportunity to satisfy that request, City shall have the right to put the Rights-of-Way back into condition as good as that prevailing prior to Grantee's work. In the event City determines that Grantee is responsible for such disturbance or damage, Grantee shall be obligated to fully reimburse City for such restoration within thirty (30) days after its receipt of City's invoice thereof.
6. Temporary Relocation.
- a. At any time during the period of the Franchise, Grantee shall, at its own expense, protect, support, temporarily disconnect, relocate or remove any of its property when, in the opinion of City, (i) the same is required by reason of traffic conditions, public safety, Rights-of-Way vacation, freeway or Rights-of-Way construction, alteration to or establishment of any Rights-of-Way or any facility within the Rights-of-Way, sidewalk, or other public place, including but not limited to, installation of sewers, drains, waterlines, power lines, traffic signal lines or transportation facilities; or (ii) a City project or activity makes disconnection, removal, or relocation necessary for City.
 - b. Grantee shall, on request of any Person holding a permit to move a building, temporarily raise or lower its wires to permit the movement of such buildings. The expense of such temporary removal or raising or lowering of wires shall be paid by the Person requesting the same, and Grantee shall have the authority to require such payment in advance. Grantee shall be given not less than five (5) business days advance notice to arrange such temporary wire alterations.
7. Emergency. Whenever, in case of fire or other emergency, it becomes necessary in the judgment of the City Manager, police chief, fire chief, or their delegates, to remove or damage any of Grantee's facilities, no charge shall be made by Grantee against City for restoration, repair or damages. However, such plans will be provided to Grantee as soon as reasonably possible.
8. Tree Trimming. Grantee shall comply with all applicable provisions of the Code of Ordinances of the City regarding the trimming of any trees on public property or in the Rights-of-Way.

9. Protection of facilities. Nothing contained in this section shall relieve any Person from liability arising out of the failure to exercise reasonable care to avoid damaging Grantee's facilities while performing any work connected with grading, regrading or changing the line of any Rights-of-Way or public place or the installation of any conduit or construction or reconstruction of any sewer or water system.
10. Installation records. Grantee shall keep accurate Installation records of the location of all facilities in the Rights-of-Way and public ways and furnish them to City upon request for purposes of locating facilities that occupy public rights-of-way and planning and managing construction activity in the public right of way. Grantee shall cooperate with City to furnish such information in an electronic mapping format, if possible compatible with the then-current City electronic mapping format. Upon completion of new or relocation construction of underground facilities in the Rights-of-Way and public ways, Grantee shall provide City with Installation records in an electronic format, if possible compatible with the then-current City electronic mapping format showing the location of the underground and above ground facilities. To the maximum extent permitted by state and federal law, The City shall maintain the confidentiality of any maps or records of the location of Grantee's facilities provided by Grantee and shall not disclose such information to a third party except as specifically required by applicable law. If the City believes that it must release such information, the City shall advise Grantee in advance so that Grantee may take appropriate steps to protect its interests.
11. Locating facilities.
 - a. If, during the design process for public improvements, City discovers a potential conflict with proposed construction, Grantee shall either: (a) locate and, if necessary, expose its facilities in conflict or (b) use a location service under contract with City to locate or expose its facilities. Grantee is obligated to furnish the location information in a timely manner, but in no case longer than thirty (30) days after receipt of written notice.
 - b. City reserves the prior and superior right to lay, construct, erect, install, use, operate, repair, replace, remove, relocate, regrade, widen, realign, or maintain any Rights-of-Way and public ways, aerial, surface, or subsurface improvement, including but not limited to water mains, traffic control conduits, cable and devices, sanitary or storm sewers, subways, tunnels, bridges, viaducts, or any other public construction within the Rights-of-Way of City limits.
12. City's rights.
 - a. When City uses its prior superior right to the Rights-of-Way and public ways, Grantee shall move its property that is located in the Rights-of-Way and public ways, at its own cost, to such a location as City directs.
 - b. Nothing in this Franchise shall be construed to prevent City from constructing, maintaining, repairing or relocating sewers; grading, paving, maintaining, repairing, relocating and/or altering any Right-of-Way; constructing, laying down, repairing, maintaining or relocating any water mains; or constructing, maintaining, relocating, or repairing any sidewalk or other public work.

- c. City will notify Grantee of any planned exercise of its prior superior right to the Rights-of-Way to require Grantee to relocate its facilities with enough prior notice to enable it to relocate to the new position in the Rights-of-Way before it is required to remove its facilities from its prior location. City will provide timely permit approval for the forced relocation without charging Grantee fees of any kind.

13. Relocation delays.
 - a. Subject to Grantee's compliance with Section 3.12 above, if Grantee's relocation effort so delays construction of a public project causing City to be liable for delay damages, Grantee shall reimburse City for those damages attributable to the delay created by Grantee. In the event Grantee should dispute the amount of damages attributable to Grantee, the matter shall be referred to the City engineer for a decision. In the event that Grantee disagrees with the City engineer's decision, the matter shall be submitted to the City Council for determination, whose decision shall be final and binding upon Grantee as a matter of City review, but nothing herein waives any right of appeal to the courts.
 - b. In the event City becomes aware of a potential delay involving Grantee's facilities, City shall promptly notify Grantee of this potential delay.

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

15. Interference with Utility Facilities. Grantee agrees not to install, maintain or use any of its facilities in such a manner as to damage or interfere with any existing facilities of another utility located within the Rights-of-Way and public ways of City. Nothing in this section is meant to limit any rights Grantee may have under Applicable Laws to be compensated for the cost of relocating its facilities from the utility that is requesting the relocation.

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

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

- b. Grantee shall install and maintain its System and other equipment in accordance with City's codes and the applicable requirements of the National Electric Safety Code and all other applicable FCC, state and local regulations, and in such manner that they will not interfere with City communications technology related to health, safety and welfare of the residents.
- c. Cable System structures, and lines, equipment and connections in, over, under and upon the Rights-of-Way of City, wherever situated or located, shall at all times be kept and maintained in good condition, order, and repair so that the same shall not menace or endanger the life or property of City or any Person.

SECTION 4. DESIGN PROVISIONS

1. System Upgrade/Construction: Minimum Channel Capacity.
 - a. Grantee shall operate and maintain for the term of this Franchise a System providing a minimum of 550 MHz capacity. Design specifications found in Exhibit B attached hereto are hereby incorporated as part of this Franchise.
 - b. The System will utilize a hybrid fiber-coaxial architecture and shall replace any existing headend equipment with state-of-the-art standard frequency headend equipment which is technically necessary to meet FCC technical standards.
 - c. Grantee shall operate and maintain a System capable of providing non-video services such as high-speed data transmission, Internet access, and Other Programming Services.
 - d. All final programming decisions remain the discretion of Grantee in accordance with this Franchise, provided that Grantee notifies City and Subscribers in writing thirty (30) days prior to any Channel additions, deletions, or realignments, and further subject to Grantee's signal carriage obligations hereunder and pursuant to 47 U.S.C. § 531-536, and further subject to Grantee's rights pursuant to 47 U.S.C. § 545.
2. System Construction. On or about thirty (30) days prior to any System construction, affected Subscribers will receive a notice by any means reasonably calculated to reach them which shall include Grantee's telephone number that Subscribers can use to contact Grantee with any questions or concerns they may have. No less than forty-eight (48) hours before construction, all affected houses will receive notification regarding Grantee's construction schedule which will also include the scope of work to be performed and Grantee's telephone number. Nothing shall prohibit Grantee from consolidating the notices required in this subparagraph.
3. Interruption of Service. Grantee shall interrupt Service only for good cause and for the shortest time possible. Such interruption shall occur during periods of minimum use of the System. If Service is interrupted for a total period of more than twenty-four (24) continuous hours in any thirty (30) day period, Subscribers shall be credited pro rata for such interruption.

4. Emergency Alert Capability. Grantee shall at all times comply with the Emergency Alert System standards pursuant to Title 47, Section 11, Subparts A-E of the Code of Federal Regulations, as may be amended or modified from time to time. The City acknowledges that the Emergency Alert System will not be available to it when the Grantee is obligated by federal law to run national or regional emergency broadcasts.
5. Technical Standards. The technical standards used in the operation of the System shall comply, at minimum, with the technical standards promulgated by the FCC relating to Cable Systems pursuant to Title 47, Section 76, Subpart K of the Code of Federal Regulations, as may be amended or modified from time to time, which regulations are expressly incorporated herein by reference.
6. Special Testing.
 - a. City shall have the right to inspect and test all construction or Installation work performed pursuant to the provisions of the Franchise. In addition, City may require special testing of a location or locations within the System as desired at any time during the term of this Franchise. Demand for such special tests may be made on the basis of complaints received or other evidence indicating an unresolved controversy or noncompliance or for routine verification of Grantee's compliance with FCC technical standards. City shall endeavor to so arrange its request for such special testing so as to minimize hardship or inconvenience to Grantee or to the Subscribers caused by such testing.
 - b. Before ordering such tests, Grantee shall be afforded thirty (30) days advance written notice. City shall meet with Grantee prior to requiring special tests to discuss the need for such and, if possible, visually inspect those locations which may be the focus of concern. If, after such meetings and inspections, City wishes to require special tests and the thirty (30) days have elapsed, the tests shall be conducted by Grantee at Grantee's expense and may be observed by a qualified engineer selected by City at the City's expense. Grantee shall participate and cooperate in such testing and shall not assess City or Subscribers any additional fees or costs associated with time or labor Grantee may incur as a result of its participation in such testing. If such special testing establishes that the System does not meet all the material terms hereof and all applicable rules and regulation, Grantee shall bear all the expense for such special testing at a cost not to exceed \$10,000.00.
7. FCC Reports. The results of any tests required to be filed by Grantee with the FCC shall upon request of City also be filed with City or its designee within ten (10) days of the date of request.
8. Annexation. Upon the annexation of any additional land area by the City, if the annexed area is not currently served by a cable operator it will be subject to the other provisions of this Section 4. If the annexed area is served by a cable operator, Grantee has the option to extend its Cable System to the newly annexed area if Grantee determines that it is economically feasible to do so. Upon the annexation of any additional land area by the City, the annexed area shall be subject to all the terms of this Franchise upon sixty (60) days of written notification by the City to Grantee.

A cable operator other than Grantee whose Cable System already passes homes in an annexed area shall not extend its Cable System beyond those homes which it passes at the time the annexation occurs unless it otherwise obtains a franchise from the City.

9. Line Extension.

- a. Grantee shall construct and operate its Cable System so as to provide Service to all parts of its Franchise area as provided in this Franchise and having a minimum density equivalent of thirty (30) residential units per cable mile of System, as measured from the nearest tap on the Cable System.
- b. Where the density is less than that specified above, Grantee shall inform Persons requesting Service of the possibility of paying for Installation or a line extension and shall offer to provide them with a free written estimate of the cost, which shall be provided within fifteen (15) working days of such a request. The charge for Installation or extension for each Person requesting Service shall not exceed a pro rata share of the actual cost of extending the Service.
- c. Any residential and/or commercial unit located within one hundred fifty (150) feet of the nearest tap on Grantee's System shall be connected to the System at no charge other than the Standard Installation charge. Grantee shall, upon request by any potential Subscriber residing in City beyond the one hundred fifty (150) foot limit, extend Service to such Subscriber provided that the Subscriber shall pay the net additional Drop costs.
- d. Under Normal Operating Conditions, and absent unforeseen circumstances, if Grantee cannot perform Installations within the times specified in applicable customer standards, the Subscriber may request and is entitled to receive a credit equal to the amount he would otherwise have been charged. For any Installation that is not a free Installation or a Standard Installation, Grantee shall provide the Subscriber with a written estimate of all charges within seven (7) days of a request by the Subscriber. Failure to comply will subject Grantee to appropriate enforcement actions. This section does not apply to the introduction of new products and services when Grantee is utilizing a phased introduction.

**SECTION 5.
SERVICE PROVISIONS**

1. Non-Standard Installations. Grantee shall install and provide Cable Service to any Person requesting other than a Standard Installation provided that said Cable Service can meet FCC technical specifications and all Grantee's payment and policy obligations are met. In such case, Grantee may charge for the incremental increase in material and labor costs incurred beyond the Standard Installation.
2. Sales Procedures. Grantee shall not exercise deceptive sales procedures when marketing any of its Services within City. In its initial communication or contact with a non-Subscriber or current Subscriber seeking alternative options, Grantee shall inform the non-Subscriber of all levels of Service available, including the lowest

priced Basic Cable Service tier. Grantee shall have the right to market door-to-door during reasonable hours consistent with local ordinances and regulation.

3. Consumer Protection and Service Standards. Grantee shall maintain convenient local customer service and bill payment locations for receiving Subscriber payments, handling billing questions, equipment replacement and customer service information. Grantee shall comply with: 1) any customer service requirements that may be required by the Code of Ordinances of the City, as may be amended from time to time; 2) the standards and requirements for customer service set forth below; and 3) all applicable regulations relating to customer service obligations, including any amendments to 47 C.F.R. § 76.309 during the term of this Franchise.

a. Cable System office hours and telephone availability.

- i. Grantee will maintain a local, toll-free or collect call telephone access line which will be available to its Subscribers twenty-four (24) hours a day, seven (7) days a week.

- (1) Trained Grantee representatives will be available to respond to customer telephone inquiries during Normal Business Hours.
- (2) After Normal Business Hours, the access line may be answered by a service or an automated response system, including an answering machine. Inquiries received after Normal Business Hours must be responded to by a trained Grantee representative on the next business day.

- 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 percent (90%) of the time under Normal Operating Conditions, measured on a quarterly basis.

- iii. Grantee shall not be required to acquire equipment or perform surveys to measure compliance with the telephone answering standards above unless an historical record of complaints indicates a clear failure to comply.

- iv. Under Normal Operating Conditions, the customer will receive a busy signal less than three percent (3%) 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.

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

- i. Except for factors beyond Grantee's control, Standard Installations will be performed within seven (7) business days after an order has been

placed. "Standard" Installations are those that are located up to one hundred fifty (150) feet from the existing distribution system.

- ii. Excluding conditions beyond the control of Grantee, Grantee will begin working on "Service Interruptions" promptly and in no event later than twenty-four (24) hours after the interruption becomes known. Grantee must begin actions to correct other Service problems the next business day after notification of the Service problem.
 - iii. The appointment window alternatives for Installations, Service calls, and other Installation activities will be either a specific time or, at maximum, a four (4) hour time block during Normal Business Hours unless verbally waived by customer. Calls that do not require entrance inside the customer's structure may happen at any time during Normal Business Hours. Grantee shall contact via phone, text or by other means, as new technologies become available, all Subscribers or prospective Subscribers prior to scheduled appointments and will endeavor to maximize customer notifications of scheduled appointments. Grantee shall make available scheduled Service calls outside of Normal Business Hours during the evening on weekdays. Grantee currently maintains an On-Time Guarantee for service appointments that compensates customers by providing a twenty (\$20) credit if Grantee's technicians arrive at the customer's residence outside the appointment window. For installation appointments, late arrival is compensated in the same manner but in addition, installation will be free to the customer.
 - iv. Grantee may not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment.
 - v. If Grantee's 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.
- c. Communications between Grantee and Subscribers.
- i. Notifications to Subscribers:
 - (1) Grantee will provide written information on each of the following areas at the time of Installation of Service, at least annually to all Subscribers, and at any time upon request:
 - (a) Products and Services offered;
 - (b) Prices and options for programming Services and conditions of subscription to programming and other Services;
 - (c) Installation and Service maintenance policies;

- (d) Instructions on how to use the Cable Service;
 - (e) Channel positions of programming carried on the System; and
 - (f) Billing and complaint procedures, including the address and telephone number of the City's cable office.
- (2) Subscribers 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 a minimum of thirty (30) days in advance of such changes if the change is within the control of the Grantee. In addition, the Grantee shall notify Subscribers thirty (30) days in advance of any significant changes in the other information required by Section 5.3(c)(i)(1).
 - (3) In addition to the requirement of subparagraph (2) of this section regarding advance notification to Subscribers of any changes in rates, programming services or Channel positions, Grantee shall give thirty (30) days written notice to both Subscribers and the City before implementing any rate or Service change. Such notice shall state the precise amount of any rate change and briefly explain in readily understandable fashion the cause of the rate change (e.g., inflation, change in external costs or the addition/deletion of Channels). When the change involves the addition or deletion of Channels, each Channel added or deleted must be separately identified. For purposes of the carriage of digital broadcast signals, the Grantee need only identify for Subscribers, the television signal added and not whether that signal may be multiplexed during certain dayparts.
 - (4) To the extent Grantee is required to provide notice of Service and rate changes to Subscribers, the Grantee may provide such notice using any reasonable written means at its sole discretion.
 - (5) Notwithstanding any other provision of this section, Grantee shall not be required to provide prior notice of any rate change that is the result of a regulatory fee, Franchise Fee, or any other fee, tax, assessment, or charge of any kind imposed by any federal agency, state, or City on the transaction between the Grantee and the Subscriber.

ii. Billing:

- (1) Consistent with 47 C.F.R. § 76.1619, bills will be clear, concise and understandable. Bills must be fully itemized, with itemizations including, but not limited to, Basic Cable Service and premium Service charges and equipment charges. Bills

will also clearly delineate all activity during the billing period, including optional charges, rebates and credits.

- (2) In case of a billing dispute, the Grantee must respond to a written complaint from a Subscriber within thirty (30) days.
- iii. Refunds: Refund checks will be issued promptly, but no later than either:
 - (1) The Subscriber's next billing cycle following resolution of the request or thirty (30) days, whichever is earlier or
 - (2) The return of the equipment supplied by Grantee if Service is terminated.
- iv. Credits: Credits for Service will be issued no later than the Subscriber's next billing cycle following the determination that a credit is warranted.

Based on a historical record of complaints that indicates a clear failure to comply with the standards set forth above, upon fourteen (14) days written request, Grantee shall provide City with a quarterly compliance report specific to the System in the Service Area, which report information shall describe in detail Grantee's compliance with each and every term and provision of this Section. Grantee shall comply with the cable industry's on-time guaranty as endorsed by the National Cable Television Association. This on-time guaranty generally provides that if Installation is not commenced within the "appointment window" specified by the operator, Installation shall be free for the Subscriber unless the Subscriber is at fault for causing the Installation not to occur.

4. Refund Policy. If a Subscriber's Cable Service is interrupted or discontinued without cause, for twenty-four (24) or more consecutive hours, the Grantee shall, upon request by Subscriber, credit such Subscriber pro rata for such interruption. For this purpose, every month will be assumed to have thirty (30) days.
5. Late Fees. Grantee shall comply with all applicable state and federal laws with respect to any assessment, charge, cost, fee or sum, however characterized, that the Grantee imposes upon a Subscriber for late payment of a bill. The City reserves the right to enforce Grantee's compliance with all Applicable Laws to the maximum extent legally permissible.
6. Local Office Policy.
 - a. Grantee shall maintain locations in City for receiving Subscriber inquiries, check payments, and equipment transfers. In addition, Grantee shall maintain credit card payment locations within the Service Area for receiving Subscriber payments after hours.
 - b. Payments at Grantee's payment locations shall be deemed received on the date such payments are picked up by Grantee which shall occur no less than twenty-four (24) hours after each and every due date for Subscriber bills.

7. Service to public buildings. Grantee shall provide, upon request, and without charge, cable including two digital boxes to any municipal buildings owned, operated, and occupied by the City and to any public or parochial elementary or secondary school. Grantee shall be responsible for the costs of extension to designated institutions for the first two hundred and fifty (250) feet as measured from Grantee's nearest active plant. The institution shall pay the net additional Drop or extension costs beyond the two hundred and fifty (250) feet. The cost of any internal wiring shall be borne by the institution as well as any maintenance costs.

**SECTION 6.
OPERATION AND ADMINISTRATION PROVISIONS**

1. Administration of Franchise. The City Manager or other designee shall have continuing regulatory jurisdiction and supervision over the System and the Grantee's operation under the Franchise; provided, however, that the City Council shall retain the sole authority to take enforcement action pursuant to this Franchise.
2. Delegated-Authority. The City may appoint a citizen advisory body or may delegate to any other body or Person authority to monitor the performance of Grantee pursuant to the Franchise. Grantee shall cooperate with any such delegates of City.
3. Franchise Fee.
 - a. During the term of the Franchise, Grantee shall pay quarterly to City a Franchise Fee in an amount equal to five percent (5%) of its quarterly Gross Revenues, or such other amounts as are subsequently permitted by federal statute.
 - b. Any payments due under this provision shall be payable quarterly. The payment shall be made within forty-five (45) days of the end of each of Grantee's fiscal quarters together with a report showing the basis for the computation in form and substance substantially the same as Exhibit C attached hereto. In the event that a Franchise Fee payment or other sum due is not received by the City on or before the date due, or is underpaid, Grantee shall pay the City in addition to the payment, or sum due, \$100.00 per day or part thereof that the violation continues.
 - c. All amounts paid shall be subject to audit and recomputation by City and acceptance of any payment shall not be construed as an accord that the amount paid is in fact the correct amount. In the event the City should conduct a review of Grantee's books and records pursuant to Section 7.6 of this Franchise and such review indicates a Franchise Fee underpayment of five percent (5%) or more, the Grantee shall assume all reasonable documented costs of such audit, and pay same upon demand by the City.
4. Discounted Rates. If Grantee's Subscribers are offered what is, in effect, a discount for "bundled" services (i.e. Subscribers obtain Cable Services and some other, non-cable goods or service) then for the purpose of calculating Gross Revenues, the discount shall be applied proportionately to cable and non-cable goods and services, in accordance with the following example:

Assume a Subscriber's charge for a given month for Cable Service alone would be \$40, for local telephone service alone would be \$30, and for high-speed service alone would be \$30, for a total of \$100. In fact, the three (3) services are offered in effect at a combined rate where the Subscriber receives what amounts to a twenty percent (20%) discount from the rates that would apply to a service if purchased individually (i.e. \$80 per month for all three (3) services). The discount (here, \$20) for Gross Revenue computation purposes would be applied pro rata so that Gross Revenues for Cable Service are deemed to be \$32 (\$40 less 20% of \$40). The result would be the same if the Subscriber received a \$20 discount for telephone service on the condition that he or she also subscribes to Cable Service at standard rates.

In no event shall Grantee be permitted to evade or reduce applicable Franchise Fee payments required to be made to City due to discounted bundled services.

5. Not Franchise Fees.

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

6. Access to Records. The City shall have the right to inspect, upon reasonable notice and during Normal Business Hours, any records maintained by Grantee which relate to System operations including specifically Grantee's accounting and financial records. City acknowledges that some of the records which may be provided by Grantee may be classified as confidential and therefore may subject Grantee to competitive disadvantage if made public. City shall therefore maintain the confidentiality of any and all records provided to it by Grantee which are not required to be made public pursuant to Applicable Laws. Grantee shall produce such books and records for City's inspection at Grantee's local office within the Service Area or at such other mutually agreed upon location within the City. To the extent it is necessary for City to send representatives to a location outside of the City to inspect Grantee's books and records for compliance with the Franchise, Grantee shall be responsible for all travel costs incurred by City representatives.

7. Reports and Maps to be Filed with City.

- a. Grantee shall file with the City, at the time of payment of the Franchise Fee, a report of all Gross Revenues in form and substance as Exhibit C attached hereto.
- b. If required by City, Grantee shall provide City a written or computer-stored record of all service calls and interruptions or degradation of Service experienced for the preceding two (2) years, provided that such complaints result in or require a service call, subject to the Subscriber's right of privacy.
- c. City and Grantee shall mutually agree, at the times and in the form prescribed, such other reasonable reports with respect to Grantee's operations pursuant to this Franchise.
- d. If required by City, Grantee shall furnish to and file with City Manager the maps, plats, and permanent records of the location and character of all facilities constructed, including underground facilities, and Grantee shall file with City updates of such maps, plats and permanent records annually if changes have been made in the System.

8. Periodic Evaluation.

- a. City may require evaluation sessions no more than once every three years during the term of this Franchise, upon thirty (30) days written notice to Grantee.
- b. Topics which may be discussed at any evaluation session may include, but are not limited to, application of new technologies, System performance, programming offered, access Channels, facilities and support, municipal uses of cable, Subscriber rates, customer complaints, amendments to this Franchise, judicial rulings, FCC rulings, line extension policies and any other topics City deems relevant.
- c. As part of any periodic evaluation proceeding the City shall have the right to visit and/or inspect the Grantee's headend facility, customer service center and any other facilities of Grantee whether or not located in the City to the extent such facilities are in any way related to Grantee's ability to provide Cable Services to the City.
- d. As a result of a periodic review or evaluation session, upon notification from City, Grantee shall meet with City and discuss the findings of the City's review and undertake good faith efforts to reach agreement on changes to the Franchise that would be mutually advantageous.

**SECTION 7.
GENERAL FINANCIAL AND INSURANCE PROVISIONS**

1. Liability Insurance.

- a. Upon the effective date, Grantee shall, at its sole expense take out and maintain during the term of this Franchise commercial general liability insurance with a Grantee licensed to do business in the State of Mississippi

with a rating by A.M. Best & Co. of not less than “B” that shall protect the Grantee, City and its officials, officers, directors, employees and agents from claims which may arise from operations under this Franchise, whether such operations be by the Grantee, its officials, officers, directors, employees and agents or any subcontractors of Grantee. This liability insurance shall include, but shall not be limited to, protection against claims arising from bodily and personal injury and damage to property, resulting from Grantee’s vehicles, products and operations. Grantee shall maintain, throughout the term of the Franchise, liability insurance insuring Grantee and the City in the minimum amounts of:

- i. One Million and No/100 Dollars (\$1,000,000.00) for bodily injury or death to any one (1) Person;
 - ii. One Million and No/100 Dollars (\$1,000,000.00) for bodily injury or death resulting from any one (1) accident;
 - iii. One Million and No/100 Dollars (\$1,000,000.00) in the form of an umbrella policy.
- b. The following endorsements shall be attached to the liability policy:
- i. The policy shall provide coverage on an “occurrence” basis.
 - ii. The policy shall cover personal injury as well as bodily injury.
 - iii. The policy shall cover blanket contractual liability subject to the standard universal exclusions of contractual liability included in the carrier’s standard endorsement as to bodily injuries, personal injuries and property damage.
 - iv. Broad form property damage liability shall be afforded.
 - v. City shall be named as an additional insured on the policy.
 - vi. An endorsement shall be provided which states that the coverage is primary insurance and that no other insurance maintained by the City will be called upon to contribute to a loss under this coverage.
 - vii. Standard form of cross-liability shall be afforded.
 - viii. An endorsement stating that the policy shall not be canceled without thirty (30) days’ notice of such cancellation given to City.
- c. Grantee shall submit to City documentation of the required insurance, including a certificate showing that the City is an additional insured, as well as all properly executed endorsements.

2. Indemnification

- a. Grantee shall indemnify, defend and hold City, its officers, boards, commissions, agents and employees (collectively the “Indemnified Parties”)

harmless from and against any and all lawsuits, claims, causes or action, actions, liabilities, demands, damages, judgments, settlements, disability, losses, expenses (including attorney's fees and disbursements of counsel) and costs of any nature that any of the Indemnified Parties may at any time suffer, sustain or incur arising out of, based upon or in any way connected with the Grantee's operations, the exercise of the Franchise, the breach of Grantee of its obligations under this Franchise and/or the activities of Grantee, its subcontractors, employees and agents hereunder. Grantee shall be solely responsible for and shall indemnify, defend and hold the Indemnified Parties harmless from and against any and all matters relative to payment of Grantee's employees, including compliance with Social Security and withholdings. Grantee shall not be required to indemnify City for negligence or misconduct on the part of City or its officials, boards, commissions, agents, or employees.

- b. The indemnification obligations of Grantee set forth in this Franchise are not limited in any way by the amount or type of damages or compensation payable by or for Grantee under Workers' Compensation, disability or other employee benefit acts, acceptance of insurance certificates required under this Franchise or the terms, applicability or limitations of any insurance held by Grantee.
 - c. City does not, and shall not, waive any rights against Grantee which it may have by reason of the indemnification provided for in this Franchise, because of the acceptance by City, or the deposit with City by Grantee, of any of the insurance policies described in this Franchise.
 - d. The indemnification of City by Grantee provided for in this Franchise shall apply to all damages and claims for damages of any kind suffered by reason of any of the Grantee's operations referred to in this Franchise, regardless of whether or not such insurance policies shall have been determined to be applicable to any such damages or claims for damages.
3. Grantee's Insurance. Grantee shall not commence any Cable System reconstruction work or permit any subcontractor to commence work until all insurance required under this Franchise has been obtained. Said insurance shall be maintained in full force and effect until the expiration of this Franchise.
- a. In order for City to assert its rights to be indemnified, defended, and held harmless, City must, with respect to each claim:
 - i. Promptly notify Grantee in writing of any claim or legal proceeding which gives rise to such right;
 - ii. Afford Grantee the opportunity to participate in and fully control any compromise, settlement or other resolution or disposition of any claim or proceeding; and
 - iii. Fully cooperate with reasonable requests of Grantee, at Grantee's expense, in its participation in, and control, compromise, settlement or

resolution or other disposition of such claim or proceeding subject to subparagraph (ii) above.

SECTION 8.

SALE, ABANDONMENT, TRANSFER AND REVOCATION OF FRANCHISE

1. City's Right to Revoke.
 - a. In addition to all other rights which City has pursuant to law or equity, City reserves the right to commence proceedings to revoke, terminate or cancel this Franchise, and all rights and privileges pertaining thereto, if it is determined by City that after notice and an opportunity to cure as reordered herein;
 - i. Grantee has violated material provisions(s) of this Franchise and has not cured; or
 - ii. Grantee has attempted to evade any of the provisions of the Franchise; or
 - iii. Grantee has practiced fraud or deceit upon City.
 - b. City may revoke this Franchise without the hearing otherwise required herein if Grantee is adjudged a bankrupt.
2. Procedures for Revocation.
 - a. City shall provide Grantee with written notice of a Franchise violation consistent with Section 8 of this Franchise and shall allow Grantee thirty (30) days subsequent to receipt of the notice in which to correct the violation or to provide adequate assurance of performance in compliance with the Franchise.
 - b. Should City determine to proceed with a revocation proceeding, Grantee shall be provided the right to a public hearing affording due process before the City Council prior to the effective date of revocation. City shall provide Grantee with written notice of its decision together with written findings of fact supplementing said decision.
 - c. Only after the public hearing and upon written notice of the determination by City to revoke the Franchise may Grantee appeal said decision with an appropriate state or federal court or agency.
 - d. During the appeal period, the Franchise shall remain in full force and effect unless the term thereof sooner expires or unless continuation of the Franchise would endanger the health, safety and welfare of any Person or the public.
3. Abandonment of Service. Grantee may not abandon the System or any portion thereof without having first given three (3) months written notice to City. Grantee may not abandon the System or any portion thereof without compensating City for actual damages resulting from the abandonment, including all costs incident to removal of the System. A sale of the system to a third party will not be considered an abandonment.

4. Removal After Abandonment, Termination or Forfeiture.

- a. In the event of termination or forfeiture of the Franchise or abandonment of the System, City shall have the right to require Grantee to remove all or any portion of the System from all Rights-of-Way and public property within City.
- b. Except where Grantee has appealed the City's decision, if Grantee has failed to commence removal of System, or such part thereof as was designated by City, within thirty (30) days after written notice of City's demand for removal is given, or if Grantee has failed to complete such removal within twelve (12) months after written notice of City's demand for removal is given, City shall have the right to apply funds secured by the performance bond toward removal. If Grantee has abandoned the System without removal, after twelve (12) months the City may declare all right, title, and interest to the System to be in City with all rights of ownership including, but not limited to, the right to operate the System or transfer the System to another for operation by it.

5. Sale or Transfer of Franchise.

- a. No sale or transfer of the Franchise, or sale, transfer, or fundamental corporate change of or in Grantee, including, but not limited to, a fundamental corporate change in Grantee's parent corporation or any entity having a controlling interest in Grantee, the sale of a controlling interest in the Grantee's assets, a merger including the merger of a subsidiary and parent entity, consolidation, shall take place until a written request has been filed with City requesting approval of the sale, transfer, or corporate change and such approval has been granted or deemed granted; provided, however, that said approval shall not be required where Grantee grants a security interest in its Franchise and/or assets to secure any indebtedness or where the change is an internal business organizational change not involving a change in ownership of the parent Grantee.
- b. Any sale, transfer, exchange or assignment of stock in Grantee, or Grantee's parent corporation or any other entity having a controlling interest in Grantee, so as to create a new controlling interest therein, shall be subject to the requirements of this Section 10.5. The term "controlling interest" as used herein is not limited to majority stock ownership, but includes actual working control in whatever manner exercised. In any event, as used herein, a new "controlling interest" shall be deemed to be created upon the acquisition through any transaction or group of transactions of a legal or beneficial interest of fifteen percent (15%) or more by one (1) Person. Acquisition by one (1) Person of an interest of five percent (5%) or more in a single transaction shall require notice to City.
- c. The Grantee shall file, in addition to all documents, forms and information required to be filed by Applicable Laws, the following:
 - i. All contracts, agreements or other documents that constitute the proposed transaction and all exhibits, attachments, or other documents referred to therein which are necessary in order to understand the terms thereof; and

- ii. A list detailing all documents filed with any state or federal agency related to the transaction including, but not limited to the FCC, the FTC, the FEC, the SEC or applicable state departments and agencies. Upon request, Grantee shall provide City with a complete copy of any such document; and
- iii. Any other documents or information related to the transaction as may be specifically requested by the City.
- d. City shall have such time as is permitted by Applicable Laws in which to review a transfer request.
- e. Grantee shall reimburse City for all reasonable out-of-pocket, legal and consulting costs associated with City's review of any request to transfer.
- f. In no event shall a sale, transfer, or assignment of ownership or control pursuant to subparagraph (a) or (b) of this section be approved without the transferee becoming a signatory to this Franchise and assuming all rights and obligations thereunder, and assuming all other rights and obligations of the transferor to the City including, but not limited to, any adequate guarantees or other security instruments required by the City.
- g. No Franchise may be transferred if City determines Grantee is in noncompliance of the Franchise unless and until any noncompliance has been corrected or an acceptable compliance program has been approved by City. The approval of any transfer of ownership pursuant to this section shall not be deemed to waive any rights of City to subsequently enforce noncompliance issues relating to this Franchise with the new Grantee even if such issues predated the approval, whether known or unknown to City.

**SECTION 9.
PROTECTION OF INDIVIDUAL RIGHTS**

1. Discriminatory Practices Prohibited. Grantee shall not deny Service, deny access, or otherwise discriminate against Subscribers or general citizens on the basis of race, color, religion, national origin, sex, age, status as to public assistance, or disability. Denial of service for nonpayment shall not be prohibited under this section even if these categories exist in any particular case. Grantee shall comply at all times with all other Applicable Laws, and all executive and administrative orders relating to nondiscrimination.
2. Subscriber Privacy.
 - a. Grantee may not transmit signals from a Subscriber terminal for purposes of monitoring individual viewing patterns or practices without the express written permission of the Subscriber. Such written permission shall be for a limited period of time not to exceed one (1) year which may be renewed at the option of the Subscriber. No penalty shall be invoked for a Subscriber's failure to provide or renew such authorization. The authorization shall be revocable at any time by the Subscriber without penalty of any kind whatsoever. Such permission shall be required for each type or classification

of activity planned for the purpose of monitoring individual viewing patterns or practices. Notwithstanding the above, Grantee may monitor usage patterns for technical and network research on an aggregate basis and not for individual Subscriber identification.

- b. No lists of the names and addresses of Subscribers or any lists that identify the individual viewing habits of Subscribers shall be sold or otherwise made available to any party other than to Grantee or its agents for Grantee's service business use or to City for the purpose of Franchise administration and also to the Subscriber subject of that information, unless Grantee has received specific written authorization from the Subscriber to make such data available. Such written permission shall be for a limited period of time not to exceed one (1) year which may be renewed at the option of the Subscriber. No penalty shall be invoked for a Subscriber's failure to provide or renew such authorization. The authorization shall be revocable at any time by the Subscriber without penalty of any kind whatsoever.
- c. Written permission from the Subscriber shall not be required for the conducting of system wide or individually addressed electronic sweeps for the purpose of verifying System integrity or monitoring for the purpose of billing. Confidentiality of such information shall be subject to the provision set forth in subparagraph (b) of this section.
- d. Subscribers and non-Subscribers may request to be put on a list to prevent solicitations from Grantee.

SECTION 10. MISCELLANEOUS PROVISIONS

- 1. Franchise Renewal. Any renewal of this Franchise shall be performed in accordance with Applicable Laws.
- 2. Work Performed by Others. All applicable obligations of this Franchise shall apply to any subcontractor or others performing any work or services pursuant to the provisions of this Franchise however, in no event shall any such subcontractor or other performing work obtain any rights to maintain and operate a System or provide Cable Service. Grantee shall provide notice to City of the name(s) and address(es) of any entity, other than Grantee, which performs substantial services pursuant to this Franchise.
- 3. Amendment of Franchise Ordinance. Grantee and City may agree, from time to time, to amend this Franchise. Such written amendments may be made subsequent to a review session pursuant to Section 7 or at any other time if City and Grantee agree that such an amendment will be in the public interest or the Grantee's interest or if such an amendment is required due to changes in federal, state or local laws; provided, however, nothing herein shall restrict City's exercise of its police powers.
- 4. Compliance with Federal, State and Local Laws.
 - a. If any federal or state law or regulation shall require or permit City or Grantee to perform any service or act or shall prohibit City or Grantee from

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

- b. If any term, condition or provision of this Franchise or the application thereof to any Person or circumstance shall, to any extent, be held to be invalid or unenforceable, the remainder hereof and the application of such term, condition or provision to Persons or circumstances other than those as to whom it shall be held invalid or unenforceable shall not be affected thereby, and this Franchise and all the terms, provisions and conditions hereof shall, in all other respects, continue to be effective and complied with provided the loss of the invalid or unenforceable clause does not substantially alter the agreement between the parties. In the event such law, rule or regulation is subsequently repealed, rescinded, amended or otherwise changed so that the provision which had been held invalid or modified is no longer in conflict with the law, rules and regulations then in effect, said provision shall thereupon return to full force and effect and shall thereafter be binding on Grantee and City.
5. Nonenforcement by City. Grantee shall not be relieved of its obligations to comply with any of the provisions of this Franchise by reason of any failure or delay of City to enforce prompt compliance. City may only waive its rights hereunder by expressly so stating in writing. Any such written waiver by City of a breach or violation of any provision of this Franchise shall not operate as or be construed to be a waiver of any subsequent breach or violation.
6. Rights Cumulative. All rights and remedies given to City by this Franchise or retained by City herein shall be in addition to and cumulative with any and all other rights and remedies, existing or implied, now or hereafter available to City, at law or in equity, and such rights and remedies shall not be exclusive, but each and every right and remedy specifically given by this Franchise or otherwise existing or given may be exercised from time to time and as often and in such order as may be deemed expedient by City and the exercise of one or more rights or remedies shall not be deemed a waiver of the right to exercise at the same time or thereafter any other right or remedy.
7. Grantee Acknowledgment of Validity of Franchise. Grantee acknowledges that it has had an opportunity to review the terms and conditions of this Franchise and that under current law Grantee believes that said terms and conditions are not unreasonable or arbitrary, and that Grantee believes City has the power to make the terms and conditions contained in this Franchise.
8. Force Majeure. Neither party shall be liable for any failure of performance hereunder due to causes beyond its reasonable control including but not limited to; acts of God, fire, explosion, vandalism, storm or other similar catastrophes; national emergencies; insurrection; riots or wars.

SECTION 11.
PUBLICATION EFFECTIVE DATE; ACCEPTANCE AND EXHIBITS

1. Publication, Effective Date. This Franchise shall be published in accordance with Applicable Laws. The effective date of this Franchise shall be the date of acceptance by Grantee in accordance with the provisions of Section 11.2

2. Acceptance.
 - a. Grantee shall accept this Franchise within thirty (30) days of its enactment by the City Council, unless the time for acceptance is extended by City. Such acceptance by the Grantee shall be deemed the grant of this Franchise for all purposes. In the event acceptance does not take place, this Franchise and any and all rights granted hereunder to Grantee shall be null and void.

 - b. Upon acceptance of this Franchise, Grantee and City shall be bound by all the terms and conditions contained herein.

 - c. Grantee shall accept this Franchise in the following manner:
 - i. This Franchise will be properly executed and acknowledged by Grantee and delivered to City.

 - ii. With its acceptance, Grantee shall also deliver a certified or cashier's check, approved by the City, in the amount of Five Thousand Dollars (\$5,000.00) made payable to the City of Gautier, Mississippi, as an acceptance fee and any grant payments, and insurance certificates as required herein, that have not previously been delivered. The acceptance fee shall be deposited in an account of the City, and shall serve to recover expenses incurred by the City in the granting of this Franchise. Said expenses shall include attorney's fees and consulting expenses incurred by the City.

Passed and adopted by the City Council this _____ day of _____, 2016.

ATTEST:

CITY OF GAUTIER, MISSISSIPPI

By: _____

By: _____

Its: _____

Its: _____

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

CABLE ONE, INC.

Date: _____, _____ 2016

By: _____

Its: _____

SWORN TO BEFORE ME this
__ day of _____, 2016.

NOTARY PUBLIC

**EXHIBIT A
OWNERSHIP**

Grantee shall provide the City a copy of its Annual Report to satisfy this requirement when such Annual Report is ready.

EXHIBIT B SYSTEM DESIGN SPECIFICATIONS

The Cable System shall be designed, constructed, routinely inspected, and maintained to guarantee that the Cable System meets or exceeds the requirements of the most current editions of the National Electrical Code (NFRA 70) and the National Electrical Safety Code (ANSI C2). In all matters requiring interpretation of either of these codes, the City's interpretation shall control over all other sources and interpretations.

Grantee shall use equipment used in high-quality, reliable, modern Cable Systems of similar design in similar markets.

The Cable System shall provide Subscribers with a technically advanced and reliable Cable System. The System shall have at least 550 MHz of bandwidth capacity. The System will be two-way active, and it will be designed to have capability to transmit return signals upstream in the 5-30 MHz spectrum.

The design of the System shall be based upon a "Fiber to the node" architecture that will deliver the signals by fiber optics directly to each neighborhood. Grantee's initial design includes fibers to each node site having a neighborhood group average of approximately five hundred (500) homes. If Grantee splits nodes into smaller sizes, fewer fibers will extend to such smaller nodes. There shall be no more than seven (7) active amplifiers in a cascade from each node to the residential dwelling. The incorporation of stand-by power supplies, strategically placed throughout the system including all hubs, will further reduce the likelihood of service interruptions.

**EXHIBIT C
FRANCHISE FEE PAYMENT WORKSHEET**

TRADE SECRET – CONFIDENTIAL

	Month/Year	Month/Year	Month/Year	Total
Basic Cable Service				
Installation Charge				
Bulk Revenue				
Expanded Basic Service				
Pay Service				
Pay-per-view				
Guide Revenue				
Franchise Fee Revenue				
Advertising Revenue				
Home Shopping Revenue				
Digital Services				
Inside Wiring				
Other Revenue				
Equipment Rental				
Processing Fees				
Bad Debt				
REVENUE				
Fee Calculated				

Fee Factor: 5%

EXHIBIT D
GRANTEE COMPLIMENTARY SERVICE TO CITY LOCATIONS

One (1) complimentary outlet of Basic Service will be provided to each of the locations listed below. If any of the locations listed below require an installation, Grantee will install Basic Service at the lowest actual cost of Grantee's time and material. Each location listed below may add additional outlets at their own expense, as long as installation meets Grantee's standards and approval, which shall not be unreasonably withheld.

City Hall 3330 Hwy. 90

Police Department 3329 Hwy. 90

Police Substation South 2300 Ladnier Rd.

Public Works Building 3305 Gautier Vancleave Rd.

Central Fire Station 2502 College Dr.

North Fire Station 7510 Martin Bluff Rd.

South Fire Station 1905 Ladnier Rd.

West Fire Station 6200 Brown Rd.

Senior Citizens Building 914 De La Point Dr.