

Lakes Region  
Planning Commission

JAN 17 2012

103 Main St, Suite 3  
Meredith, NH 03253

**CABLE TELEVISION  
RENEWAL FRANCHISE**

**GRANTED TO**

**METROCAST CABLEVISION OF NEW  
HAMPSHIRE, L.L.C.**

**THE BOARD OF SELECTMEN**

**TOWN OF GILMANTON,**

**NEW HAMPSHIRE**

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## AGREEMENT

This Cable Television Renewal Franchise entered into this 22nd of June, 2000, by and between the Town of Gilmanton, New Hampshire, as Franchise Authority and MetroCast Cablevision of New Hampshire, L.L.C., 9 Apple Road, Belmont, NH, for the renewal of cable television franchise pursuant to RSA 53-C.

### RECITALS

WHEREAS, the Franchising Authority of the Town of Gilmanton has determined that the Franchisee has the financial, legal and technical ability which is reasonably sufficient to provide services, facilities, and equipment necessary to meet the future cable-related needs of the Gilmanton community;

NOW, THEREFORE, in consideration of the terms and conditions set forth herein, and it being the intention of the parties to be legally bound hereby, the Franchising Authority and the Franchisee agree as follows:

### ARTICLE 1

#### DEFINITIONS

##### SECTION 1.1—DEFINITIONS

For the purpose of this Renewal Franchise, the following words, terms, phrases and their derivations shall have the meanings given herein, unless the context, the masculine pronoun includes the feminine pronoun, words used in the present tense include the future tense, words in the plural number include the singular number and words in the singular number include the plural number. The word shall is always mandatory and not merely directory.

(1) Access or Public Access: The right or ability of any resident and/or any persons affiliated with a non-commercial institution to use designated facilities, equipment and/or channels of the Cable Television System, subject to the conditions and procedures established for such use by the Access Provider.

(2) Access Channel: A video channel which the Franchise shall make available to the Town of Gilmanton and/or the designated Access Provider, without charge, for the purpose of transmitting programming produced or provided by members of the public, Town departments and agencies, public schools, educational institutional and similar organizations.

(3) Access Provider: The regional entity to be designated by the Franchising Authority of the Town of Gilmanston for the purpose of operating and managing the use of public, educational and governmental access channels on the Cable Television System.

(4) Access programming: (i) "Public" -- Non-commercial local programming produced by the Access Provider, and/or by Gilmanston individuals and/or organizations wishing to present programming and/or information to the public; (ii) "Educational" -- Non-commercial local origination programming produced by the Gilmanston Public schools, and/or other educational organizations wishing to present educational programming and/or information to the public; (iii) "Governmental" -- Non-commercial programming produced by Town agencies, departments and/or designees of the Franchising Authority wishing to present programming and/or information to the public.

(5) Affiliate or Affiliated Person: Any Person who or which directly or indirectly controls and owns an interest in the Franchisee; any Person which the Franchisee directly or indirectly controls and in which the Franchisee owns an interest; and any Person directly or indirectly subject to control and owned in whole or in part by a Person who or which directly or indirectly controls and owns an interest in the Franchisee.

(6) Area Outage: Any event in which Cable System equipment is damaged, fails or otherwise malfunctions (collectively called "malfunctions") and eight (8) or more Subscribers receiving service from that section of cable or such equipment receive unsatisfactory (pursuant to applicable FCC standards), unusable or no service as a result of such malfunction.

(7) Basic Service: Any Service tier which includes the retransmission of local television broadcast signals.

(8) Broadcast: Over-the-air transmission by a radio or television station.

(9) Cable Act: Public Law No. 98-549, 98 Stat. 2779 (1984) (the Cable Communications Policy Act of 1984), as amended by Public Law No. 102-385, 106 Stat. 1460 (1992) (the Cable Television Consumer Protection and Competition Act of 1992), and as further amended by Public Law No. 104-458, 110 Stat. 110 (1996) (the Telecommunications Act of 1996).

(10) Cable Service: The one-way transmission to Subscribers of Video Programming or other Programming service, and Subscriber interaction, if any, which is required for the selection of such Video Programming or other programming service.

- (11) Cable Television System or Cable System or System: 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 the Town.
- (12) Channel: Bandwidth sufficient to carry Signals over the Cable System.
- (13) Converter: An electronic devise which converts Signals to a frequency within the television receiver of a Subscriber and any channel selector which permits a Subscriber to view all Signals delivered at designated Converter dial locations at the television set or by remote control.
- (14) Downstream Channel: A Channel over which Signals travel from the Headend to an authorized recipient of Programming.
- (15) Drop: A connection from feeder cable to the Subscriber/User television set, radio or other terminal.
- (16) Educational Access Channel: A Channel, or shared Channel, on the Cable System which is made available by the Franchisee for educational institutions and/or educators wishing to present non-commercial educational information to the public.
- (17) Effective Date of Renewal Franchise: June 22, 2000
- (18) Execution Date of Renewal Franchise: December 31, 2013.
- (19) FCC: The Federal Communications Commission, or any successor governmental entity thereto.
- (20) Franchise: The non-exclusive, initial authorization, or renewal thereof, issued by the Franchising Authority, whether such authorization is designated as a franchise, permit, license, resolution, contract, certificate, or otherwise, which authorizes construction and operation of the Cable System for the purpose of offering Cable Service or other service to customers.
- (21) Franchise Area: The entire corporate limits of the Town, including all territory thereafter annexed to the Town.
- (22) Franchisee: MetroCast Cablevision of New Hampshire, L.L.C., or any successor or transferee in accordance with the terms and conditions in this Renewal Franchise.
- (23) Franchising Authority: The Board of Selectmen of the Town of Gilmanton, or its lawful successor thereto.



- (24) Franchise Fee: The payments to be made by the Franchisee to the Town, which shall have the meaning as set forth in Section 622(g) of the Cable Act.
- (25) Governmental Access Channel: A Channel, or shared Channel, on the Cable System which has been made available by the Franchisee for use by the Franchising Authority and/or its designee(s).
- (26) Gross Annual Revenues: Consideration of any form or kind received by the Franchisee and/or its Affiliates from the carriage of Signals to provide Cable Services over the Cable Television System including, without limitation: the distribution of any Service over the System; the provision of any Service Related Activity in connection with the operation of the System; Basic Service monthly fees; Internet services, all other Service fees; Pay-Per-View revenues; installation, reconnection, downgrade, upgrade and any similar fees; fees paid for Channels designated for commercial use; Converter and remote control sales, rentals or leases; studio and other facility or equipment rentals; advertising revenues; and revenues derived for the sale of products in any way advertised or promoted on the System. Gross Annual Revenues shall also include the Gross Revenue of any other Person which is derived directly or indirectly from or in connection with the operation of the System to the extent that said revenue is derived, through a means which has the effect of evading payment of Franchise Fees to the Town that would otherwise be paid herein. Consideration which is not derived from the provision of Cable Services shall not be part of Gross Annual Revenues.
- (27) Headend: The electronic center through which Broadcast and cablecast Signals are electronically received and processed for distribution over the Cable Television System.
- (28) Highway Department: The Highway Department of the Town of Gilmanton.
- (29) Hub or Hub Site: A sub-Headend, generally located within a cable television community, used for the purpose of (i) Signal processing or switching, and/or (ii) placement of a fiber node, microwave link or transportation super trunk.
- (30) Installation: The connection of the Subscriber Network from feeder cable to Subscribers' terminals.
- (31) Institutional Network ("I-Net"): The separate cable, consisting of upstream and downstream Channels, said Channels for the exclusive use of the Franchising Authority and/or its departments and designees.
- (32) Lakes Region Cable Television Consortium (the "Consortium"): The communities presently (as of the Effective Date of this Renewal Franchise) consisting of the Cities of Franklin and Laconia, and the Towns of Alton, Belmont,

Deerfield, Gilford, Gilmanton, Meredith, New Durham, Northfield, and Tilton; and, in the future, such other municipalities served by the Franchisee.

(33) Leased Channel or Leased Access: A video Channel which the Franchisee shall make available pursuant to Section 612 of the Cable Act.

(34) Origination Capability: An activated connection to an Upstream Channel, allowing a User(s) to transmit a Signal(s) upstream to a designated location.

(35) Outlet: An interior receptacle(s) through which a Subscriber's or User's television set can be connection to the System.

(36) Pay Cable or Pay Cable Services: Programming delivered for a fee or charge to Subscribers on a per-channel basis, in addition to the fee or charge to Subscribers for Basic Service.

(37) PEG: The acronym for "public, educational and governmental," used in conjunction with Access Channels, support and facilities.

(38) Person: Any corporation, partnership, limited partnership, association, trust, organization, other business entity, individual or group of individuals acting in concert.

(39) Prime Rate: The prime rate of interest at the Bank of Boston, or any successor bank.

(40) Public Way: The surface of, and the space above and below, any public street, highway, freeway, bridge, land path, alley, courts, boulevard, sidewalk, parkway, way, lane, public way, drive, circle or other public right-of-way, including, but not limited to, public utility easements (except those owned by the Town), dedicated utility strips or rights-of-way dedicated for compatible uses and any temporary or permanent fixtures or improvements located thereon now or thereafter held by the Franchising Authority, for the purpose of Installing, operating, repairing and maintaining the Cable System. Public Way shall also mean any easement now or hereafter held by the Franchising Authority within the Service Area for the purpose of public travel, or for compatible uses, and shall include other easements or rights-of-way and shall, within their proper use and meaning, entitle the Franchising Authority and the Franchisee to the use thereof for the purpose of the installing or transmitting Franchisee's Cable Services over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, compliances, attachments and other property as may be ordinarily necessary and pertinent to the Cable System.

- (41) Public Access Channel: A Channel on the Cable System which is made available by the Franchisee for individuals and organizations wishing to present non-commercial information.
- (42) Renewal Franchise: The non-exclusive Cable Television Franchise granted to the Franchisee by this instrument.
- (43) Scrambling/Encoding: The electronic processing or distortion of a Signal(s) in order to render it unintelligible or unreceivable without the use of a Converter or other decoding devise.
- (44) Service: Any Basic Service, any Pay Cable Service, or any other Cable Service or Service Tier, whether or not originated by the Franchisee, which is offered to any Subscriber in conjunction with, or which is distributed over, the System.
- (45) Service Related Activity: Any activity or function for which the Franchisee receives revenue from any other Person and which is directly associated with the operation of the System for the Provision of Cable Service or the production or distribution of any Service over the System by any Person other than the Franchisee, including, without limitation, operation of studio or any other facilities or equipment, billing, audience promotion, or installation or lease of equipment.
- (46) Service Tier: A category of Cable Service or other Service(s), provided by Franchisee and for which a separate charge is made by Franchisee.
- (47) Signal: Any transmission of electrical, electromagnetic or optical energy from one location to another.
- (48) State: The State of New Hampshire.
- (49) Subscriber: Any Person, firm, company, municipality, corporation or association lawfully receiving Service from the Franchisee.
- (50) Subscriber Network: The bidirectional-capable cable network operated by the Franchisee, over which Signals can be transmitted to Subscribers.
- (51) Town: The Town of Gilmanton, its municipal officers, agents and employees unless otherwise specifically designated; the area within the territorial Town limits, including all subsequent additions thereto.
- (52) Town Counsel: The Town Counsel of the Town of Gilmanton, New Hampshire.

(53) Transfer: The disposal by the Franchisee, directly or indirectly, by gift, assignment, sale, merger, consolidation or otherwise, of the ownership or control of the System or this Renewal Franchise, to a Person or a group of Persons acting in concert.

(54) Trap: A device attached to the Cable System or a Subscriber's residence to prevent selected Signals from entering a Subscriber's residence.

(55) Trunk and Distribution System: That portion of the Cable System for the delivery of Signals, but not including Drops to Subscribers' residences.

(56) Upstream Channel: A Channel over which Signals travel from an authorized location to the Cable System Headend.

(57) User: A Person utilizing the Cable Television System, including all related facilities for purposes of production and/or transmission of electronic or other Signals as opposed to utilization solely as a Subscriber.

(58) Video Programming or Programming: Programming provided by, or generally considered comparable to Programming provided by, a television Broadcast station.

(59) VCR: The acronym for video cassette recorder.

## ARTICLE 2

### GRANT OF RENEWAL FRANCHISE

#### SECTION 2.1 -- GRANT OF RENEWAL FRANCHISE

Pursuant to the authority of RSA Chapter 53-C, Section 626 of the Cable Act, and subject to the terms and conditions set forth herein, the Board of Selectmen of the Town of Gilmanton, New Hampshire, as the FRANCHISING AUTHORITY of the Town, hereby grants a non-exclusive cable television renewal franchise to the Franchisee, a New Hampshire limited liability company established for such purpose, authorizing and permitting the Franchisee to construct, upgrade, install, operate and maintain a Cable Television System within the corporate limits of the Town of Gilmanton.

This Renewal Franchise is subject to the terms and conditions contained in Chapter 53-C of the Laws of New Hampshire, as amended; the regulations of the FCC; the Cable Act, and all Town, State and federal statutes and by-laws of general application.

Subject to the terms and conditions herein, the Franchising Authority hereby grants to the Franchisee, the right to construct, upgrade, install, operate and maintain a Cable Television System in, under, over, along, across or upon the streets, lanes, avenues, alleys, sidewalks, bridges, highways and other public places under the jurisdiction of the Town of Gilmanton within the municipal boundaries and subsequent additions thereto, including property over which the Town has an easement or right-of-way, for the purpose of reception, transmission, collection, amplification, origination, distribution, and/or redistribution of Signals in accordance with the laws of the United States of America, the State of New Hampshire and the Town of Gilmanton. In exercising rights pursuant to this Renewal Franchise, the Franchisee shall not endanger or interfere with the lives of Persons, interfere with any installations of the Town, any public utility serving the Town or any other Persons permitted to use Public Ways and places.

Grant of this Renewal Franchise does not establish priority for use over other present or future holders or the Town's own use of Public Ways and places. Any references herein to "Public Way" or "Street" shall not be construed to be a representation or guarantee by the Town that its property rights are sufficient to permit its use for any purpose, or that the Franchisee shall gain or be permitted to exercise any rights to use property in the Town greater than those already possessed by the Town.

## **SECTION 2.2 — TERM OF RENEWAL FRANCHISE**

The term of this Renewal Franchise shall commence on the Effective Date and shall expire on December 31, 2013, unless sooner terminated as provided herein or surrendered.

## **SECTION 2.3 — POLICE AND REGULATORY POWERS**

In executing this Franchise Agreement, Franchisee acknowledges that its rights are subject to the powers of the Town to adopt and enforce general by-laws and regulations necessary to the safety and welfare of the public. The Franchisee shall comply with all applicable laws, by-laws and regulations now in effect or that may be enacted by the Town pursuant to any such power. Any conflict between the terms of this Renewal Franchise and any present or future lawful exercise of such powers by the Town shall be resolved in favor of the latter.

## **SECTION 2.4 — NON-EXCLUSIVITY OF RENEWAL FRANCHISE**

This Renewal Franchise shall not affect the right of the Franchising Authority to grant to any other Person a Franchise or right to occupy or use the streets, or portions thereof, for the construction, installation, operation or

maintenance of a cable television system within the Town of Gilmanton, or the right of the Franchising Authority to permit the use of the Public Ways and places of the Town for any purpose whatsoever. The Franchisee hereby acknowledges the Franchising Authority's right to make such grants and permit such uses. In the event that the Franchising Authority grants any such franchise to any other person or entity, such franchise shall be granted on terms no more favorable or less burdensome than the terms of this Renewal Franchise.

## SECTION 2.5 — REMOVAL OR ABANDONMENT

Upon termination of this Renewal Franchise by passage of time or otherwise, and unless (1) the Franchisee renews this Renewal Franchise for another term or (2) the Franchisee transfers the Cable Television System to a transferee approved by the Franchising Authority, the Franchisee shall remove all of its supporting structures, poles, transmission and distribution systems, and all other appurtenances from the Public Ways and places and shall restore all areas to their original condition. If such removal is not complete within six (6) months after such termination, the Franchising Authority may deem any property not removed as having been abandoned and may dispose of any such property in any way or manner it deems appropriate.

## ARTICLE 3

### TRANSFER AND ASSIGNMENT OF RENEWAL FRANCHISE

#### SECTION 3.1 — RESTRICTIONS AGAINST TRANSFERS

(a) Neither this Renewal Franchise, nor any rights or obligations of the Franchisee in or pursuant to this Renewal Franchise or the Cable System shall be transferred in part or as a whole, by assignment, trust, lease, sublease, pledge or other hypothecation, and is not to be sold, transferred, leased, assigned, or disposed of in part or as a whole, either by forced sale, merger, consolidations, or otherwise, nor shall title thereto, either legal or equitable, or any right or interest therein, pass to or vest in any Person, nor shall any change in control of the Franchisee or the Cable System occur, either by any act of the Franchisee or by a parent company of the Franchisee, by operation of law or otherwise, in each such case without the prior consent of the Franchising Authority, which, absent any past due franchise obligations, consent shall not be unreasonably withheld or delayed, and which shall be expressed in writing, under such conditions as may be therein reasonably prescribed by the Franchising Authority; provided, however, that nothing in this Section 3.1 would prohibit i) commercial transactions in the normal course of business or ii) the provision of security interests in assets for the purpose of securing financing.

(b) For purposes of this section, any sale, assignment or any other disposition of a majority ownership interest of the parent company of the Franchisee to any one person or group of Persons acting in concert, in one transaction or a series of related transactions, shall be deemed to be a change of control of the Franchisee. The word "control" as used in this section is not limited to major stockholders but includes actual working control in whatever manner exercised and includes control of the parent company of the Franchisee.

(c) Neither the Franchisee nor its parent company, if any, shall enter into a Cable System management contract or any other arrangement for the management of the Cable System, however, structured without the prior written consent of the Franchising Authority, which will not be unreasonably withheld.

### **SECTION 3.2 — BANKRUPTCY**

Subject to applicable bankruptcy law(s), if there shall be filed against the Franchisee in any court, pursuant to any statute either of the United States or of any state, a petition in bankruptcy or insolvency or for reorganization or for the appointment of a receiver or trustee of all or a portion of Franchisee's property, and if, within sixty (60) days thereof, the Franchisee fails to secure a discharge thereof, or if the Franchisee shall voluntarily file any such petition or make an assignment for the benefit of creditors, or petition for or enter into an arrangement, the Franchisee shall notify the Town of such fact within five (5) days of its occurrence, and any subsequent sale of the Cable Television System, or cable property or facilities, or this Renewal Franchise, shall be treated as a change in control of the Franchisee, and the provisions of this Section governing approval of the Town to change shall apply. The term "bankruptcy" as used herein shall include an assignment for the benefit of creditors and a petition for rearrangement or other similar procedure.

### **SECTION 3.3 — APPROVAL PROCEDURE**

(a) The Franchisee shall promptly notify the Franchising Authority of any action or proposed action requiring the consent of the Franchising Authority pursuant to this Article 3.

(b) The Franchisee shall submit to the Franchising Authority an original and ten (10) copies unless otherwise directed, of its petition requesting such Transfer or assignment consent, which petition shall fully describe the action or proposed action and clearly state the basis on which the petition should be approved. The petition shall also contain all reasonably appropriate documentation and such additional information as the Franchising Authority may require. The

petition shall be signed by the Franchisee and by the proposed transferee or by its representative, evidence of whose authority shall be submitted with such petition.

(c) The consent of the Franchising Authority shall be given only after a public hearing, if such a hearing is deemed necessary by either the Franchising Authority or the transferee, to consider the written petition for Transfer. The Franchising Authority shall complete review of the petition for Transfer and make a decision thereon no later than one hundred twenty (120) days after receipt of the request for transfer. If the Franchising Authority fails to render a final decision on such request within said 120 days, said request shall be deemed granted unless the requesting party and the Franchising Authority agree to an extension of time.

(d) For purposes of determining whether it shall consent to any such change of control and ownership, the Franchising Authority shall inquire into the legal, financial, character and technical qualifications of the prospective controlling or owning Person, and including, but not limited to, such Person's cable-related experience, if any, in other communities, and any and all matters relative to whether such Person is likely to adhere to all of the terms and conditions of the Renewal Franchise.

(e) At any time during the Town's review process, the Franchising Authority reserves the right to require additional supporting documentation, reasonably related to the criteria set forth in paragraph (d) above, from the Franchisee or any other Person involved in the action or proposed action. The Franchisee shall provide all requested assistance to the Franchising Authority in accordance with any such inquiry and, as appropriate, shall secure the cooperation and assistance of all other Persons involved in such action. Failure to provide all Transfer related information reasonably requested by the Franchising Authority as part of said review process may be grounds for denial of the proposed Transfer or change of control.

#### **SECTION 3.4 — CONDITIONS RELATED TO TRANSFER**

(a) As a condition to the granting of any consent required by this Article 3, the Town may require that each Person involved in any such action described in Section 3.1 herein shall execute an agreement specifying that said Person assumes and agrees to be bound by all applicable provisions of this Renewal Franchise.

(b) Any proposed controlling or owning Person or transferee approved by the Town shall be subject to all of the terms and conditions contained in this Renewal Franchise; provided, however, that any such Person or transferee shall provide additional information, in order to reasonably assure the Town that such Person or transferee shall adhere to all of the terms and conditions contained in this Renewal Franchise.



(c) The consent of the Franchising Authority to a Transfer of this Renewal Franchise shall not be given if there is reasonable evidence from either the Transfer petition or subsequent investigation that the proposed transferee will not adhere to all of the terms and conditions of the Renewal Franchise.

### **SECTION 3.6 — EFFECT OF UNAUTHORIZED ACTION**

(a) The Transfer of this Renewal Franchise without the prior written consent of the Franchising Authority shall be null and void, and shall:

(i) be deemed a material breach of this Renewal Franchise; and

(ii) among other remedies available to the Town, be subject to a liquidated damages assessment of four hundred dollars (\$400.00) per day until the taking of an action described in Section 3.3 supra is approved, or if not approved, until prior ownership, control or other status quo ante is restored to a condition satisfactory to the Franchising Authority.

(b) If the Franchising Authority denies its consent to any such action and a Transfer has nevertheless been effected, the Franchising Authority may revoke and terminate this Renewal Franchise.

### **SECTION 3.7 — NO WAIVER OR RIGHTS**

The consent or approval of the Franchising Authority to any assignment, lease, Transfer, sublease or mortgage of the Renewal Franchise granted to the Franchisee shall not constitute a waiver or release of the rights of the Town in and to the streets and Public Ways or any other rights of the Town under this Renewal Franchise; nor shall such consent render unnecessary any subsequent consent(s). Any such Transfer shall, by its terms, be expressly subordinate to the terms and conditions of the Renewal Franchise.

### **SECTION 3.8 — RENEWAL FRANCHISE SIGNATORY**

Any approval by the Franchising Authority of Transfer of ownership or control of the Cable System shall be contingent upon the prospective transferee and/or controlling Person or party becoming a signatory to the Renewal Franchise.

## ARTICLE 4

### EXTENSION POLICY

#### SECTION 4.1 — LINE EXTENSION

(a) The Franchisee shall provide for construction of all necessary line extensions for Cable Service to new dwelling units when the number of new Subscribers reaches the density requirement of ten (10) full-time Subscribers per mile of cable facilities, with a one-year service commitment payable in advance. In the areas with less than ten (10) Subscribers per mile of plant, the Franchisee shall require payment, as follows:

Where there are fewer than ten (10) Subscribers per mile, the Franchisee shall construct line extensions as follows:

(i) where there are nine (9) Subscribers per mile, each of whom commits to pay in advance for one year of cable service, the Franchisee shall pay ninety (90) percent of the cost of such line extension and the Subscribers shall pay ten (10) percent;

(ii) where there are eight (8) Subscribers per mile, each of whom commits to pay in advance for one year of cable service, the Franchisee shall pay eighty (80) percent of the cost of such line extension and the Subscribers shall pay twenty (20) percent;

(iii) where there are seven (7) Subscribers per mile, each of whom commits to pay in advance for one year of cable service, the Franchisee shall pay seventy (70) percent of the cost of such line extension and the Subscribers shall pay thirty (30) percent;

(iv) where there are six (6) Subscribers per mile, each of whom commits to pay in advance for one year of cable service, the Franchisee shall pay sixty (60) percent of the cost of such line extension and the Subscribers shall pay forty (40) percent;

(v) where there are five (5) Subscribers per mile, each of whom commits to pay in advance for one year of cable service, the Franchisee shall pay fifty (50) percent of the cost of such line extension and the Subscribers shall pay fifty (50) percent;

(vi) where there are four (4) Subscribers per mile, each of whom commits to pay in advance for one year of cable service, the Franchisee shall pay

forty (40) percent of the cost of such line extension and the Subscribers shall pay sixty (60) percent;

(vii) where there are three (3) Subscribers per mile, each of whom commits to pay in advance for one year of cable service, the Franchisee shall pay thirty (30) percent of the cost of such line extension and the Subscribers shall pay seventy (70) percent;

(viii) where there are two (2) Subscribers per mile, each of whom commits to pay in advance for one year of cable service, the Franchisee shall pay twenty (20) percent of the cost of such line extension and the Subscribers shall pay eighty (80) percent; and

(ix) where there is one (1) Subscriber per mile, who commits to pay in advance for one year of cable service, the Franchisee shall pay ten (10) percent of the cost of such line extension and the Subscriber shall pay ninety (90) percent.

- 1) The Franchisee shall further extend service to any areas of the Town not meeting the requirements of this section, at the written direction and expense of the Franchising Authority, promptly upon receiving full payment of said line extension costs from the Franchising Authority, as well as receipt of all necessary permits.
- 2) The Franchisee shall in no case externalize, pass through and/or itemize any line extension costs beyond those costs previously assumed by the subscriber or Franchising Authority pursuant to the provisions of this Article.
- 3) The Franchisee shall construct such extension as soon as practicable, but no later than sixty (60) days after receipt of installation fee and permission to use any poles in such areas, provided that the Franchisee shall expeditiously seek all necessary permits.

#### **SECTION 4.2 – COOPERATION WITH OTHER FRANCHISEES**

Upon the request of the Franchising Authority, the Franchisee agrees to negotiate in good faith with other Franchisees which hold licenses in adjoining communities, to provide cable service to sections of this community which the Franchisee determines to be commercially impracticable to extend service, based upon the location of its current infrastructure.

## ARTICLE 5

### CABLE SYSTEM DESIGN

#### SECTION 5.1—SUBSCRIBER NETWORK

(a) Present Service Area: The areas of Gilmanton highlighted on the map attached herein as Exhibit 1 shall be connected within twelve (12) months of the date of the Franchise Renewal Agreement execution. If MetroCast is unable to complete the extension due to force majeure, performance of make ready or availability of construction crews and equipment, MetroCast shall provide written notice and explanation to the Town on a monthly basis until such extension is completed. To the extent that MetroCast has not previously done so, MetroCast shall submit a pole permit application, within thirty (30) days of the execution of this Franchise Renewal. Subject to Exhibit 1, every public highway shall be serviced by feeder cable unless such service can be supplied using alternative cable technology. Cable Service shall be provided to every existing dwelling unit requesting Cable Service and located on public streets and private roads, as marked on Exhibit 1, provided Franchisee is able to obtain from property owners any necessary easements at no cost and/or any applicable permits.

(b) The Franchisee commits to constructing, within thirty-six months of the execution date of this Renewal Franchise, a 2-way residential cable system utilizing addressable technology, and cable and electronics capable of transmitting a bandwidth of 860 MHz, providing a minimum of 75 channels in the downstream direction and 4 channels in the upstream direction. The Cable System shall have 2-way interactivity within three years of the execution date of this Renewal Agreement.

#### SECTION 5.2—CABLE LINK

Franchisee shall continue to provide a hard-wire cable link or fiber optic cable link between Lakes Region Public Access TV studios and the Headend. Said cable link shall be used to transmit Programming upstream to the Headend, there such Programming shall be switched and inserted onto one of the Downstream PEG Access Channels. There shall be no charges to any of the Consortium communities for said cable link.

#### SECTION 5.3—INSTITUTIONAL NETWORK

Within six (6) months of the Effective Date of a request by the Town, the Franchisee shall construct, install, activate, operate and maintain, at its sole cost

and expense, a fiber-optic Institutional Network ("I-Net") backbone to be utilized by the Town. The I-Net shall connect the Town buildings and other institutions specified in Exhibit 2, attached hereto, ("I-Net Buildings"). The Franchisee's obligations in this Section 5.3 shall not exceed the sum of ten thousand dollars (\$10,000.00).

In order for the Franchising Authority to maximize its opportunities under this section, the Franchisee shall notify the Franchising Authority ninety days prior to the date in which the Franchisee intends to begin the system rebuild as set forth in Section 5.1, for the purposes of coordinating the construction of the I-Net backbone as specified in Exhibit 2.

#### **SECTION 5.4—INSTITUTIONAL NETWORK INTERCONNECTION**

The Franchisee shall cooperate with the Town and/or any State or federal agency which may be hereafter established for the purpose of regulating, financing or otherwise providing for the interconnection of Institutional Networks and/or cable systems beyond the corporate limits of the Town of Gilmanton.

#### **SECTION 5.5—PARENTAL CONTROL CAPABILITY**

The Franchisee shall provide, upon request, Subscribers with the capability to control the reception of Channels carrying obscene or indecent Programming. Said capability shall be provided at a rate consistent with applicable federal law.

#### **SECTION 5.6—SUBSCRIBER ANTENNAE**

The Cable System shall be so designed so that the provision of Cable Service shall not require, or result in, the physical removal of Subscriber's existing antennae and/or downloads to receivers, in order that Subscribers may utilize such antennae and downloads in place of Cable System reception. The Franchisee shall furnish to each requesting Subscriber, at a rate consistent with applicable federal law, a switch permitting the Subscriber to change from Cable System reception to home antennae reception, and back, at the option of the Subscriber.

#### **SECTION 5.7—EMERGENCY POWER**

The Cable Television System shall incorporate equipment designed to be capable of providing standby powering of the Headend for a minimum of four (4) hours upon failure of the power furnished by the utility company.

## SECTION 5.8—DROPS

(a) In areas of the Town where the Cable System is required to be located underground, Drops to the Subscriber's structure shall be underground. In other areas of the Town, Drops shall be aerial unless the Subscriber requests underground Installation and elects to pay the cost(s) thereof.

(b) The Franchisee shall adhere to the Subscriber's preference regarding point of entry of the Drop into the structure. In the event that such preference results in a non-standard Installation, any incremental costs thereof shall be paid by said Subscriber.

(c) Within the Subscriber's structure, Drop and/or cable runs shall be installed in a professional manner.

## SECTION 5.9—SIGNAL DELIVERY

(A) The Franchisee shall comply with the following:

(i) Throughout the entire term of this Renewal Franchise, the Franchisee shall maintain a tier(s) of Programming Service that contains, at a minimum, i) a substantially similar number of unduplicated Channels and ii) a substantially similar mix, level and quality of Signals that are currently contained on the Satellite Tier (hereinafter referred to as the "Satellite Tier") as of the Execution Date of this Renewal Franchise, and as further described in Exhibit 4, attached hereto.

(ii) Continue the current system of Signal delivery, whereby all Basic Tier and Satellite Tier Signals are delivered to Subscribers "in the clear", and the Franchisee continues its use of Trap technology, for said tiers; or

(iii) Construct, operate and make available to all Satellite Tier Subscribers an interdiction-based security system which shall allow all of the satellite tier channels to enter all satellite tier Subscribers' homes "in the clear"; or

(iv) Construct, operate and make available to all Satellite Tier Subscribers an industry-proven technology other than the one in use as of the Effective Date of this Renewal Franchise which shall allow all of the Satellite Tier Channels to enter all Satellite Tier Subscribers' homes "in the clear."

(B) In the future, in the event that fifteen (15%) of all Traps in the Belmont Headend-based System are malfunctioning and/or have been tampered with, the Franchisee may encrypt Signals, based on the following:

(i) The Franchisee may perform at least one annual audit of its Traps, testing a minimum of twenty percent (20%) of all Traps in the Belmont System;

(ii) In the event that 15% of the Traps tested pursuant to paragraph (i) above are either malfunctioning and/or have been tampered with, the Franchisee shall do a subsequent test of a minimum of twenty percent (20%) of all Traps in the Belmont System.

(iii) For the Franchisee to be allowed to encrypt Satellite Tier (or its equivalent) Signals, two (2) audits must verify that fifteen (15%) of all Traps in the Belmont Headend-based System are either malfunctioning and/or have been tampered with.

(iv) The Franchisee will consult with the Consortium and any franchising authorities served by the Franchisee's Belmont Headend on mutually-convenient times to conduct said audits and give the Consortium and any such franchising authorities subsequent, reasonable notice of the time and location of said audits in order for Consortium and franchising authority representatives to be present; and

(v) The Franchisee shall maintain its Traps in good working order and make reasonable efforts to ensure the accuracy of its Trap records.

## **SECTION 5.10—ANTI-BUY-THROUGH COMPLIANCE**

Franchisee warrants that it is constructing a subscriber network under Section 5.1 of this franchise which has the capacity to offer basic service and all programming distributed on a per channel or per program basis without also providing other intermediate tiers of service. Franchisee shall comply in all respects with federal law governing buy-through of programming tiers.

## **SECTION 5.11—TECHNICAL PLAN**

(a) The Franchisee shall submit written plans for discussion for technical improvements projected to be within the following twelve-month period with the Town annually upon request of the Town.

(b) The Franchisee agrees to negotiate in good faith with the Town regarding possible incorporation into the Cable System of any new and useful design, equipment and capacity features desired by the Town.





## SECTION 5.12—FCC TECHNICAL SPECIFICATIONS

Attached hereto as Exhibit 3 for informational purposes only are the FCC's technical specifications, at 47 C.F.R. 76.605.

## ARTICLE 6

### CONSTRUCTION, INSTALLATION AND MAINTENANCE STANDARDS

#### SECTION 6.1—CONDITIONS OF STREET OCCUPANCY

All transmission and distribution structures, poles, other lines, and equipment installed or erected by the Franchisee pursuant to the terms hereof shall be so located so as to cause a minimum of interference with the proper use of Public Ways and with the rights and reasonable convenience of Persons who own property that abuts any of said Public Ways.

#### SECTION 6.2—UNDERGROUND FACILITIES

In the areas of the Town having telephone lines and electric utility lines underground, whether required by law or not, all of the Franchisee's lines, cables and wires shall be underground. At such time as these facilities are placed underground by the telephone and electric utility companies or are required to be placed underground by the Town, the Franchisee shall likewise place its facilities underground at no direct cost to Subscribers unless otherwise permitted by applicable law, other than an extension from the existing Trunk and Distribution System which exceeds two hundred fifty feet (250'). Underground cable lines shall be placed beneath the pavement subgrade. It is the policy of the Town that existing poles for electric and communication purposes be utilized wherever possible and that underground installation is preferable to the placement of additional poles.

#### SECTION 6.3—RESTORATION OF PUBLIC WAYS

If the Franchisee causes any disturbance or alteration of any Public Way, the Franchisee shall, at its own cost and expense and in a manner approved in advance in writing by the Franchising Authority, replace and restore such Public Way to a condition reasonably comparable to the condition before such disturbance or alteration occurred.

## SECTION 6.4—CABLE SYSTEM MONITORING

The Franchisee shall continue to monitor the Cable System on a frequent basis and the Headend on a weekly basis. Problems detected through such monitoring shall be addressed promptly.

## SECTION 6.5—SAFETY STANDARDS

The Franchisee shall construct, upgrade, install, operate, maintain and remove the Cable Television System in conformance with Occupational Safety and Health Administration regulations, the National Electric Code, the National Electric Safety Code, Bell Telephone Systems Code of Pole Line Construction (when applicable), the rules and regulations of the Town and the FCC, all building and zoning codes, and all land use restrictions as the same exist or may be amended hereafter. Enforcement and compliance with the foregoing codes, rules and regulations shall be the responsibility of the appropriate code and/or regulatory enforcement authority.

## SECTION 6.6—PRIVATE PROPERTY

The Franchisee shall be subject to all laws, by-laws or regulations regarding private property in the course of constructing, upgrading, installing, operating and maintaining the Cable Television System in the Town. The Franchisee shall promptly repair or replace all private property, real and personal, damaged or destroyed as a result of the construction, upgrade, installation, operation or maintenance of the Cable Television System at its sole cost and expense.

## SECTION 6.7—RIGHT TO INSPECTION OF CONSTRUCTION

Upon reasonable notice, the Franchising Authority or its designee shall have the right to inspect all construction, installation and/or upgrade work performed subject to the provisions of this Renewal Franchise and to make such tests as it shall deem necessary to ensure compliance with the terms and conditions of this Renewal Franchise and all other applicable law. Any such inspection shall not interfere with the Franchisee's operations.

## SECTION 6.8—EQUIPMENT

The Franchisee shall install equipment which shall enable it to operate the Cable System in full compliance with applicable FCC Technical Standards.

## **SECTION 6.9—SERVICE INTERRUPTION**

Except where there exists an emergency situation necessitating a more expeditious procedure, the Franchisee may interrupt Service for the purpose of repairing, upgrading or testing the Cable Television System, only during periods of lesser use and, if practical, only after a minimum of forty-eight (48) hours notice to all affected Subscribers.

## **SECTION 6.10—TEMPORARY RELOCATION**

The Franchisee shall temporarily raise or lower its wires or other equipment upon the reasonable request of any Person holding a building moving permit issued by the Town. The expense of such raising or lowering shall be paid by the party requesting such move. The Franchisee shall be given reasonable notice necessary to maintain continuity of service.

## **SECTION 6.11—DISCONNECTION AND RELOCATION**

The Franchisee shall, at its sole cost and expense, protect, support, temporarily disconnect, relocate in the same street, or other Public Way or place, or remove from any street or any other Public Ways and places, any of its property as required by the Franchising Authority or its designee by reason of traffic conditions, public safety, street construction, change or establishment of street grade, or the construction of any public improvement or structure by any Town department acting in a governmental capacity.

## **SECTION 6.12—CONSTRUCTION MAPS**

At the request of the Franchising Authority, upon System Completion, the Franchisee shall make available to the Franchising Authority or its designee accurate maps of all existing and newly constructed plant on a confidential basis subject to the confidentiality provisions of RSA 91-A. If changes are made in the Cable System, the Franchisee shall make available updated maps or appropriate drawings annually, not later than fifteen (15) days after each anniversary of the Effective Date of this Renewal Franchise.

## **SECTION 6.13—PEDESTALS**

In any cases in which pedestals housing electronic devices are to be utilized, in Town Public Ways or within the Town public lay-out, such equipment must be installed in accordance with applicable regulations of the Highway Department; provided, however, that the Franchisee may place active devices (amplifiers, line

extenders, power supplies, etc.) in a low-profile electronic control box, at Town approved locations to be specified by the Franchisee when the Franchisee applies for an underground permit, which shall not be unreasonably denied. All such equipment shall be shown on the construction maps, submitted to the Town in accordance with Section 6.12 supra.

#### **SECTION 6.14—TREE TRIMMING**

In the installation of amplifiers, poles, other appliances or equipment and in stringing of cables and/or wires as authorized herein, the Franchisee shall avoid all unnecessary damage and/or injury to any and all shade trees in and along the streets, alleys, Public Ways and places, and private property in the Town. All tree and/or root trimming and/or pruning provided for herewith shall be done pursuant to appropriate regulations of the Town.

#### **SECTION 6.15—EMERGENCY REMOVAL OF PLANT**

If, at any time, in case of fire or disaster in the Town, it shall become necessary in the reasonable judgment of the Franchising Authority or any designee, to cut or move any of the wires, cables, amplifiers, appliances or appurtenances of the Cable Television System, the Town shall have the right to do so at the sole cost and expense of the Franchisee. If practical, the Town shall notify the Franchisee and require it to cut or move any such wires, cables, amplifiers, appliances or appurtenances of the Cable Television System.

#### **SECTION 6.16—REMOVAL AND RELOCATION**

The Franchising Authority shall have the authority at any time to order and require the Franchisee to remove or relocate any pole, wire, cable or other structure owned by the Franchisee that is dangerous to life or property. In the event that the Franchisee, after reasonable, advance notice, fails or refuses to act within a reasonable time, the Franchising Authority shall have the authority to remove or relocate the same, at the sole cost and expense of the Franchisee.

#### **SECTION 6.17—COMMERCIAL ESTABLISHMENTS**

The Franchisee shall be required to make Cable Service(s) available to any commercial establishments in the Town, upon the parties being able to reach a reasonable agreement regarding the terms and costs of initial installation and service. The Franchisee has informed the Franchising Authority that certain Cable Services may not be available to commercial establishments pursuant to the Franchisee's contractual obligations with program suppliers.

## ARTICLE 7

### SERVICES AND PROGRAMMING

#### SECTION 7.1—BASIC SERVICE

To the extent required by applicable law, the Franchisee shall provide a Basic Service which shall include at least 1) all Broadcast television Signals in the Lakes Region, New Hampshire area which are required to be carried by a cable television system serving the Town pursuant to statute or regulation; 2) the Downstream Access Channels pursuant to Section 8.1 infra, for public, educational and governmental use, to be administered by the Access Provider; and 3) in the Franchisee's editorial discretion, such additional Programming as the Franchisee may choose to include in its Basic Service offered to Subscribers.

#### SECTION 7.2—PROGRAMMING

The Franchisee shall use its best efforts to provide diverse Programming, including Programming in the broad categories of sports Programming, public affairs Programming, news Programming, children's Programming and optional premium movie Programming.

#### SECTION 7.3—TWO-WAY CAPABILITY

The Franchisee shall construct and maintain a System capable of being adapted for two-way use, available to all Subscribers.

#### SECTION 7.4—LEASED ACCESS CHANNELS FOR COMMERCIAL USE

Pursuant to Section 612(b)(1)(B) of the Cable Act, the Franchisee shall make available Channel capacity for commercial use by Persons unaffiliated with the Franchisee.

#### SECTION 7.5—VCR/CABLE COMPATIBILITY

(a) The Franchisee shall provide to any Subscriber, upon request, an A/B switch which will allow VCR owners to tape and view any Channel capable of being tuned by such owner's television set and/or VCR, except in instances involving two (2) scrambled Signals.

(b) Attached hereto, as Exhibit 4, are the different options available to VCR owners for installing VCRs to be compatible with the Cable System. The Franchisee shall make these options available to all Subscribers in writing with the applicable charges, if any.

(c) The Franchisee shall not Scramble or otherwise encode, in any manner or form, for the entire term of this Renewal Franchise, any Signals carried on its Basic Service.

## SECTION 7.6—CONTINUITY OF SERVICE

The Franchisee shall provide all Subscribers with continuous, uninterrupted Service, except for necessary Service interruptions, subject to Force Majeure. When necessary Service interruptions can be anticipated, the Franchisee shall notify Subscribers in advance, pursuant to Section 6.9 supra.

## SECTION 7.7—SERVICE TO PUBLIC BUILDINGS

(a) The Franchisee shall connect, without charge to the Franchising Authority, Basic Service and Satellite Tier (unless prohibited otherwise by the Franchisee's contractual obligations) to the Town's office buildings, fire station, police station, and public school buildings, that are passed by its Cable System, and listed in Exhibit 5, attached hereto.

(b) The Franchisee shall provide said Drops, Basic and Extended Basic Service within six months (6) months of the Effective Date of this Renewal Franchise. Upon written request of the Franchising Authority, the Franchisee shall provide additional Drops and Basic and Extended Basic Service to those public institutions located along its cable routes, but not listed in Exhibit 5 at no cost to the Franchising Authority and without line item pass through to the Subscribers. The Franchisee shall discuss the location of each Drop with the proper officials at each of the institutions entitled to such Drop and Basic and Extended Basic Service, prior to the installation of said Drop. The Franchisee shall provide a high-speed cable modem to each of the public buildings listed in Exhibit 5 hereto within ninety (90) days of making such service available to its Subscribers on a commercial basis, at no cost to the Franchising Authority and without line item pass through to the Subscribers.

## ARTICLE 8

### PUBLIC, EDUCATIONAL AND GOVERNMENTAL ACCESS FACILITIES AND SUPPORT

#### SECTION 8.1—PEG ACCESS CHANNELS

- (a) The Franchisee shall provide two Access Channels and a third Access Channel at the completion of the rebuild described in Section 5.1 hereof.
- (b) After the completion of the rebuild, and not more often than once annually, the Franchisee may request permission from the Access Provider for the continued use of the designated third Access Channel for the Franchisee's sole use. The Access Provider may grant said permission for a period not to exceed one year, which can be extended by the Access Provider for additional, one year terms upon petition of the Franchisee.
- (c) The Franchisee shall maintain the location of the Access Channel, as of the date of execution of this Renewal Franchise. If an Access Channel location change is necessary, the franchisee shall: (i) notify the franchising authority in writing of such change 90 days in advance; and (ii) assist(in advertising and promoting any such channel changes.
- (d) Franchisee shall train Town officials, designees or school staff in the production of a community bulletin board, at the Franchisee's cost, as often as is reasonably necessary, such training to allow the Town to have complete responsibility for the production and broadcast of the community bulletin board. All such training and use shall be as provided in the rules which shall be established by the Town and Franchisee. Franchisee shall also provide personnel with technical qualifications to be available, upon request by the Town, to cure technical problems with the cable plant arising from the operation of the Town's local access channel.

The Franchisee shall not engage in any program censorship or any other control of the content of the PEG Access Programming on the Cable System, except as permitted by federal law with respect to programming that is not protected by the First Amendment of the United States.

#### SECTION 8.2—EQUIPMENT-FACILITIES PAYMENT

- (a) At its sole cost and expense, the Franchisee shall provide an annual cash payment to the Access Provider in the following amounts:

Years 1 – 2	\$30,000 per year
Years 3 – 6	\$15,000 per year
Years 7 – end of Agreement	\$30,000 per year

Said payment shall be used by the Access Provider for construction of a PEG Access studio, the purchase of PEG Access equipment and supplies, and/or operating costs associated with the operation of the Consortium's Public Access facilities.. The Franchisee shall make said annual payment to the Access Provider no later than (7) days following the Effective Date of this Renewal Franchise, and no later than seven (7) days following the anniversary of the Effective Date of this Renewal Franchise, provided that the following Consortium communities accept said payment in fulfillment of the Franchisee's PEG access obligations: Alton, Belmont, Deerfield, Gilmanton, Gilmanton, Franklin, Laconia, Meredith, Northfield and Tilton.

(b) Within two (2) years of said payment, the Access Provider shall inform the Franchisee of the uses of said funds.

(c)–The Franchisee herein agrees that it shall not externalize, line-item and/or in any other manner pass-through to Subscribers the cost of the equipment-facilities payments pursuant to Section 8.2(a) above.

(d) In no case shall said payments be counted against any Franchisee Fee payment, required by Section 9.1 herein, or any other fees or payments required by applicable law, provided that said payments are used for the purposes set forth herein.

(e) In the event that the payment(s) required herein are not tendered within seven (7) days of the dates fixed herein, interest due on such payment(s) shall accrue from the date due at the rate of one percent (1%) above the Prime Rate.

### SECTION 8.3—ACCESS CHANNELS MAINTENANCE

The Franchisee shall monitor the PEG Access Channels for technical quality and shall ensure that they are maintained at standards commensurate with those which apply to the Cable System's commercial Channels; provided, however, that the Franchisee is not responsible for the technical quality of PEG Access Programming. Upon request, the Franchisee shall make available a copy of its most recent annual performance tests.



## SECTION 8.4—ACCESS CABLECASTING

(a) In order that PEG Access Users can cablecast PEG Access Programming over the Downstream PEG Access Channels, all PEG Programming shall be modulated, then transmitted from the Access Provider studio to the Cable System Headend, on the Cable Link pursuant to Section 5.2 supra. At the Headend, said Access Programming shall be retransmitted on one of the Downstream PEG Access Channels. The Franchisee shall provide and maintain all necessary processing equipment at the Headend in order to switch Upstream Signals from the LRPA-TV studios to the Designated Access Channel.

(b) It shall be the Franchisee's sole responsibility to ensure that said PEG Access Programming is properly switched, either manually or electronically, to the appropriate Downstream Channel, in an efficient and timely manner. The Franchisee shall not charge the Franchising Authority and/or any PEG Access User(s) for such switching responsibility. The Franchisee and the Franchising Authority shall negotiate in good faith any difficulties that arise regarding cablecasting of PEG Access Programming.

(c) The Franchisee shall provide and maintain all necessary processing equipment at the Headend in order to switch Upstream Signals from the LRPA-Studios to the designated Downstream Access Channel.

(d) The Franchisee shall install equipment in order to receive and process upstream Programming from the I-Net and routing such Programming through the Headend for distribution to the Subscriber Network and/or the I-Net.

## SECTION 8.5—BULLETIN BOARD

Within ninety (90) days of the Effective Date of this Renewal Franchise, the Franchisee shall provide a character generator for the use of programming a community bulletin-board on one of the PEG Access Channels, up to a cost of Four Thousand Dollars (\$4000.00). The Franchisee shall consult with the Consortium on the technical specifications of such character generator prior to its purchase.

## SECTION 8.6—CENSORSHIP

Neither the Franchisee, the Town nor the Access Provider shall engage in any program censorship or other editorial control of the content of PEG Access Programming on the Cable System, except as otherwise required or permitted by applicable law.

## SECTION 8.7—PUBLIC ACCESS PROGRAMMING

(a) Public Access Users shall sign a user form in which she or he agrees:

(i) to comply with all applicable laws regarding obscenity;

(ii) to be solely responsible for any liability resulting from his or her Public Access Programming including, but not limited to, defamation, slander, libel, obscenity or copyright infringement; and

(iii) to indemnify the Franchising Authority, the Consortium, the Town, the Access Provider and the Franchisee from any liability arising from said Public Access Programming.

(b) In accordance with Section 611(e) of the Cable Act, the Franchisee shall not exercise any editorial control over any public, educational or governmental use of PEG Access Channels, except as may be required by applicable federal law.

(c) At all times during the term of this Renewal Franchise, the Access Provider shall obtain, pay premiums for, and file copies with the Franchising Authority and the Franchisee, on an annual basis, of a Certificate of Insurance, or other evidence of coverage, for a Media Perils Liability Policy, with the Access Provider, the Consortium, the Town and the Franchisee as named insureds, which shall indemnify the Access Provider, the Consortium and the Franchisee against any liability from Public Access Programming, in a form similar to that attached hereto as Exhibit 6.

## SECTION 8.8.—ANNUAL REPORTS

The Access Provider shall issue a report regarding use of PEG Access equipment and provide the Franchisee with a copy of such a report.

## ARTICLE 9

### FRANCHISE FEES

#### SECTION 9.1—FRANCHISE FEE ENTITLEMENT

(a) The Franchisee shall pay to the Town, throughout the term of this Renewal Franchise, a Franchise Fee equal to three percent (3%) of the Franchisee's Gross Annual Revenues derived during each year of this Renewal Franchise; provided, however, that the Franchise Fee shall be equal to three percent (3%) of the Franchisee's Gross Annual Revenues until the Franchising Authority notifies

the Franchisee, in writing, to increase the Franchise Fee to three percent (3%) of the Franchisee's Gross Annual Revenues. The Franchisee shall not be liable for a total financial commitment in excess of five percent (5%) of its Gross Annual Revenues; provided, however, that said five percent (5%) cap shall not include (i) the equipment/facilities grant (Section 8.2), (ii) any damages (Section 13.2), and/or (iii) any interest from late payments.

(b) Pursuant to Section 622(f) of the Cable Act, the Franchisee may designate that portion of a Subscriber's bill attributable to the Franchise Fee as a separate item on the bill.

### SECTION 9.2—PAYMENT

(a) The Town shall be furnished, on an annual basis, with a statement by a Certified Public Accountant that verifies, in reasonable detail, the total Gross Annual Revenues for the payment period. The Franchise Fee, less any amounts due from Town of Gilmanton to the Access Provider, if the Town so directs Franchisee to pay these amounts due directly to said Access Provider, shall be due and payable on or before March 15<sup>th</sup> of each calendar year of this Renewal Franchise. Any payments made by the Franchisee to the Access Provider on behalf of the Town shall be due and payable on or before March 15<sup>th</sup> of each calendar year.

(b) The Town may designate a representative to consult with the Franchisee's Certified Public Accountant to examine such Gross Annual Revenue and Subscriber records of the Franchisee which are necessary to determine the accuracy of the statement submitted by Franchisee's Certified Public Accountant.

### SECTION 9.3—LATE PAYMENT

In the event the Franchise Fees herein required are not tendered within seven (7) business days of the dates fixed in Sections 9.1 and 9.2 above, interest due on such Franchise Fee(s) shall accrue from the date due at the rate of one (1%) percent above the Prime Rate. The Town and Franchisee agree that this interest charge represents a fair and reasonable estimate of the damages which the Town might suffer from such failure and further agree that the actual damages which the Town might suffer in such event are incapable of ascertainment or reliable estimate. Any interest because of late payments to the Town pursuant to this Section 9.3 shall not be deemed to be part of the Franchise Fees to be paid to the Town pursuant to Section 9.1 hereof and shall be within the exclusion to the term "franchise fee" for requirements incidental to enforcing the Franchise pursuant to Section 622(g)(2)(D) of the Cable Act.

## SECTION 9.4—RECOMPUTATION

Tender or acceptance of any payment shall not be construed as an accord that the amount paid is correct, nor shall such acceptance of payment be construed as a release of any claim that the Town may have for additional sums including interest payable under this Section 9.4. All amounts shall be subject to audit and recomputation by the Town, which shall be based on a calendar year and shall occur in no event later than one (1) year after the Franchise Fees are tendered with respect to such calendar year. If, after audit and recomputation, an additional payment is owed to the Town, such payment shall be paid within thirty (30) days after such audit and recomputation. The interest on such additional payment shall be charged from the due date at the rate of one percent (1%) above the Prime Rate during the period that such additional amount is owed; provided, however, that there shall be no interest or late charge on any portion of disputed fees where there is a bona fide dispute as to the obligation to pay said fees, during the pendency of any such bona fide dispute.

## SECTION 9.5—OTHER PAYMENT OBLIGATIONS AND EXCLUSIONS

(a) The Franchise Fee payments shall be in addition to and shall not constitute an offset or credit against any and all taxes or other fees or charges of general applicability which the Franchisee or any Affiliated Person shall be required to pay to the Town, or to any State or federal agency or authority, as required herein or by law; the payment of said taxes, fees or charges shall not constitute a credit or offset against the Franchise Fee payments all of which shall be separate and distinct obligations of the Franchisee and each Affiliated Person. The Franchisee herein agrees that no such taxes, fees or charges shall be used as offsets or credits against the Franchise Fee payments.

(b) Consistent with Section 622(h) of the Cable Act, any Person, including a Leased Access User, that distributes any Service over the Cable System for which charges are assessed to Subscribers but not received by the Franchisee shall pay the Town a fee equal to five percent (5%) of such Person's Gross Annual Revenues. If the Franchisee collects revenues for said Person, then the Franchisee shall collect said five percent (5%) fee on the Gross Annual Revenues of said Person and shall pay said amounts to the Town along with the Franchisee's Franchise Fee payments pursuant to Section 9.1 herein. If the Franchisee does not collect the revenues for a Person that distributes any Service over the System, then the Franchisee shall notify said Person of this five percent (5%) fee requirement and shall notify the Franchising Authority of such use of the Cable System by any such Person(s) and the Franchisee shall then have no further responsibility to the Town, with respect to any such fee for such Person(s).

(c) Unless otherwise specified by applicable federal law, all contributions, services, equipment, Channel capacity, facilities, support, such as the PEG Access equipment payments in Section 8.2(a) supra, free connections and service to public buildings, pursuant to Section 7.7 supra, to be provided by the Franchisee pursuant to this Renewal Franchise are not within the meaning of the term "franchise fee" as defined in Section 622(g)(1) of the Cable Act and fall within one or more exclusions to the term "franchise fee" as defined in Sections 622(g)(2)(A) through (D) of the Cable Act.

#### **SECTION 9.6—AFFILIATES USE OF SYSTEM**

The Franchisee shall not permit the use or operation of the Cable System by Affiliates in connection with the operation of other cable television systems on terms which result in a diversion of revenues from operation of the Cable System to the detriment of the Town and/or the Access Provider under this Renewal Franchise. If requested by the Franchising Authority, the Franchisee shall be required to demonstrate that use or operation of the Cable System by the Franchisee and/or an Affiliate is fair and competitive compared to such use by other third-parties. Should the Franchising Authority subsequently determine otherwise, the Franchisee shall enter into good faith negotiations to resolve any dispute(s) regarding such gross revenue discrepancies on account of such a relationship.

#### **SECTION 9.7—ACCEPTANCE BY THE TOWN; NO RELEASE**

No acceptance of any payment by the Town shall be construed as a release or as an accord and satisfaction of any claim the Town may have for further or additional sums payable as a Franchise Fee pursuant to this Article 9 or for the performance of any other obligation of the Franchisee.

### **ARTICLE 10**

#### **ADMINISTRATION**

#### **SECTION 10.1—REGULATORY AUTHORITY**

The Franchising Authority and/or its designee(s) shall be responsible for the day to day regulation of the Cable Television System. The Franchising Authority and/or its designee(s) shall monitor and enforce the Licensee's compliance with the terms and conditions of this Renewal Franchise. The Issuing Authority shall notify the Licensee in writing of any instance of non-compliance pursuant to Section 13.1 infra.

## SECTION 10.2—PERFORMANCE EVALUATION HEARINGS

(a) The Franchising Authority shall hold a performance evaluation hearing in the Third Year of this Renewal Franchise, or after system build-out, whichever comes first. The Franchising Authority may hold a performance evaluation hearing every year thereafter, the Franchisee to be available upon request by the Franchising Authority.

(b) The Franchising Authority shall have the right to question the Franchisee on any aspect of this Renewal Franchise including, but not limited to, the operation, maintenance and/or removal of the Cable Television System. During review and evaluation by the Franchising Authority, the Franchisee shall fully cooperate with the Franchising Authority and/or its designee(s), and produce such documents or other materials as are reasonably requested from the Town. Any Subscriber or other Person may submit comments during such review hearing, either orally or in writing, and such comments shall be duly considered by the Franchising Authority.

(c) Within sixty (60) days after the conclusion of such review hearing(s), the Franchising Authority shall issue a written report with respect to the adequacy of Cable System performance and quality of Service, and send one (1) copy to the Franchisee and file one (1) copy with the Town Clerk's Office. If inadequacies are found which result in a violation of any of the provisions of this Renewal Franchise, the Franchisee shall respond and propose a plan for implementing any changes or improvements necessary, pursuant to Section 13.1 infra.

(d) The failure of Franchisee to participate in this annual hearing shall constitute a material violation of this Renewal Franchise and be subject to liquidated damages pursuant to Section 13.2 infra.

## SECTION 10.3—JURISDICTION

Unless otherwise required by applicable law, jurisdiction and venue over any dispute, action or suit shall be in any court of appropriate venue and subject matter jurisdiction located in the State of New Hampshire and the parties by this instrument subject themselves to the personal jurisdiction of said court for the entry of judgment and the resolution of any dispute, action or suit.

## ARTICLE 11

### RATES AND CHARGES

#### SECTION 11.1—RATE REGULATION

The Town reserves the right to regulate the Franchisee's rates and charges to the extent allowable under applicable federal law and regulation, including but not limited to, the Cable Act.

#### SECTION 11.2—NOTIFICATION OF RATES AND CHARGES

The Franchisee shall file with the Town schedules which shall describe all Services offered by the Franchisee, all rates and charges of any kind, and all terms and conditions relating thereto. No rates or charges shall be effective except as they appear on a schedule so filed. Any changes in rates and charges by Franchisee shall be preceded by a thirty (30) day notice of the proposed change to the Franchising Authority and all Subscribers, except where other notice may be permitted under applicable law or regulation. The requirements of this section shall apply to all rates and charges associated with the delivery of cable television Services in Gilmanton, including those charges authorized in Section 11.3.

#### SECTION 11.3—RIGHTS OF INDIVIDUALS; SPECIAL CLASSIFICATIONS

The Franchisee shall not deny Service, access or otherwise discriminate against Subscribers, Channel Users or general citizens on the basis of age, race, religion, sex, physical handicap or country of natural origin. Nothing herein shall prohibit the Franchisee from offering reduced rates for senior citizens, handicapped Persons and/or charitable institutions.

#### SECTION 11.4—BILLING PRACTICES

The Franchisee shall set forth in writing its billing practices and policies, including the conditions under which an account will be considered overdue and subject to disconnection, and shall furnish a copy thereof to each new Subscriber and to the Franchising Authority and thereafter to any Subscribers upon request, and to the Town and all Subscribers at such time as there is a change in such policies.

## SECTION 11.5—TERMINATION OF PRO-RATED SERVICE

In the event Subscriber's Service is terminated, monthly charges for such Service shall be pro-rated on a daily basis and, where advance payment has been made by a Subscriber, the appropriate refund shall be made by the Franchisee to said Subscriber within thirty (30) days of such termination or the next billing cycle, whichever is later, after the Subscriber has returned any of the Franchisee's equipment.

## SECTION 11.6—SUBSCRIBERS' RIGHTS UPON FAILURE OF SERVICE

(a) In the event that Service to any Subscriber is interrupted for twenty-four (24) or more consecutive hours, the Franchisee shall automatically provide a pro-rata credit or rebate, on a daily basis, of that portion of the Service during the next consecutive billing period, as set forth in RSA 53-C;3-c.

(b) For purposes of computing the time of such interrupted Service, said time shall begin when a complaint for interrupted Service is received and logged by the Franchisee, or when the Franchisee has actual or constructive notice of the interruption, and shall last until Service is restored.

## SECTION 11.7—DISCONNECTION FOR NON-PAYMENT

(a) In no event shall the Franchisee disconnect a Subscriber's Cable Service for nonpayment unless (i) the Subscriber's payment is past due; (ii) the Franchisee has given said Subscriber written notice of such past due amount, included in a subsequent bill or separate mailing prior to the proposed disconnection; and (iii) said Subscriber has not paid a past due amount after forty-five (45) days from its due date.

## ARTICLE 12

### INSURANCE, INDEMNIFICATION, BONDS, & OTHER SURETY

#### SECTION 12.1—INSURANCE REQUIREMENTS

At all times during the term of the Renewal License, including the time for removal of facilities provided for herein, the Franchisee shall obtain, pay all premiums for, and file with the Franchising Authority, on an annual basis, copies of the certificates of insurance for the following policies:



(1) A general commercial liability policy naming the Town, its officers, boards, commissions, agents, committees and/or employees as additional insureds on all claims on account of injury to or death of a Person or Persons occasioned by the construction, Installation, maintenance or operation of the Cable System or alleged to have been so occasioned, with a minimum liability of Five Hundred Thousand Dollars (\$500,000.00) for injury or death to any one Person in any one occurrence and One Million Dollars (\$1,000,000.00) for injury or death to two (2) or more Persons in any one occurrence.

(2) A property damage insurance policy naming the Town, its officers, boards, commissions, agents, committees and/or employees as additional insureds and save them harmless from any and all claims of property damage, real or personal, occasioned or alleged to have been so occasioned by the construction, Installation, maintenance or operation of the Cable Television System, with a minimum liability of Five Hundred Thousand Dollars (\$500,000.00) for damage to the property of any one Person in any one occurrence and One Million Dollars (\$1,000,000.00) for damage to the property of two (2) or more Persons in any one occurrence.

(3) Automobile liability insurance for owned automobiles, non-owned automobiles and/or rented automobiles in the amount of:

(a) One Million Dollars (\$1,000,000.00) for bodily injury and consequent death per occurrence;

(b) One Million Dollars (\$1,000,000.00) for bodily injury and consequent death to any one Person; and

(c) Five Hundred Thousand Dollars (\$500,000.00) for property damage per occurrence.

(4) Worker's Compensation in the minimum amount of the statutory limit, and One Hundred Thousand Dollars (\$100,000.00) for Employer's Liability.

(5) The following conditions shall apply to the insurance policies required herein:

(a) Such insurance shall commence no later than the Effective Date of this Renewal License.

(b) Such insurance shall be primary with respect to any insurance maintained by the Town and shall not call on the Town's insurance for contributions.

(c) Such insurance shall be obtained from brokers or carriers authorized to transact insurance business in New Hampshire.

- (d) The Franchisee's failure to obtain to procure or maintain the required insurance shall constitute a material breach of this Renewal License.

## SECTION 12.2—PERFORMANCE BOND

- (a) The Franchisee shall maintain at its sole cost and expense throughout the term of the Renewal License a faithful performance bond running to the Town, with good and sufficient surety licensed to do business in the State in the sum of Fifty Thousand Dollars (\$50,000.00). Said bond shall be conditioned upon the faithful performance and discharge of all of the obligations imposed by this Renewal Franchise.
- (b) The performance bond shall be effective throughout the term of this Renewal Franchise, including the time for removal of all of the facilities provided for herein, and shall be conditioned that in the event that the Franchisee shall fail to comply with any one or more provisions of this Renewal Franchise, or to comply with any order, permit or direction of any department, agency, commission, board, division or office of the Town having jurisdiction over its costs, or to pay any claims, liens or taxes due the Town which arise by reason of the upgrade, maintenance, operation and/or removal of the Cable System, the Town shall recover from the surety of such bond all damages suffered by the Town as a result thereof, pursuant to Sections 13.1 and 13.2 infra.
- (c) Said bond shall be a continuing obligation of this Renewal Franchise, and thereafter until the Franchisee has satisfied all of its obligations to the Town that may have arisen from the grant of the Renewal Franchise or from the exercise of any privilege herein granted. In the event that the Town recovers from said surety, the Franchisee shall take immediate steps to reinstate the performance bond to the amount required herein. Neither this section, any bond accepted pursuant thereto, or any damages recovered thereunder shall limit the liability of the Franchisee under this Renewal Franchise.

## SECTION 12.3—REPORTING

On an annual basis, the Franchisee shall submit to the Franchising Authority, or its designee, copies of all current certificates regarding a) all insurance policies as required herein, and b) the performance bond as required herein.

## SECTION 12.4—INDEMNIFICATION

(a) The Franchisee shall, at its sole cost and expense, indemnify and hold harmless the Town, its officials, boards, commissions, committees, agents and/or employees against all claims for damage due to the actions of the Franchisee, its employees, officers or agents arising out of the construction, Installation, maintenance, operation and/or removal of the Cable Television System under this Renewal Franchise, including without limitation, damage to Persons or property, both real and personal, caused by the construction, Installation, operation, maintenance and/or removal of any structure, equipment, wire or cable installed. Indemnified expenses shall include, without limitation, all out-of-pocket expenses, such as attorneys' fees.

(b) The Franchisee's obligation to indemnify the Town as aforesaid, the Town agrees that it will, on request, surrender to the Franchisee, the defense of any claim for damages for which the Town claims a right to indemnification hereunder. The Franchisee shall then have the duty to defend such claim and may employ attorneys of its own selection, at its own expense, to investigate, negotiate, settle or litigate any such claim or suit.

## SECTION 12.5—NOTICE OF CANCELLATION OR REDUCTION OF COVERAGE

The insurance policies and performance bond required herein shall each contain an explicit endorsement stating that such insurance policies and performance bond are intended to cover the liability assumed by the Franchisee under the terms of the Renewal Franchise and shall contain the following endorsement:

It is hereby understood and agreed that this policy (or bond) shall not be cancelled, materially changed or the amount of coverage thereof reduced until forty-five (45) days after receipt by the Issuing Authority by certified mail of one (1) copy of a written notice of such intent to cancel, materially change or reduce the coverage required herein.

## ARTICLE 13

### DETERMINATION OF BREACH LIQUIDATED DAMAGE-FRANCHISE REVOCATION

#### SECTION 13.1—DETERMINATION OF BREACH

(A) It is the intent of the parties hereto to attempt to resolve disputes arising under this Renewal Franchise informally. In the event that such efforts are not successful, the Franchising Authority and the Franchisee shall follow the procedures set forth in this Article 13.

(B) In the event that the Franchising Authority has reason to believe that the Franchisee has defaulted in the performance of any or several provisions of this Renewal Franchise, except as excused by Force Majeure, the Franchising Authority shall notify the Franchisee in writing, by certified mail, of the provision or provisions which the Franchising Authority believes may have been in default and the details relating thereto. The Franchisee shall have thirty (30) days from the receipt of such notice to:

(a) respond to the Franchising Authority in writing, contesting the Franchising authority's assertion of default and providing such information or documentation as may be necessary to support the Franchisee's position; or

(b) cure any such default (and provide written evidence of the same), or, in the event that by nature of the default, such default cannot be cured within such thirty (30) day period, to take reasonable steps to cure said default and diligently continue such efforts until said default is cured. The Franchisee shall report to the Franchising Authority, in writing, by certified mail, at fourteen (14) day intervals as to Franchisee's efforts, indicating the steps taken by the Franchisee to cure said default and reporting the Franchisee's progress until such default is cured.

(c) In the event that (i) the Franchisee fails to respond to such notice of default; (ii) the Franchisee fails to cure the default or to take reasonable steps to cure the default within the required thirty (30) day period; or (iii) the Franchising Authority is not satisfied with (1) the Franchisee's response (pursuant to paragraph {a} above) or (2) the Franchisee's efforts to cure (pursuant to paragraph {b} above), the Franchising Authority shall promptly schedule a public hearing no sooner than fourteen (14) days after written notice, by certified mail, to the Franchisee. The Franchisee shall be provided a full and fair opportunity to offer evidence, question any Person(s) offering testimony and be heard at such public hearing.

(d) Within thirty (30) days after said public hearing, the Franchising Authority shall determine whether or not the Franchisee is in default of any

provision of the Renewal Franchise. In the event that the Franchising Authority, after such hearings, determines that the Franchisee is in such default, the Franchising Authority (i) shall issue a written decision containing its findings and (ii) may determine to pursue any of the following remedies:

- i) assess liquidated damages in accordance with the schedule set forth in Section 13.2 below;
- ii) seek specific performance of any provision of the Renewal Franchise which reasonable lends itself to such remedy as an alternative to damages;
- iii) commence an action at law for monetary damages;
- iv) foreclose on all or any appropriate part of the security provided pursuant to Section 12.2 herein;
- v) declare the Renewal Franchise to be revoked subject to Section 13.3 and applicable law;
- vi) invoke any other lawful remedy available to the Town.

## SECTION 13.2—LIQUIDATED DAMAGES

(a) For the violation of any of the following provisions of this Renewal Franchise, liquidated damages shall be paid by the Franchisee to the Franchising Authority, subject to Section 13.1 above. Any such liquidated damages shall be assessed as of the date that the Franchisee receives written notice, by certified mail, of the provision or provisions which the Franchising Authority believes are in default.

(1) For failure to fully upgrade, extend, install, operate and maintain the Cable Television System, in accordance with Section 5.1(b) herein, three hundred fifty dollars (\$350.00) per day, for each day that such upgrade, installation, operation and maintenance has not occurred.

(2) For failure to construct, install, fully activate and maintain the Institutional Network in accordance with Section 5.3 herein, two hundred dollars (\$200.00) per day, for each day that such non-compliance continues.

(3) For failure to obtain the advance, written approval of the Franchising Authority for any transfer of the Renewal Franchise in accordance with Article 3 herein, three hundred dollars (\$300.00) per day, for each day that such non-compliance continues.

(4) For failure to comply with the FCC's Customer Service Obligations in accordance with Section 14.2 herein, one hundred dollars (\$100.00) per day, for each day that such non-compliance continues.

(5) For failure to comply with any of the obligations in accordance with Article 14 herein, seventy-five dollars (\$75.00) per day, for each day that such non-compliance continues.

(6) For failure to submit (i) reports, pursuant to Article 15 herein, and/or (ii) schedules and notices pursuant to Section 11.2 herein, fifty (\$50.00) per day that said reports and/or schedules and notices are not submitted as required.

(b) Such liquidated damages shall be in addition to, and not a limitation upon, any other provision of this Renewal Franchise and applicable law, including penalties or revocation, or any other provisions of this Renewal Franchise and applicable law, including penalties or revocation or any other statutorily or judicially imposed penalties or remedies.

### **SECTION 13.3—REVOCATION OF THE RENEWAL FRANCHISE**

In the event that the Franchisee fails to comply with any material provision of this Renewal Franchise, the Franchising Authority may revoke the Renewal Franchise granted herein, subject to the procedures of Section 13.1 above.

### **SECTION 13.4—TERMINATION**

The termination of this Renewal Franchise and the Franchisee's rights herein shall become effective upon the earliest to occur of: {i} the revocation of the Renewal Franchise by action of the Franchising Authority, pursuant to Section 13.1 and 13.3 above; {ii} the abandonment of the Cable System, in whole or material part, by the Franchisee without the express, prior approval of the Franchising Authority; or {iii} the expiration of the term of this Renewal Franchise. In the event of any termination, the Town shall have all of the rights provided in this Renewal Franchise.

### **SECTION 13.5—NOTICE TO OTHER PARTY OF LEGAL ACTION**

Except for (i) enforcing any damages pursuant to Section 13.2 herein and/or (ii) in any case where the Franchising Authority, the Franchisee and/or the Town may lose any right(s) that such party may otherwise have, including, but not limited to, injunctive relief, in the event that such party to this Renewal Franchise intends to take legal action against the other for any reason, such moving party

shall first (i) give the other party reasonable notice that an action may be filed, (ii) meet with the other party, if practical, before it files any such action, and (iii) negotiate the issue, which is the subject of any proposed legal action, in good faith with the other party. Nothing in this Article 13 shall be deemed to limit the Franchising Authority's, the Franchisee's or the Town's right to seek appropriate relief in a court of competent jurisdiction.

#### SECTION 13.6—NON-EXCLUSIVITY OF REMEDY

No decision by the Franchising Authority, the Franchisee and/or the Town to invoke any remedy under the Renewal Franchise or under any statute, law or ordinance shall preclude the availability of any other such remedy.

### ARTICLE 14

#### SUBSCRIBER RIGHTS AND CONSUMER PROTECTION

##### SECTION 14.1—BUSINESS-CUSTOMER SERVICE OFFICE/TELEPHONE ANSWERING SERVICE

(a) The Franchisee shall continue to maintain and operate a business-customer service office in the Town of Belmont or, if not in Belmont, in a location reasonably proximate to the Town of Gilmanton for the purpose of receiving and resolving all complaints, including without limitation, those regarding billing, Service, Installation and equipment malfunctions, accepting the return of Converters and/or other Subscriber equipment, and answering general inquiries .

(b) For the entire term of this Renewal Franchise, the Franchisee shall maintain a customer payment center within, or within reasonable proximity to, the Town of Gilmanton, for payment of Subscriber bills and return/exchange of leased or rented equipment.

(c) The Franchisee shall continue to maintain sufficient customer service representatives at said business-customer service office to handle all Gilmanton Subscriber calls, during the following current hours: 7:30 AM to 7:30 PM Monday, Thursday and Friday, 9:00 AM to 5:00 PM Tuesday and Wednesday, and 9:00 AM to 2:00 PM Saturday; provided, however, that the Franchisee may change said hours upon the advance written notice to the Franchising Authority; provided, further, that the Franchisee must maintain a minimum of fifty (50) hours per week, including at least one (1) evening per week and at least four (4) hours each Saturday (holidays excluded).

(d) At all other times than those hours established in Section 14.1(c) above, and throughout the entire term of this Renewal Franchise, the Franchisee shall maintain a telephone answering service to handle Subscriber inquiries, complaints and emergencies, and provide proper referral regarding billing and other subscriber information. All such after-hours calls shall be logged by the Franchisee or its agents. Said answering service shall forward all inquiries and/or complaints to the Franchisee the morning of the next business day. The Franchisee shall promptly contact each individual Subscriber to follow-up on their individual problem and/or inquiry, as necessary.

(e) All after-hours telephone calls of an emergency nature shall be acted upon immediately.

## SECTION 14.2—FCC CUSTOMER SERVICE OBLIGATIONS

The Franchisee shall comply with the FCC's Customer Service Obligations, codified at 47 C.F.R. Section 76.309, as may be amended, and attached hereto as Exhibit 7.

## SECTION 14.3—TELEPHONE ACCESS

(a) The Franchisee's business office shall have a publicly listed local telephone number. The Franchisee shall maintain an adequate number of telephone lines for answering Subscriber calls.

(b) Pursuant to 47 C.F.R. 576.30(c)(1)(B), the Franchisee shall connect a telephone caller to a live customer representative, including wait time, within thirty (30) seconds when the connection is made. If such a call needs to be Transferred, the Transfer time shall not exceed thirty (30) seconds. These standards shall be met no less than ninety percent (90%) of the time during the Franchisee's regular business hours, pursuant to Section 14.1(c) above, i) under normal operating conditions, as defined in said 47 CFR §76.309, and ii) as measured on a quarterly basis.

(c) Under normal operating conditions, as defined in said 47 CFR §76.309, a telephone caller to the Franchisee shall receive a busy signal less than three percent (3%) of the time.

(d) If the Franchisee reasonably believes that the Franchisee is not in compliance with 47 CFR §76.309(B), the Franchising Authority shall notify the Franchisee of its belief, and shall notify the Franchisee of all of the facts upon which its bases such belief. After such notification, the Franchising Authority and the Franchisee shall confer regarding said issue, and if the Franchising Authority is



not satisfied concerning the Franchisee's compliance in this matter, the Franchisee, upon request, shall conduct a busy study.

#### SECTION 14.4—INITIAL INSTALLATION IN WIRED AREAS

(a) The Franchisee shall provide Cable Service(s) in all areas of the Town to those residents whose homes are passed by the Cable System and who have requested Service and have paid a deposit for such Service, if requested, within fourteen (14) days of said request and deposit. In arranging appointments for said cable Installation work, the Franchisee shall make its best efforts to specify to the resident, in advance, whether said Installation will occur in the morning or afternoon hours. The Franchisee shall make reasonable efforts to install at time convenient to residents, including times other than 9:00 AM to 4:30 PM weekdays. Failure to install within said fourteen (14) day period, without just cause (Force Majeure) or resident fault, shall require the Franchisee to automatically offer a priority cable Installation to the affected resident at a time mutually agreeable to the Franchisee and the affected resident, but in no case later than three (3) working days following the initial Installation date, unless mutually agreed to otherwise by the parties.

(b) There shall be no additional charge in addition to standard aerial installation charges to residents for Installation, provided said residence is within two hundred feet (200') from existing or proposed feeder line. Installations requiring materials or procedures which exceed these specified lengths or which involves extraordinary conditions will be subject to additional charges, as determined by the Franchisee; provided, however, that such charges shall be fair, reasonable and nondiscriminatory.

#### SECTION 14.5—SERVICE CALLS

(a) In arranging appointments for Service calls, the Franchisee shall comply with the FCC's Customer Service Obligations, as may be amended.

(b) The Franchisee shall remove all Subscriber Drops, within seven (7) days of receiving a written request from a Subscriber to do so.

#### SECTION 14.6—SUBSCRIBER SOLICITATION PROCEDURES

(A) The Franchisee shall provide all prospective Subscribers with complete, clear and concise written information concerning all Services and rates by the Franchisee upon solicitation of Service or prior to, or at the time of, installation of cable service. Such information shall include but not be limited to the following:

(a) All levels of Services and rates, deposits if applicable, installation costs, additional television set charges, service upgrade and/or downgrade charges and relocation of cable Outlet charges.

(b) Detailed written information concerning billing and collection procedures, procedures for ordering changes in or termination of services, and all refund policies.

(c) Notice of the availability of complete written information concerning the utilization of VCRs with Cable Service(s), including the cost for hooking up such VCRs.

(d) Notice of availability of detailed information on parental lockout devices.

(e) Detailed written information concerning the Franchisee's privacy policies, pursuant to State and federal law.

(B) In soliciting prospective customers for telemarketing, the Franchisee shall provide the following:

(a) A description of each level of Service in detail;

(b) A description of the lowest cost Service in an objective manner; and

(c) A price quotation summary for the prospective customer what the total bill could be expected to be for requested service.

#### **SECTION 14.7—NOTICE TO SUBSCRIBERS REGARDING QUALITY OF SERVICE**

(a) As set forth in RSA 53-C: 3-d, annually, the Franchisee shall mail to each of its Subscribers a notice which:

(i) Informs Subscribers how to communicate their views to the Franchisee and to the Office of the Attorney General, Consumer Protection and Antitrust Bureau;

(ii) States the responsibility of the Office of the Attorney General, Consumer Protection and Antitrust Bureau to receive and act on consumer complaints; and

(iii) Such notice shall be in non-technical language, understandable by the general public, and in a convenient format. On or before January 30 of each

year, the Franchisee shall certify to the Franchising Authority and to the Office of the Attorney General, Consumer Protection and Antitrust Bureau, that it has distributed the notice as provided herein during the previous calendar year as required.

## SECTION 14.8—BILLING PRACTICES INFORMATION AND PROCEDURES

(a) The Franchisee shall inform all prospective Subscribers of complete information respecting billing and collection procedures, procedures for ordering changes in a termination of Services, and refund policies, upon solicitation of Service and prior to the consummation of any agreement for Installation of Service. Such information shall be provided to Subscribers in easy-to-understand language.

(b) Billing procedures shall be as follows:

(i) The Franchisee shall bill all Subscribers to its Cable Television System in a uniform, non-discriminatory manner, regardless of a Subscriber's level of service(s). The bill shall have an explicit due date.

(ii) Upon initiation of Service and prior to the due date of each bill, the Franchisee shall provide all Subscribers with an itemized bill that contains, at a minimum, the following information:

(a) a list of each Service or package received for that particular billing period;

(b) the rate or charge for each Service or package received;

(c) the period of time over which said Services are billed; and

(d) the total charges due for the monthly period, separate for any previous balance due;

(iii) Subscribers shall have thirty (30) days from the due date of a bill in which to register a complaint or dispute concerning said bill.

(iv) In the event that bona fide billing dispute arises, the Franchisee shall make a good faith effort to resolve each dispute within fourteen (14) working days of receiving written notification of said dispute from the Subscriber, or any written communication from the Franchising Authority regarding a Subscriber complaint. If said dispute is not settled within the fourteen (14) working day period and/or the Subscriber notifies the Franchisee that its proposed resolution is unacceptable, the Franchisee shall notify, and deliver to, the affected Subscriber its

proposed resolution of the dispute within two (2) business days of the expiration of said fourteen (14) day period.

(v) Said Subscriber shall be responsible for paying only that portion of the bill that is not in dispute. In no event shall the Franchisee, prior to the resolution of a billing dispute, disconnect, assess a late payment charge or require payment of a late payment charge from the Subscriber for failure to pay the disputed portion of bona fide disputed bills, or portions thereof, provided the Subscriber notifies the Franchisee of said dispute within thirty (30) days following the beginning of the billing period for which Service was rendered under the disputed bill.

(vi) Late charges, if applied, shall in no case exceed one and a half percent (1.5%) per month of the balance due, and shall not be imposed on the disputed portion of a Subscriber's bill should a bona fide dispute arise concerning a Subscriber's bill.

#### **SECTION 14.9—COMPLAINT RESOLUTION PROCEDURES**

(a) The Franchisee shall establish a procedure for resolution of billing and privacy dispute and complaints by Subscribers. The Franchisee shall provide, on an annual basis, a written description of said procedures to all Subscribers, as well as the Franchising Authority, with an initial copy to the Franchising Authority within thirty (30) days of the Effective Date of the Renewal Franchise.

(b) The Franchisee shall promptly respond to all Subscriber complaints requiring a response, but in any event within three (3) business days of receipt of any such complaints. In the event that the Subscriber notifies the Franchisee that he or she is not satisfied with the Franchisee's response, or the Franchisee does not respond within said three (3) business days, such Subscriber may contact the Better Business Bureau of the Granite State ("BBBGS"), which shall attempt to informally mediate the dispute. If such informal mediation fails, the Subscriber shall have the right to seek arbitration of the dispute, in addition to any other remedy available to, and desired by, such Subscriber(s). If such arbitration occurs, the Franchisee and such said Subscriber shall sign an agreement, which describes the issue(s) in dispute. Both the Franchisee and Subscriber shall agree to accept said arbitrator's decision in the matter.

(c) Notwithstanding the foregoing and based upon multiple complaints or disputes brought by Subscribers, if the Franchising Authority or its designee(s) determines it to be in the public interest, the Franchising Authority or its designee(s) may investigate any such multiple complaints or disputes brought by subscribers arising from the operations of the Franchisee, provided said Subscribers

make a good faith effort to comply with the Franchisee's procedures specified in paragraphs (a) and (b) above for the resolution of complaints.

(d) In the event that the Franchising Authority or its designee(s) finds a pattern of multiple unresolved subscriber complaints, the Franchising Authority or its designee(s) shall meet with the Franchisee to discuss the possible need for appropriate amendments to the Franchisee's procedures for the resolution of complaints.

#### **SECTION 14.10—CHANGE OF SERVICE**

Upon notification by a Subscriber to disconnect or downgrade a basic or premium service, The Franchisee shall cease and/or adjust said Subscriber's monthly service charges immediately or as of the Subscriber's specified disconnect or downgrade date. In no case shall said Subscriber be charged for service(s) requested to be changed after the Franchisee is notified of said change(s). In the event that Subscribers request disconnection or downgrade of service(s) as a result of a rate increase, the Franchisee's charges, if any, shall be consistent with applicable law(s) and regulation(s).

#### **SECTION 14.11—LOSS OF SERVICE-SIGNAL QUALITY**

Upon a showing of a number of complaints from Subscribers that indicates a general or area-wide Signal quality problem concerning consistently poor or substandard Signal quality in the System, the Franchisee shall comply with Section 15.9.

#### **SECTION 14.12—EMPLOYEE AND AGENT IDENTIFICATION CARDS**

All of the Franchisee's employees and agents entering upon private property, in connection with the construction, Installation, maintenance and operation of the Cable System, including repair and sales personnel, shall be required to carry an employee identification card issued by the Franchisee, worn visibly by said employees and agents.

#### **SECTION 14.13—PROTECTION OF SUBSCRIBER PRIVACY**

(a) The Franchisee shall respect the rights of privacy of every Subscriber and/or User of the Cable Television System and shall not violate such rights through the use of any device or Signal associated with the Cable Television System, and as hereafter provided.

(b) The Franchisee shall comply with all privacy provisions contained in this Article 14 and all other applicable federal and state laws including, but not limited to, the provisions of Section 631 of the Cable Act.

(c) The Franchisee shall be responsible for carrying out and enforcing the Cable System's privacy policy, and shall at all times maintain adequate physical, technical and administrative security safeguards to ensure that personal subscriber information is handled and protected strictly in accordance with this policy.

(d) Any poll or upstream response of a Subscriber or User shall only be conducted or obtained pursuant to applicable State and/or federal law, including Section 631 of the Cable Act.

(e) The Franchisee and/or its agents or employees shall not make available to any third party, including the Town, information concerning the viewing habits or subscription package decisions of any individual Subscriber.

(f) At the time of entering into an agreement to provide Cable Service to a Subscriber and at least once a year thereafter, the Franchisee shall provide all Subscribers with the written notice required in Section 631(a)(1) of the Cable Act.

#### **SECTION 14.14—DISTRIBUTION OF SUBSCRIBER INFORMATION**

The Franchisee and its agents or employee shall not, without the prior written authorization of the affected Subscriber or User, provide to any third party, including the Town, data identifying or designating any Subscriber either by name or address. Said authorization may be withdrawn at any time by the Subscriber or User by providing written notice to the Franchisee. The Franchisee shall provide annual notice to each Subscriber or User who has given the aforesaid authorization of each Subscriber's or User's right to withdraw the authorization. In no event shall such authorization be obtained as a condition of Service or continuation thereof, except as necessary to adequately provide particular services. Nothing herein shall preclude the use of such identifying information by the Franchisee, its agents and employees in the ordinary course of business, provided that such use is in accordance with applicable State and/or federal law(s).

#### **SECTION 14.15—MONITORING**

Neither the Franchisee or its agents nor the Town or its agent shall tap, monitor, arrange for the tapping or monitoring, or permit any other Person to tap or monitor, any cable, line, Signal, input device, or Subscriber Outlet or receiver for any purpose, without the prior written authorization of the affected Subscriber or User; provided, however, that the Franchisee may conduct systemwide or

individually addressed "sweeps" solely for the purpose of verifying System integrity, checking for illegal taps, controlling return-path transmission, or billing for Pay Services, without such authorization. The Franchisee shall report to the affected parties and the Franchising Authority any instances of monitoring or tapping of the Cable Television System, or any part thereof, of which it has knowledge, whether or not such activity has been authorized by the Franchisee. The Franchisee shall not record or retain any information transmitted between a Subscriber or User and any third party, except as required for lawful business purposes. The Franchisee shall destroy all subscriber information of a personal nature after a reasonable period of time except as authorized not to do so by the affected Subscriber.

#### **SECTION 14.16—SUBSCRIBERS RIGHT TO INSPECT AND VERIFY INFORMATION**

(a) The Franchisee shall make available for inspection by a Subscriber at a reasonable time and place all personal subscriber information that the Franchisee maintains regarding said Subscriber.

(b) A Subscriber may obtain from the Franchisee a copy of any or all of the personal subscriber information regarding him or her maintained by the Franchisee.

(c) A Subscriber or User may challenge the accuracy, completeness, retention, actual or alleged use or dissemination of any item of personal subscriber information. Such challenges and elated inquiries about the handling of subscriber information, shall be directed to the Franchisee's Executive Vice-President.

#### **SECTION 14.17—PRIVACY STANDARDS REVIEW**

The Franchising Authority and the Franchisee shall periodically review this Article 14 to determine that it effectively addresses appropriate concerns about privacy. This Article may be amended periodically by agreement of the Franchising Authority and Franchisee.

## ARTICLE 15

### REPORTS, AUDITS AND PERFORMANCE TESTS

#### SECTION 15.1—GENERAL

(a) In any instance where the Franchising Authority reasonably believes that the Franchisee may not be in compliance with its obligations under this Renewal Franchise, upon request of the Franchising Authority, the Franchisee shall promptly submit to the Town any relevant information regarding the Franchisee, its business and operations, or any Affiliated Person, with respect to the Cable System, any Service or any Service Related Activity, in such form and containing such detail as may be specified by the Franchising Authority pertaining to the subject matter of this Renewal Franchise which may be reasonably required to establish the Franchisee's compliance with its obligations pursuant to this Renewal Franchise.

(b) If the Franchisee believes that the documentation requested by the Franchising Authority involves proprietary information or private personal information, then the Franchisee shall submit the information to its counsel, who shall confer with the Town Counsel for a determination of the validity of the Franchisee's claim of a proprietary interest. If the Town Counsel agrees that the material is of a proprietary nature or involves private personal information, the information furnished shall not be a public record, but the Franchisee shall make it available, on its premises, to the Franchising Authority, at times convenient for both parties. If the Town Counsel does not agree that the material is of a proprietary nature or involves private personal information, the Franchising Authority may proceed according to the procedures in Section 13.1 supra.

#### SECTION 15.2—FINANCIAL REPORTS

The Franchisee shall make available to the Franchising Authority and/or its designee(s), no later than one hundred and twenty (120) days after the end of the Franchisee's Fiscal Year, the following financial information, at the Gilmanston Town Hall, with a copy sent to the Town's Counsel, accountant and/or other agents:

(a) Statement of Revenues, including:

(i) All Subscriber revenues, including but not limited to, regular Basic Service charges, all other Service tier charges, pay programming charges, Pay-Per-View revenues, Installation revenues (including reconnection, second set,



etc.), advertising revenues, Leased Access revenue, home shopping services revenues and any other revenues. To the extent allowed by applicable law, said information shall not be made public.

(b) If requested, a list of officers and members of the Board of Directors of the Franchisee and its parent, if any.

### SECTION 15.3—CABLE SYSTEM INFORMATION

The Franchisee shall file annually with the Franchising Authority a statistical summary of the operations of the Cable System. Said report shall include, but not be limited to, i) the number of Basic Service Subscribers, ii) the number of Satellite Tier Subscribers, iii) the number of dwelling units passed, and iv) the number of plant miles in construction or completed.

### SECTION 15.4—IN-HOUSE TELEPHONE REPORTS

If requested, the Franchisee shall provide copies of all in-house telephone reports, if any, that track the activity and effectiveness of the Franchisee's telephone system.

### SECTION 15.5—COMPLAINT LOG

The Franchisee shall keep a record or log of all written complaints received regarding quality of Service, equipment malfunctions, billing procedure, employee relations with subscribers and similar matters. Such records shall be maintained by the Franchisee for a period of two (2) years.

Such record(s) shall contain the following information for each complaint received:

- (a) Date, time and nature of the complaint;
- (b) Investigation of the complaint; and
- (c) Manner and time of resolution of the complaint.

(d) If the complaint regards equipment malfunction or quality of reception, the Franchisee shall file a report indicating the corrective steps it has taken, with the nature of the problem stated. The Franchisee shall make its logs or records, or both, of such complaints available to any authorized agent of the Franchising Authority upon request during normal business hours for onsite review.

## **SECTION 15.6—INDIVIDUAL COMPLAINT REPORTS**

To the extent that the release of such information is permitted by applicable law, the Franchisee shall, within ten (10) business days after receiving a request from the Town, send a written report to the Franchising Authority with respect to any complaint. Such report shall provide a full explanation of the investigation, findings(s) and corrective steps taken, as allowed by applicable law.

## **SECTION 15.7—OUTAGE LOG**

The Franchisee shall maintain an outage log showing the date, approximate time, duration, type and probable cause of all Headend, Trunk, or Distribution Service outages, known to affect eight (8) or more Subscribers, due to causes other than routine testing or maintenance at reasonable times. Said logs shall be made available to the Franchising Authority, or its designee, for inspection, at a convenient location, and maintained by the Franchisee for a period of not less than four (4) years.

## **SECTION 15.8—ANNUAL PERFORMANCE TESTS**

The Franchisee shall provide copies of performance tests to the Franchising Authority in accordance with FCC regulations, and as set out in 47 CFR §76.601 et seq.

## **SECTION 15.9—QUALITY OF SERVICE**

Where there exists evidence which, in the reasonable judgment of the Franchising Authority, casts doubt upon the reliability or technical quality of Cable Service(s), the Franchising Authority shall cite specific facts which casts such doubts in a notice to the Franchisee. The Franchisee shall submit a written report to the Franchising Authority, within thirty (30) days of a request thereof, setting forth in detail its explanation of the problems and proposing measures for resolution of such problems.

## **SECTION 15.10—DUAL FILINGS**

(a) If requested, the Franchisee shall make available to the Town and copying at the Franchisee's expense, copies of any petitions or communications with any State or federal agency or commission pertaining to any material aspect of the Cable System operation hereunder.

(b) In the event that either the Franchising Authority or the Franchisee requests from any State or federal agency or commission a waiver or advisory opinion relating to the Cable System, it shall immediately notify the other party in writing of said request, petition or waiver.

#### **SECTION 15.11—ADDITIONAL INFORMATION**

The Franchisee and any Affiliated Person(s) shall cooperate fully and faithfully with any lawful investigation, audit, or inquiry conducted by a Town governmental agency.

### **ARTICLE 16**

#### **MISCELLANEOUS PROVISIONS**

##### **SECTION 16.1—ENTIRE AGREEMENT**

This instrument contains the entire agreement between the parties, supersedes all prior agreements or proposals except as specifically incorporated herein, and cannot be changed orally but only by an instrument in writing executed by the parties.

##### **SECTION 16.2—CAPTIONS**

The captions to sections throughout this Renewal Franchise are intended solely to facilitate reading and reference to the sections and provisions of the Renewal Franchise. Such captions shall not affect the meaning or interpretation of the Renewal Franchise.

##### **SECTION 16.3—SEPARABILITY**

If any section, sentence, paragraph, term or provision of this Renewal Franchise is determined to be illegal, invalid or unconstitutional, by any court of competent jurisdiction or by any state or federal regulatory agency having jurisdiction thereof, such determination shall have no effect on the validity of any other section, sentence, paragraph, term or provision hereof, all of which shall remain in full force and effect for the term of this Renewal Franchise.

## SECTION 16.4—ACTS OR OMISSIONS OF AFFILIATES

During the term of this Renewal Franchise, the Franchisee shall be liable for the acts or omission of its Affiliates while such Affiliates are involved directly or indirectly in the construction, Installation, maintenance or operation of the Cable System as if the acts or omissions of such Affiliates were the acts or omissions of the Franchisee.

## SECTION 16.5—RENEWAL FRANCHISE EXHIBITS

The Exhibits to this Renewal Franchise, attached hereto, and all portions thereof, are incorporated herein by this reference and expressly made a part of this Renewal Franchise, except for those Exhibits that are attached for reference only, as indicated elsewhere in this Renewal Franchise.

## SECTION 16.6—CABLE ACT CHANGES

Except for Sections 5.9 and 5.10 supra, this Renewal Franchise is subject to the terms and conditions contained in Chapter 53-C of the Laws of New Hampshire; the regulations of the FCC; the Cable Act, and all Town, State and federal statutes and by-laws of general application, as all may be amended from time to time.

## SECTION 16.7—WARRANTIES

(a) The Franchisee warrants, represents and acknowledges, and agrees that at on or before the Effective Date of this Renewal Franchise, the Franchisee shall submit to the Franchising Authority, in a form reasonable acceptable to the Town's Counsel, and appropriate document evidencing its warranties, that, as of the Execution Date of this Renewal Franchise:

(i) The Franchisee is duly organized, validly existing and in good standing under the laws of the State of New Hampshire;

(ii) The Franchisee has the requisite power and authority under applicable law and its by-laws and articles of incorporation and/or other organizational documents, is authorized by resolutions of its Board of Directors or other governing body, and has secured all consents which are required to be obtained as of the Execution Date of this Renewal Franchise, to enter into and legally bind the Franchisee to this Renewal Franchise and to take all actions necessary to perform all of its obligations pursuant to this Renewal Franchise;

(iii) To the best of the Franchisee's knowledge, there is no action or proceedings pending or threatened against the Franchisee which would interfere with performance of this Renewal Franchise.

(b) The Franchising Authority warrants, represents and acknowledges that, as of the Effective Date of this Renewal License:

(i) The Franchising Authority is the duly authorized Franchising Authority pursuant to RSA 53-C:1(IV); and

(ii) The Franchising Authority has duly voted to grant this Renewal Franchise.

#### **SECTION 16.8—FORCE MAJEURE**

If by reason of force majeure either party is unable in whole or in part to carry out its obligations hereunder, said party shall not be deemed in violation or default during the continuance of such inability. The term "force majeure" as used herein shall mean the following: acts of God; acts of public enemies; orders of any kind of the government of the United States of America or of the state of New Hampshire or any of their departments, agencies, political subdivision, or officials, or any civil or military authority, insurrections; riots; epidemics; landslides; lightening; earthquakes; fires; hurricanes; volcanic activity; storms; floods; washout; droughts; civil disturbances; explosions; strikes; and unavailability of essential equipment and/or materials beyond the control of the Franchisee; and other matters beyond the reasonable control of the Franchisee.

#### **SECTION 16.9—STATEMENT OF THE FRANCHISEE**

At or before the execution of this Renewal Franchise, the Franchisee shall submit to the Franchising Authority, or its designee, in a form acceptable to the Town's Counsel, a statement from the Franchisee's Chief Executive Officer (or equivalent), stating that, as of the Execution Date of this Renewal Franchise, the Franchisee's performance of all terms and conditions in this Renewal Franchise is commercially practicable.

#### **SECTION 16.10—APPLICABILITY OF RENEWAL FRANCHISE**

All of the provisions in this Renewal Franchise shall apply to, and are enforceable against, the Town, the Franchisee, and their respective successors and assignees.

## SECTION 16.11—NOTICES

(a) Every notice to be served upon the Franchising Authority shall be delivered or sent by certified mail (postage prepaid) to the Board of Selectmen, Gilmanton Town Hall, 47 Cherry Valley Road, Gilmanton, New Hampshire 03246, or such other address as the Franchising Authority may specify in writing to the Franchisee. Every notice served upon the Franchisee shall be delivered or sent by certified mail (postage prepaid) to Community TV Corporation, 408 Union Avenue, Laconia, NH 03246, or such other address as the Franchisee may specify in writing to the Franchising Authority. The delivery shall be equivalent to direct personal notice, direction or order, and shall be deemed to have been given at the time of receipt of such notice(s).

(b) Whenever notice of any public meeting relating to the Cable System is required by law, regulation or this Renewal Franchise, upon notice by the Town, the Town shall publish or cause to be published notice of same, sufficient to identify its time, place and purpose, in a Lakes Region newspaper of general circulation once in each of two (2) successive weeks, the first publication being not less than fourteen (14) days before the day of any such hearing. The Franchisee shall promptly reimburse the Town for the costs of such notice(s).

(c) Subject to subsection (b) above, all required notices shall be in writing.

## SECTION 16.13—NO RECOURSE AGAINST THE FRANCHISING AUTHORITY

In any court proceeding involving any claim against the Franchising Authority, or any official, member, employee, or agent of the Franchising Authority, 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 a 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.

## SECTION 16.14—NON-DISCRIMINATION

The Franchisee shall not discriminate against any Person in its solicitation or Service on the basis of race, color, creed, religion, ancestry, national origin, geographical location within the Town, sex, affectional preference, disability, age, marital status, or status with regard to public assistance. The Franchisee shall be subject to all other requirements of federal and State laws or regulations, relating to nondiscrimination through the term of the Renewal Franchise.

## SECTION 16.15—TERM

All obligations of the Franchisee and the Franchising Authority set forth in the Renewal Franchise, except as set forth herein differently, shall commence upon the execution of this Renewal Franchise and shall continue for the term of the Renewal Franchise except as expressly provided for herein.

## SECTION 16.16 - FUTURE TECHNOLOGY

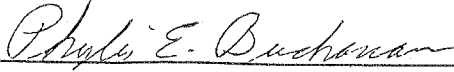
- (a) To maintain a leadership position in providing cable service in the Town, the Franchisee shall from time to time upgrade the Cable System, to the extent technically and economically feasible, to provide the Town Cable Services offering the best available proven technology consistent with the terms of this Franchise Agreement.
- (b) The Franchisee shall, upon request by the Franchising Authority, but not more often than every three years, shall conduct a performance evaluation review with the Franchising Authority regarding changes in relevant cable technology, as defined herein that might benefit the Town's Subscribers. Within a year of the completion of any such evaluation and review, Franchisee shall provide Cable Services as requested by the Franchising Authority, subject to the limitations listed below.
- (c) Franchisee may refuse to provide such cable Services upon a showing that the demand for such services does not permit recovery of a reasonable rate of return on the additional capital investment required to provide such services over the remaining term of the Franchise. For purposes of this Franchise and this section, the term "Cable Service" includes the provision of Internet access services but does not include the provision of telecommunication services. Relevant cable technology may include, but is not limited to, video compression capacity, scrambling technology, additional interactive capability, Institutional Network upgrade and PEG access capacity and capability. The Franchisee shall fully cooperate with the Franchising Authority, and produce such documents, subject to the confidentiality of RSA 91-A, and other materials as are reasonably requested by the Town to facilitate the process.

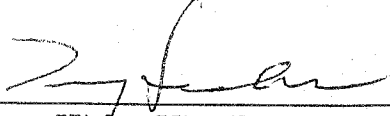
For the Town to exercise its options in this section the following requirements must be met:


- a. The Franchising Authority shall notify the Franchisee in writing of its request that the performance evaluation be conducted;
- b. The Franchisee meet with the Town and negotiate in good faith to identify available cable technologies, which are not currently provided in the Town;
- c. The Franchising Authority must request in writing that the Franchisee perform the upgrade as in the best interest of Subscribers;
- d. Such relevant cable technology must be technically and economically feasible. Economically feasible shall mean the Franchisee shall have prospects of recovering the additional capital invested to provide such Cable service and of earning a reasonable rate of return, including a recognition of risk to the cable operator if offering a new, untried, technology or service. The Franchising Authority agrees to negotiate an extension of the term of Franchise Agreement if said action is deemed to be in the best interest of the Town as determined by the Franchising Authority, and renders the proposed upgrade as economically feasible.
- e. The Franchising Authority may hold a public hearing, upon fifteen (15) days, notice to the Franchisee, for public comment on any proposed future technology offering;
- f. Within thirty (30) days of the public hearing, Franchisee shall respond in writing to the Town's request for a technology upgrade by stating its intent to comply with or reject the upgrade requirements. Failure to provide reasonable technology upgrade shall be considered a material breach of the Franchise and may subject the Franchisee to revocation proceedings.




Executed this 22<sup>nd</sup> day of June, 2000.

  
\_\_\_\_\_  
Phylis E. Buchanan, Chair

  
\_\_\_\_\_  
Terry Hicks, Vice-President  
HARRON METROCAST

  
\_\_\_\_\_  
Eric S. Muzzey

  
\_\_\_\_\_  
Nathaniel T. Abbott

BOARD OF SELECTMEN

**Exhibit 1**  
**Cable Wiring Map**

(see attached)

EXHIBIT 2

INSTITUTIONAL NETWORK BUILDINGS

Pursuant to Section 5.3, the Franchisee shall provide I-Net Drops and/or Outlets at the following locations, without charge to the Town:

{See Attached}

## **EXHIBIT 2 LIST**

Corners Fire Station

Academy Building – Gilmananton Town Office

Corners Library

Gilmananton Elementary School

Gilmananton Police Station

Old Town Hall – Gilmananton Iron Works

Gilmananton Iron Works Fire Station

Gilmananton Iron Works Library

EXHIBIT 3

FCC TECHNICAL SPECIFICATIONS

{See Attached}

(f) *Minority-controlled* means more than 50 percent owned by one or more members of a minority group.

(g) *Minority* means Black, Hispanic, American Indian, Alaska Native, Asian and Pacific Islander.

(h) *Attributable interest* shall be defined by reference to the criteria set forth in the Notes to §76.501.

[58 FR 60141, Nov. 15, 1993]

### Subpart K—Technical Standards

#### §76.601 Performance tests.

(a) The operator of each cable television system shall be responsible for insuring that each such system is designed, installed, and operated in a manner that fully complies with the provisions of this subpart. Each system operator shall be prepared to show, on request by an authorized representative of the Commission or the local franchiser, that the system does, in fact, comply with the rules.

(b) The operator of each cable television system shall maintain at its local office a current listing of the cable television channels which that system delivers to its subscribers.

(c) The operator of each cable television system shall conduct complete performance tests of that system at least twice each calendar year (at intervals not to exceed seven months), unless otherwise noted below, and shall maintain the resulting test data on file at the operator's local business office for at least five (5) years. The test data shall be made available for inspection by the Commission or the local franchiser, upon request. The performance tests shall be directed at determining the extent to which the system complies with all the technical standards set forth in §76.605(a) and shall be as follows:

(1) For cable television systems with 1000 or more subscribers but with 12,500 or fewer subscribers, proof-of-performance tests conducted pursuant to this section shall include measurements taken at six (6) widely separated points. However, within each cable system, one additional test point shall be added for every additional 12,500 subscribers or fraction thereof (e.g., 7 test points if 12,501 to 25,000 subscribers; 8

test points if 25,001 to 37,500 subscribers, etc.). In addition, for technically integrated portions of cable systems that are not mechanically continuous (i.e., employing microwave connections), at least one test point will be required for each portion of the cable system served by a technically integrated microwave hub. The proof-of-performance test points chosen shall be balanced to represent all geographic areas served by the cable system. At least one-third of the test points shall be representative of subscriber terminals most distant from the system input and from each microwave receiver (if microwave transmissions are employed), in terms of cable length. The measurements may be taken at convenient monitoring points in the cable network: Provided, that data shall be included to relate the measured performance of the system as would be viewed from a nearby subscriber terminal. An identification of the instruments, including the makes, model numbers, and the most recent date of calibration, a description of the procedures utilized, and a statement of the qualifications of the person performing the tests shall also be included.

(2) Proof-of-performance tests to determine the extent to which a cable television system complies with the standards set forth in §76.605(a) (3), (4), and (5) shall be made on each of the NTSC or similar video channels of that system. Unless otherwise as noted, proof-of-performance tests for all other standards in §76.605(a) shall be made on a minimum of four (4) channels plus one additional channel for every 100 MHz, or fraction thereof, of cable distribution system upper frequency limit (e.g., 5 channels for cable television systems with a cable distribution system upper frequency limit of 101 to 216 MHz; 6 channels for cable television systems with a cable distribution system upper frequency limit of 217-300 MHz; 7 channels for cable television systems with a cable distribution system upper frequency limit to 300 to 400 MHz, etc.). The channels selected for testing must be representative of all the channels within the cable television system.

(3) The operator of each cable television system shall conduct semi-an-

nual proof-of-performance tests of that system, to determine the extent to which the system complies with the technical standards set forth in §76.605(a)(4) as follows. The visual signal level on each channel shall be measured and recorded, along with the date and time of the measurement, once every six hours (at intervals of not less than five hours or no more than seven hours after the previous measurement), to include the warmest and the coldest times, during a 24-hour period in January or February and in July or August.

(4) The operator of each cable television system shall conduct triennial proof-of-performance tests of its system to determine the extent to which the system complies with the technical standards set forth in §76.605(a)(11).

(d) Successful completion of the performance tests required by paragraph (c) of this section does not relieve the system of the obligation to comply with all pertinent technical standards at all subscriber terminals. Additional tests, repeat tests, or tests involving specified subscriber terminals may be required by the Commission of the local franchiser to secure compliance with the technical standards.

(e) The provisions of paragraphs (c) and (d) of this section shall not apply to any cable television system having fewer than 1,000 subscribers: Provided, however, that any cable television system using any frequency spectrum other than that allocated to over-the-air television and FM broadcasting (as described in §73.603 and §73.210 of this chapter) is required to conduct all tests, measurements and monitoring of signal leakage that are required by this subpart. A cable television system operator complying with the monitoring, logging and the leakage repair requirements of §76.614, shall be considered to have met the requirements of this paragraph. However, the leakage log, shall be retained for five years rather than the two years prescribed in §76.614.

**NOTE:** Prior to requiring any additional testing pursuant to §76.601(d), the local franchising authority shall notify the cable operator who will be allowed thirty days to come into compliance with any perceived signal quality problems which need to be corrected.

The Commission may request cable operators to test their systems at any time.

[57 FR 11001, Apr. 1, 1992, as amended at 57 FR 61010, Dec. 23, 1992]

#### §76.605 Technical standards.

(a) As of December 30, 1992, unless otherwise noted, the following requirements apply to the performance of a cable television system as measured at any subscriber terminal with a matched impedance at the termination point or at the output of the modulating or processing equipment (generally the headend) of the cable television system or otherwise as noted. The requirements are applicable to each NTSC or similar video downstream cable television channel in the system:

(1) The cable television channels delivered to the subscriber's terminal shall be capable of being received and displayed by TV broadcast receivers used for the off-the-air reception of TV broadcast signals, as authorized under part 73 of this chapter.

(2) Cable systems shall transmit channels to subscriber premises equipment on frequencies in accordance with the channel allocation plan set forth in the Electronic Industries Association's Cable Television Channel Identification Plan, EIA IS-132, May 1994" (EIA IS-132). This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Cable systems are required to sue this channel allocation plan for signals transmitted in the frequency range 54 MHz to 1002 MHz. Copies of EIA IS-132 may be obtained from: Global Engineering Documents, 2805 McGraw Ave., Irvine CA 92714. Copies of EIA IS-132 may be inspected during normal business hours at the following locations: Federal Communications Commission, 1919 M Street NW., Dockets Branch (Room 239), Washington, DC, or the Office of the Federal Register, 800 North Capitol Street NW., Suite 700, Washington, DC. This requirement is applicable as of June 30, 1995, for new and re-built cable systems, and on June 30, 1997, for all cable systems.

(3) The aural center frequency of the aural carrier must be 4.5 MHz  $\pm$  5 kHz above the frequency of the visual carrier at the output of the modulating or

processing equipment of a cable television system, and at the subscriber terminal.

(4) The visual signal level, across a terminating impedance which correctly matches the internal impedance of the cable system as viewed from the subscriber terminal, shall not be less than 1 millivolt across an internal impedance of 75 ohms (0 dBmV). Additionally, as measured at the end of a 30 meter (100 foot) cable drop that is connected to the subscriber tap, it shall not be less than 1.41 millivolts across an internal impedance of 75 ohms (+3 dBmV). (At other impedance values, the minimum visual signal level, as viewed from the subscriber terminal, shall be the square root of  $0.0133(Z)$  millivolts and, as measured at the end of a 30 meter (100 foot) cable drop that is connected to the subscriber tap, shall be 2 times the square root of  $0.00662(Z)$  millivolts, where  $Z$  is the appropriate impedance value.)

(5) The visual signal level on each channel, as measured at the end of a 30 meter cable drop that is connected to the subscriber tap, shall not vary more than 8 decibels within any six-month interval, which must include four tests performed in six-hour increments during a 24-hour period in July or August and during a 24-hour period in January or February, and shall be maintained within:

(i) 3 decibels (dB) of the visual signal level of any visual carrier within a 6 MHz nominal frequency separation;

(ii) 10 dB of the visual signal level on any other channel on a cable television system of up to 300 MHz of cable distribution system upper frequency limit, with a 1 dB increase for each additional 100 MHz of cable distribution system upper frequency limit (e.g., 11 dB for a system at 301-400 MHz; 12 dB for a system at 401-500 MHz, etc.); and

(iii) A maximum level such that signal degradation due to overload in the subscriber's receiver or terminal does not occur.

(6) The rms voltage of the aural signal shall be maintained between 10 and 17 decibels below the associated visual signal level. This requirement must be met both at the subscriber terminal and at the output of the modulating and processing equipment (generally

the headend). For subscriber terminals that use equipment which modulate and remodulate the signal (e.g., baseband converters), the rms voltage of the aural signal shall be maintained between 6.5 and 17 decibels below the associated visual signal level at the subscriber terminal.

(7) The amplitude characteristic shall be within a range of  $\pm 2$  decibels from 0.75 MHz to 5.0 MHz above the lower boundary frequency of the cable television channel, referenced to the average of the highest and lowest amplitudes within these frequency boundaries.

(i) Prior to December 30, 1999, the amplitude characteristic may be measured after a subscriber tap and before a converter that is provided and maintained by the cable operator.

(ii) As of December 30, 1999, the amplitude characteristic shall be measured at the subscriber terminal.

(8) The ratio of RF visual signal level to system noise shall be as follows:

(i) From June 30, 1992, to June 30, 1993, shall not be less than 36 decibels.

(ii) From June 30, 1993 to June 30, 1995, shall not be less than 40 decibels.

(iii) As of June 30, 1995, shall not be less than 43 decibels.

(iv) For class I cable television channels, the requirements of paragraphs (a)(7)(i), (a)(7)(ii) and (a)(7)(iii) of this section are applicable only to:

(A) Each signal which is delivered by a cable television system to subscribers within the predicted Grade B contour for that signal;

(B) Each signal which is first picked up within its predicted Grade B contour;

(C) Each signal that is first received by the cable television system by direct video feed from a TV broadcast station, a low power TV station, or a TV translator station.

(9) The ratio of visual signal level to the rms amplitude of any coherent disturbances such as intermodulation products, second and third order distortions or discrete-frequency interfering signals not operating on proper offset assignments shall be as follows:

(i) The ratio of visual signal level to coherent disturbances shall not be less than 51 decibels for noncoherent channel cable television systems, when



measured with modulated carriers and time averaged; and

(ii) The ratio of visual signal level to coherent disturbances which are frequency-coincident with the visual carrier shall not be less than 47 decibels for coherent channel cable systems, when measured with modulated carriers and time averaged.

(10) The terminal isolation provided to each subscriber terminal:

(i) Shall not be less than 18 decibels. In lieu of periodic testing, the cable operator may use specifications provided by the manufacturer for the terminal isolation equipment to meet this standard; and

(ii) Shall be sufficient to prevent reflections caused by open-circuited or short-circuited subscriber terminals from producing visible picture impairments at any other subscriber terminal.

(11) The peak-to-peak variation in visual signal level caused by undesired low frequency disturbances (hum or repetitive transients) generated within the system, or by inadequate low frequency response, shall not exceed 3 percent of the visual signal level. Measurements made on a single channel using a single unmodulated carrier may be used to demonstrate compliance with this parameter at each test location.

(12) As of June 30, 1995, the following requirements apply to the performance of the cable television system as measured at the output of the modulating or processing equipment (generally the headend) of the system:

(i) The chrominance-luminance delay inequality (or chroma delay), which is the change in delay time of the chrominance component of the signal relative to the luminance component, shall be within 170 nanoseconds.

(ii) The differential gain for the color subcarrier of the television signal, which is measured as the difference in amplitude between the largest and smallest segments of the chrominance signal (divided by the largest and expressed in percent), shall not exceed  $\pm 20\%$ .

(iii) The differential phase for the color subcarrier of the television signal which is measured as the largest phase difference in degrees between each seg-

ment of the chrominance signal and reference segment (the segment at the blanking level of 0 IRE), shall not exceed  $\pm 10$  degrees.

(13) As an exception to the general provision requiring measurements to be made at subscriber terminals, and without regard to the type of signals carried by the cable television system, signal leakage from a cable television system shall be measured in accordance with the procedures outlined in §76.609(h) and shall be limited as follows:

Frequencies	Signal leakage limit (micro-volt/meter)	Distance in meters (m)
Less than and including 54 MHz, and over 216 MHz	15	30
Over 54 up to and including 216 MHz	20	3

(b) Cable television systems distributing signals by using methods such as nonconventional coaxial cable techniques, noncoaxial copper cable techniques, specialized coaxial cable and fiber optical cable hybridization techniques or specialized compression techniques or specialized receiving devices, and which, because of their basic design, cannot comply with one or more of the technical standards set forth in paragraph (a) of this section, may be permitted to operate: Provided, That an adequate showing is made pursuant to §76.7 which establishes that the public interest is benefited. In such instances, the Commission may prescribe special technical requirements to ensure that subscribers to such systems are provided with an equivalent level of good quality service.

NOTE 1: Local franchising authorities of systems serving fewer than 1000 subscribers may adopt standards less stringent than those in §76.605(a). Any such agreement shall be reduced to writing and be associated with the system's proof-of-performance records.

NOTE 2: For systems serving rural areas as defined in §76.5, the system may negotiate with its local franchising authority for standards less stringent than those in §§76.605(a)(3), 76.605(a)(7), 76.605(a)(8), 76.605(a)(10) and 76.605(a)(11). Any such agreement shall be reduced to writing and be associated with the system's proof-of-performance records.

NOTE 3: The requirements of this section shall not apply to devices subject to the provisions of §§15.601 through 15.626.

NOTE 4: Should subscriber complaints arise from a system failing to meet §76.605(a)(6) prior to December 30, 1999, the cable operator will be required to provide a converter that will allow the system to meet the standard immediately at the complaining subscriber's terminal. Further, should the problem be found to be system-wide, the Commission may order all converters on the system be changed to meet the standard.

NOTE 5: Should subscriber complaints arise from a system failing to meet §76.605(a)(10), the cable operator will be required to remedy the complaint and perform test measurements on §76.605(a)(10) containing the full number of channels as indicated in §76.601(c)(2) at the complaining subscriber's terminal. Further, should the problem be found to be system-wide, the Commission may order that the full number of channels as indicated in §76.601(c)(2) be tested at all required locations for future proof-of-performance tests.

NOTE 6: A franchising authority may apply to the Commission for a waiver to impose cable technical standards that are more stringent than the standards prescribed by the Commission.

[37 FR 3278, Feb. 12, 1972, as amended at 37 FR 13867, July 14, 1972; 40 FR 2690, Jan. 15, 1975; 40 FR 3296, Jan. 21, 1975; 41 FR 53023, Dec. 3, 1976; 42 FR 21782, Apr. 29, 1977; 47 FR 21503, May 18, 1982; 50 FR 52466, Dec. 24, 1985; 51 FR 1255, Jan. 10, 1986; 52 FR 22461, June 12, 1987; 57 FR 11002, Apr. 1, 1992; 57 FR 61010, Dec. 23, 1992; 58 FR 44952, Aug. 25, 1993; 59 FR 25342, May 16, 1994]

#### §76.606 Closed captioning.

(a) As of June 30, 1992, the operator of each cable television system shall not take any action to remove or alter closed captioning data contained on line 21 of the vertical blanking interval.

(b) As of July 1, 1993, the operator of each cable television system shall deliver intact closed captioning data contained on line 21 of the vertical blanking interval, as it arrives at the headend or from another origination source, to subscriber terminals and (when so delivered to the cable system) in a format that can be recovered and displayed by decoders meeting §15.119 of this chapter.

[57 FR 11003, Apr. 1, 1992]

#### §76.607 Resolution of complaints.

Cable system operators shall establish a process for resolving complaints from subscribers about the quality of the television signal delivered. These records shall be maintained for at least a one-year period. Aggregate data based upon these complaints shall be made available for inspection by the Commission and franchising authorities, upon request. Subscribers shall be advised, at least once each calendar year, of the procedures for resolution of complaints by the cable system operator, including the address of the responsible officer of the local franchising authority.

NOTE: Prior to being referred to the Commission, complaints from subscribers about the quality of the television signal delivered must be referred to the local franchising authority and the cable system operator.

[57 FR 61011, Dec. 23, 1992]

#### §76.609 Measurements.

(a) Measurements made to demonstrate conformity with the performance requirements set forth in §§76.601 and 76.605 shall be made under conditions which reflect system performance during normal operations, including the effect of any microwave relay operated in the Cable Television Relay (CATV) Service intervening between pickup antenna and the cable distribution network. Amplifiers shall be operated at normal gains, either by the insertion of appropriate signals or by manual adjustment. Special signals inserted in a cable television channel for measurement purposes should be operated at levels approximating those used for normal operation. Pilot tones, auxiliary or substitute signals, and nontelevision signals normally carried on the cable television system should be operated at normal levels to the extent possible. Some exemplary, but not mandatory, measurement procedures are set forth in this section.

(b) When it may be necessary to remove the television signal normally carried on a cable television channel in order to facilitate a performance measurement, it will be permissible to disconnect the antenna which serves the channel under measurement and to substitute therefor a matching resist-

ance termination. Other antennas and inputs should remain connected and normal signal levels should be maintained on other channels.

(c) As may be necessary to ensure satisfactory service to a subscriber, the Commission may require additional tests to demonstrate system performance or may specify the use of different test procedures.

(d) The frequency response of a cable television channel may be determined by one of the following methods, as appropriate:

(1) By using a swept frequency or a manually variable signal generator at the sending end and a calibrated attenuator and frequency-selective voltmeter at the subscriber terminal; or

(2) By using either a multiburst generator or vertical interval test signals and either a modulator or processor at the sending end, and by using either a demodulator and either an oscilloscope display or a waveform monitor display at the subscriber terminal.

(e) System noise may be measured using a frequency-selective voltmeter (field strength meter) which has been suitably calibrated to indicate rms noise or average power level and which has a known bandwidth. With the system operating at normal level and with a properly matched resistive termination substituted for the antenna, noise power indications at the subscriber terminal are taken in successive increments of frequency equal to the bandwidth of the frequency-selective voltmeter, summing the power indications to obtain the total noise power present over a 4 MHz band centered within the cable television channel. If it is established that the noise level is constant within this bandwidth, a single measurement may be taken which is corrected by an appropriate factor representing the ratio of 4 MHz to the noise bandwidth of the frequency-selective voltmeter. If an amplifier is inserted between the frequency-selective voltmeter and the subscriber terminal in order to facilitate this measurement, it should have a bandwidth of at least 4 MHz and appropriate corrections must be made to account for its gain and noise figure. Alternatively, measurements made in

accordance with the NCTA Recommended Practices for Measurements on Cable Television Systems, 2nd edition, November 1989, on noise measurement may be employed.

(f) The amplitude of discrete frequency interfering signals within a cable television channel may be determined with either a spectrum analyzer or with a frequency-selective voltmeter (field strength meter), which instruments have been calibrated for adequate accuracy. If calibration accuracy is in doubt, measurements may be referenced to a calibrated signal generator, or a calibrated variable attenuator, substituted at the point of measurement. If an amplifier is used between the subscriber terminal and the measuring instrument, appropriate corrections must be made to account for its gain.

(g) The terminal isolation between any two terminals in the cable television system may be measured by applying a signal of known amplitude to one terminal and measuring the amplitude of that signal at the other terminal. The frequency of the signal should be close to the midfrequency of the channel being tested. Measurements of terminal isolation are not required when either:

(1) The manufacturer's specifications for subscriber tap isolation based on a representative sample of no less than 500 subscribers taps or

(2) Laboratory tests performed by or for the operator of a cable television system on a representative sample of no less than 50 subscriber taps, indicates that the terminal isolation standard of § 76.605(a)(9) is met.

To demonstrate compliance with § 76.605(a)(9), the operator of a cable television system shall attach either such manufacturer's specifications or laboratory measurements as an exhibit to each proof-of-performance record.

(h) Measurements to determine the field strength of the signal leakage emanated by the cable television system shall be made in accordance with standard engineering procedures. Measurements made on frequencies above 25 MHz shall include the following:

(1) A field strength meter of adequate accuracy using a horizontal dipole antenna shall be employed.

§76.610

(2) Field strength shall be expressed in terms of the rms value of synchronizing peak for each cable television channel for which signal leakage can be measured.

(3) The resonant half wave dipole antenna shall be placed 3 meters from and positioned directly below the system components and at 3 meters above ground. Where such placement results in a separation of less than 3 meters between the center of the dipole antenna and the system components, or less than 3 meters between the dipole and ground level, the dipole shall be repositioned to provide a separation of 3 meters from the system components at a height of 3 meters or more above ground.

(4) The horizontal dipole antenna shall be rotated about a vertical axis and the maximum meter reading shall be used.

(5) Measurements shall be made where other conductors are 3 or more meters (10 or more feet) away from the measuring antenna.

(1) For systems using cable traps and filters to control the delivery of specific channels to the subscriber terminal, measurements made to determine compliance with §76.605(a) (5) and (6) may be performed at the location immediately prior to the trap or filter for the specific channel. The effects of these traps or filters, as certified by the system engineer or the equipment manufacturer, must be attached to each proof-of-performance record.

(j) Measurements made to determine the differential gain, differential phase and the chrominance-luminance delay inequality (chroma delay) shall be made in accordance with the NCTA Recommended Practices for Measurements on Cable Television Systems, 2nd edition, November 1989, on these parameters.

[37 FR 3273, Feb. 12, 1972, as amended at 37 FR 13367, July 14, 1972; 41 FR 10067, Mar. 9, 1976; 42 FR 21782, Apr. 23, 1977; 49 FR 45441, Nov. 16, 1984; 57 FR 11004, Apr. 1, 1992; 57 FR 61011, Dec. 23, 1992; 58 FR 49552, Aug. 25, 1993]

47 CFR Ch. I (10-1-94 Edition)

§76.610 Operation in the frequency bands 108-137 and 225-400 MHz—  
Scope of application.

The provisions of §§76.611 (effective July 1, 1990), 76.612, 76.613, 76.614 and 76.615 are applicable to all cable television systems transmitting carriers or other signal components carried at an average power level equal to or greater than  $10^{-4}$  watts across a 25 kHz bandwidth in any 160 microsecond period, at any point in the cable distribution system in the frequency bands 108-137 and 225-400 MHz for any purpose. For grandfathered systems, refer to §§76.618 and 76.619.

NOTE 1: See the provisions of §76.616 for cable operation near certain aeronautical and marine emergency radio frequencies.

NOTE 2: Until January 1, 1990, the band 138-137 MHz is allocated as an alternative allocation to the space operation, meteorological-satellite service and the space research service on a primary basis. After January 1, 1990, the space service will become secondary to aeronautical mobile service radio. Until January 1, 1990, the band 138 to 137 MHz is excluded from the rules sections regarding protection of aeronautical frequencies.

[50 FR 23099, July 19, 1985]

§76.611 Cable television basic signal leakage performance criteria.

(a) No cable television system shall commence or provide service in the frequency bands 108-137 and 225-400 MHz unless such systems is in compliance with one of the following cable television basic signal leakage performance criteria:

(1) prior to carriage of signals in the aeronautical radio bands and at least once each calendar year, with no more than 12 months between successive tests thereafter, based on a sampling of at least 75% of the cable strand, and including any portion of the cable system which are known to have or can reasonably be expected to have less leakage integrity than the average of the system, the cable operator demonstrates compliance with a cumulative signal leakage index by showing either that (i)  $10 \log I_{\text{cum}}$  is equal to or less than -7 or (ii)  $10 \log I_{\text{op}}$  is equal to or less than 64, using one of the following formula:

$$I_{3000} = \frac{1}{\theta} \sum_{i=1}^n \frac{E_i^2}{R_i^2}$$

$$I_{\infty} = \frac{1}{\theta} \sum_{i=1}^n E_i^2$$

where:

$$R_i^2 = r_i^2 + (3000)^2$$

$r_i$  is the distance (in meters) between the leakage source and the center of the cable television system;

$\theta$  is the fraction of the system cable length actually examined for leakage sources and is equal to the strand kilometers (strand miles) of plant tested divided by the total strand kilometers (strand miles) in the plant;

$R_i$  is the slant height distance (in meters) from leakage source  $i$  to a point 3000 meters above the center of the cable television system;

$E_i$  is the electric field strength in microvolts per meter ( $\mu\text{V/m}$ ) measured pursuant to §76.609(h) 3 meters from the leak  $i$ ; and

$n$  is the number of leaks found of field strength equal to or greater than 50  $\mu\text{V/m}$  pursuant to Section 76.609(h).

The sum is carried over all leaks  $i$  detected in the cable examined; or

(2) prior to carriage of signals in the aeronautical radio bands and at least once each calendar year, with no more than 12 months between successive tests thereafter, the cable operator demonstrates by measurement in the airspace that at no point does the field strength generated by the cable system exceed 10 microvolts per meter ( $\mu\text{V/m}$ ) RMS at an altitude of 450 meters above the average terrain of the cable system. The measurement system (including the receiving antenna) shall be calibrated against a known field of 10  $\mu\text{V/m}$  RMS produced by a well characterized antenna consisting of orthogonal resonant dipoles, both parallel to and one quarter wavelength above the ground plane of a diameter of two meters or more at ground level. The dipoles shall have centers collocated and be excited 90 degrees apart. The

half-power bandwidth of the detector shall be 25 kHz. If an aeronautical receiver is used for this purpose it shall meet the standards of the Radio Technical Commission for Aeronautics (RCTA) for aeronautical communications receivers. The aircraft antenna shall be horizontally polarized. Calibration shall be made in the community unit or, if more than one, in any of the community units of the physical system within a reasonable time period to performing the measurements. If data is recorded digitally the 90th percentile level of points recorded over the cable system shall not exceed 10  $\mu\text{V/m}$  RMS; if analog recordings is used the peak values of the curves, when smoothed according to good engineering practices, shall not exceed 10  $\mu\text{V/m}$  RMS.

(b) In paragraphs (a)(1) and (a)(2) of this section the unmodulated test signal used on the cable plant shall: (1) Be within the VHF aeronautical band 108-137 MHz or any other frequency in which the results can be correlated to the VHF aeronautical band and (2) have an average power level equal to the average power level of the strongest cable television carrier on the system.

(c) In paragraph (a)(1) and (2) of this section, if a modulated test signal is used, the test signal and detector technique must, when considered together, yield the same result as though an unmodulated test signal were used in conjunction with a detection technique which would yield the RMS value of said unmodulated carrier.

(d) If a sampling of at least 75% of the cable strand (and including any portions of the cable system which are known to have or can reasonably be expected to have less leakage integrity than the average of the system) as described in paragraph (a)(1) cannot be obtained by the cable operator or is otherwise not reasonably feasible, the cable operator shall perform the airspace measurements described in paragraph (a)(2).

(e) Prior to providing service to any subscriber on a new section of cable plant, the operator shall show compliance with either: (1) The basic signal leakage criteria in accordance with paragraph (a)(1) or (a)(2) of this section

for the entire plant in operation or (2) a showing shall be made indicating that no individual leak in the new section of the plant exceeds 20  $\mu\text{V}/\text{m}$  at 3 meters in accordance with §76.609 of the Rules.

(f) Notwithstanding paragraph (a) of this section, a cable operator shall be permitted to operate on any frequency which is offset pursuant to §76.612 in the frequency band 108-137 MHz for the purpose of demonstrating compliance with the cable television basic signal leakage performance criteria.

[50 FR 29399, July 19, 1985, as amended at 53 FR 2499, Jan. 23, 1988; 53 FR 5684, Feb. 25, 1988; 58 FR 44982, Aug. 25, 1993]

**§76.612 Cable television frequency separation standards.**

All cable television systems which operate in the frequency bands 108-137 and 225-400 MHz shall comply with the following frequency separation standards:

(a) In the aeronautical radiocommunication bands 118-137, 225-323.6 and 335.4-400 MHz, the frequency of all carrier signals or signal components carried at an average power level equal to or greater than  $10^{-4}$  watts in a 25 kHz bandwidth in any 160 microsecond period must operate at frequencies offset from certain frequencies which may be used by aeronautical radio services operated by Commission licensees or by the United States Government or its Agencies. The aeronautical frequencies from which offsets must be maintained are those frequencies which are within one of the aeronautical bands defined in this subparagraph, and when expressed in MHz and divided by 0.025 yield an integer. The offset must meet one of the following two criteria:

(1) All such cable carriers or signal components shall be offset by 12.5 kHz with a frequency tolerance of  $\pm 5$  kHz; or

(2) The fundamental frequency from which the visual carrier frequencies are derived by multiplication by an integer number which shall be 8.0003 MHz with a tolerance of  $\pm 1$  Hz (Harmonically Related Carrier (HRC) comb generators only).

(b) In the aeronautical radionavigation bands 108-118 and 323.6-335.4

MHz, the frequency of all carrier signals or signal components carrier at an average power level equal to or greater than  $10^{-4}$  watts in a 25 kHz bandwidth in any 160 microsecond period shall be offset by 25 kHz with a tolerance of  $\pm 5$  kHz. The aeronautical radionavigation frequencies from which offsets must be maintained are defined as follows:

(1) Within the aeronautical band 108-118 MHz when expressed in MHz and divided by 0.025 yield an even integer.

(2) Within the band 323.6-335.4 MHz, the radionavigation glide path channels are listed in Section 87.501 of the Rules.

NOTE: The HRC system, as described above, will meet this requirement in the 323.6-335.4 MHz navigation glide path band. Those Incrementally Related Carriers (IRC) systems, with comb generator reference frequencies set at certain odd multiples equal to or greater than 3 times the 0.0125 MHz aeronautical communications band offset, e.g.  $(6n + 1.250 \pm 0.0375)$  MHz, may also meet the 25 kHz offset requirement in the navigation glide path band.

[50 FR 29400, July 19, 1985]

**§76.613 Interference from a cable television system.**

(a) Harmful interference is any emission, radiation or induction which endangers the functioning of a radionavigation service or of other safety services or seriously degrades, obstructs or repeatedly interrupts a radiocommunication service operating in accordance with this chapter.

(b) The operator of a cable television system that causes harmful interference shall promptly take appropriate measures to eliminate the harmful interference.

(c) If harmful interference to radio communications involving the safety of life and protection of property cannot be promptly eliminated by the application of suitable techniques, operation of the offending cable television system or appropriate elements thereof shall immediately be suspended upon notification by the Engineer in Charge (EIC) of the Commission's local field office, and shall not be resumed until the interference has been eliminated to the satisfaction of the EIC. When authorized by the EIC, short test operations may be made during the pe-

riod of suspended operation to check the efficacy of remedial measures.

(d) The cable television system operator may be required by the EIC to prepare and submit a report regarding the cause(s) of the interference, corrective measures planned or taken, and the efficacy of the remedial measures.

(Secs. 1, (302); (32 Stat. 290); 47 U.S.C. 151, 302) (42 FR 41296, Aug. 16, 1977)

**§76.614 Cable television system regular monitoring.**

Cable television operators transmitting carriers in the frequency bands 108-137 and 225-400 MHz shall provide for a program of regular monitoring for signal leakage by substantially covering the plant every three months. The incorporation of this monitoring program into the daily activities of existing service personnel in the discharge of their normal duties will generally cover all portions of the system and will therefore meet this requirement. Monitoring equipment and procedures utilized by a cable operator shall be adequate to detect a leakage source which produces a field strength in these bands of 20  $\mu$ V/m or greater at a distance of 3 meters. During regular monitoring, any leakage source which produces a field strength of 20  $\mu$ V/m or greater at a distance of 3 meters in the aeronautical radio frequency bands shall be noted and such leakage sources shall be repaired within a reasonable period of time. The operator shall maintain a log showing the date and location of each leakage source identified, the date on which the leakage was repaired, and the probable cause of the leakage. The log shall be kept on file for a period of two (2) years and shall be made available to authorized representatives of the Commission upon request.

[50 FR 29400, July 19, 1985]

**§76.615 Notification requirements.**

All cable television operators shall comply with each of the following notification requirements:

(a) The operator of the cable system shall notify the Commission annually of all signals carried in the aeronautical radio frequency bands, noting the type of information carried by the sig-

nal (television picture, aural, pilot carrier, or system control, etc.) The timely filing of FCC Form 325, Schedule 2, will meet this requirement.

(b) The operator of a cable system shall notify the Commission before transmitting any carrier or other signal component with an average power level across a 25 kHz bandwidth in any 160 microsecond time period equal to or greater than  $10^{-4}$  watts at any point in the cable distribution system on any new frequency or frequencies in the aeronautical radio frequency bands. Such notification shall include:

(1) Legal name and local address of the cable television operator;

(2) The names and FCC identifiers (e.g. CA0001) of the system communities affected;

(3) The names and telephone numbers of local system officials who are responsible for compliance with §§76.610, 76.611 (effective July 1, 1990), and 76.612 through 76.616 of the Rules;

(4) Carrier and subcarrier frequencies and tolerance, types of modulation and the maximum average power levels of all carriers and subcarriers occurring at any location in the cable distribution system.

(5) The geographical coordinates of a point near the center of the cable system, together with the distance (in kilometers) from the designated point to the most remote point of the cable plant, existing or planned, which defines a circle enclosing the entire cable plant;

(6) A description of the routine monitoring procedure to be used; and

(7) For cable operators subject to §76.611 (effective July 1, 1990), the cumulative signal leakage index derived under §76.611(a)(1) (effective July 1, 1990) or the results of airspace measurements derived under §76.611(a)(2) (effective July 1, 1990), including a description of the method by which compliance with basic signal leakage criteria is achieved and the method of calibrating the measurement equipment. This information shall be provided to the Commission prior to July 1, 1990 and each calendar year thereafter.

[50 FR 29400, July 19, 1985]

§76.616

§76.616 Operation near certain aeronautical and marine emergency radio frequencies.

The transmission of carriers or other signal components capable of delivering peak power levels equal to or greater than  $10^{-3}$  watts at any point in a cable television system is prohibited within 100 kHz of the frequency 121.5 MHz, and is prohibited within 50 kHz of the two frequencies 156.8 MHz and 243.0 MHz.

[50 FR 29401, July 19, 1985]

§76.617 Responsibility for interference.

Interference resulting from the use of cable system terminal equipment (including subscriber terminal, input selector switch and any other accessories) shall be the responsibility of the cable system terminal equipment operator in accordance with the provisions of part 15 of this chapter; provided, however, that the operator of a cable system to which the cable system terminal equipment is connected shall be responsible for detecting and eliminating any signal leakage where that leakage would cause interference outside the subscriber's premises and/or would cause the cable system to exceed the Part 76 signal leakage requirements. In cases where excessive signal leakage occurs, the cable operator shall be required only to discontinue service to the subscriber until the problem is corrected.

[53 FR 46619, Nov. 18, 1989]

§76.618 Grandfathering.

Cable television systems are permitted to use aeronautical frequencies which were requested or granted for use by November 30, 1984, under Section 76.619 of the Rules until July 1, 1990.

[50 FR 29401, July 19, 1985]

§76.619 Grandfathered Operation in the frequency bands 108-136 and 225-400 MHz.

All cable television systems operating in a grandfathered status under §76.618 of the Rules and transmitting carriers or other signal components capable of delivering peak power equal to or greater than  $10^{-3}$  watts at any point

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in the cable system in the frequency bands 108-136 and 225-400 MHz for any purpose are subject to the following requirements:

(a) The operator of the cable system shall notify the Commission annually of all signals carried in these bands, noting the type of information carried by the signal (television, aural, or pilot carrier and system control, etc.). The timely filing of FCC Form 325, Schedule 2, will meet this requirement.

(b) The operator of the cable system shall notify the Commission of the proposed extension of the system radius in these bands. Notification shall include carrier and subcarrier frequencies, types of modulation, the previously notified geographical coordinates, the new system radius and the maximum peak power occurring at any location in the cable distribution system. No system shall extend its radius in these bands without prior Commission authorization.

(c) The operator of the cable system shall maintain at its local office a current listing of all signals carried in these bands, noting carrier and subcarrier frequencies, types of modulation, and maximum peak power which occurs at any location within the cable distribution system.

(d) The operator of the system shall provide for regular monitoring of the cable system for signal leakage covering all portions of the cable system at least once each calendar year. Monitoring equipment and procedures shall be adequate to detect leakage sources which produce field strengths in these bands of 20 microvolts per meter at a distance of 3 meters. The operator shall maintain a log showing the date and location of each leakage source identified, the date on which the leakage was eliminated, and the probable cause of the leakage. The log shall be kept on file for a period of two (2) years, and shall be made to authorized representatives of the Commission on request.

(e) All carrier signals or signal components capable of delivering peak power equal to or greater than  $10^{-3}$  watts must be operated at frequencies offset from aeronautical radio services operated by Commission licensees or by the United States Government or its agencies within 111 km (60 nautical



miles) of any portion of the cable system as given in paragraph (f) of this section. (The limit of 111 km may be increased by the Commission in cases of "extended service volumes" as defined by the Federal Aviation Administration or other federal government agency for low altitude radio navigation or communication services). If an operator of a cable system is notified by the Commission that a change in operation of an aeronautical radio service will place the cable system in conflict with any of the offset criteria, the cable system operator is responsible for eliminating such conflict within 30 days of notification.

(g) A minimum frequency offset between the nominal carrier frequency of an aeronautical radio service qualifying under paragraph (d) of this Section and the nominal frequency of any cable system carrier or signal component capable of delivering peak power equal to or greater than  $10^{-3}$  watts shall be maintained or exceeded at all times. The minimum frequency offsets are as follows:

Frequencies	Minimum frequency offsets
108-118 MHz _____	(50+T) kHz
329.6-335.4 MHz _____	
108-136 MHz _____	
225-328.6 MHz _____	(100+T) kHz
335.4-400 MHz _____	

In this table, T is the absolute value of the frequency tolerance of the cable television signal. The actual frequency tolerance will depend on the equipment and operating procedures of the cable system, but in no case shall the frequency tolerance T exceed  $\pm 25$  kHz in the bands 108-136 and 225-400 MHz.

[50 FR 29401, July 19, 1985]

#### § 76.630 Compatibility with consumer electronics equipment.

(a) Cable system operators shall not scramble or otherwise encrypt signals carried on the basic service tier. Requests for waivers of this prohibition must demonstrate either a substantial problem with theft of basic tier service or a strong need to scramble basic signals for other reasons. As part of this showing, cable operators are required to notify subscribers by mail of waiver requests. The notice to subscribers

must be mailed no later than thirty calendar days from the date the request waiver was filed with the Commission, and cable operators must inform the Commission in writing, as soon as possible, of that notification date. The notification to subscribers must state:

On (date of waiver request was filed with the Commission), (cable operator's name) filed with the Federal Communications Commission a request for waiver of the rule prohibiting scrambling of channels on the basic tier of service. 47 CFR § 76.630(a). The request for waiver states (a brief summary of the waiver request). A copy of the request for waiver is on file for public inspection at (the address of the cable operator's local place of business).

Individuals who wish to comment on this request for waiver should mail comments to the Federal Communications Commission by no later than 30 days from (the date the notification was mailed to subscribers). Those comments should be addressed to the: Federal Communications Commission, Cable Services Bureau, Washington, DC 20554, and should include the name of the cable operator to whom the comments are applicable. Individuals should also send a copy of their comments to (the cable operator at its local place of business).

Cable operators may file comments in reply no later than 7 days from the date subscriber comments must be filed.

(b) Cable system operators that provide their subscribers with cable system terminal devices and other customer premises equipment that incorporates remote control capability shall permit the remote operation of such devices with commercially available remote control units or otherwise take no action that would prevent the devices from being operated by a commercially available remote control unit. Cable system operators are advised that this requirement obliges them to actively enable the remote control functions of customer premises equipment where those functions do not operate without a special activation procedure. Cable system operators may, however, disable the remote control functions of a subscriber's customer premises equipment where requested by the subscriber.

(c) Cable operators may not alter the infrared codes used to operate the remote control capabilities of the cus-

customer premises equipment they employ in providing service to subscribers. Cable operators may, however, use new equipment that includes additional infrared codes for new remote control functions that were not included in existing models of customer premises equipment.

(d) Cable system operators that use scrambling, encryption or similar technologies in conjunction with cable system terminal devices, as defined in §15.1(e) of this chapter, that may affect subscribers' reception of signals shall offer to supply each subscriber with special equipment that will enable the simultaneous reception of multiple signals. This equipment could include, for example, set-top cable system terminal devices with multiple descramblers/decoders and/or timers, and signal bypass switches.

(1) The offer of special equipment shall be made to new subscribers at the time they subscribe and to all subscribers at least once each year.

(2) Such special equipment shall, at a minimum, have the capability:

(i) To allow simultaneous reception of any two or more scrambled or encrypted signals and to provide for tuning to alternative channels on a pre-programmed schedule; and,

(ii) To allow direct reception of all other signals that do not need to be processed through descrambling or decryption circuitry (this capability can generally be provided through a separate by-pass switch or through internal by-pass circuitry in a cable system terminal device).

(3) Cable system operators shall determine the specific equipment needed by individual subscribers on a case-by-case basis, in consultation with the subscriber. Cable system operators are required to make a good faith effort to provide subscribers with the amount and types of special equipment needed to resolve their individual compatibility problems.

(4) Cable operators shall provide such equipment at the request of individual subscribers and may charge for purchase or lease of the equipment and its installation in accordance with the provisions of the rate regulation rules for customer premises equipment used to receive the basic service tier, as set

forth in §76.923. Notwithstanding the required annual offering, cable operators shall respond to subscriber requests for special equipment for reception of multiple signals that are made at any time.

(e) Cable system operators shall provide a consumer education program on compatibility matters to their subscribers in writing, as follows:

(1) The consumer information program shall be provided to subscribers at the time they first subscribe and at least once a year thereafter. Cable operators may choose the time and means by which they comply with the annual consumer information requirement. This requirement may be satisfied by a once-a-year mailing to all subscribers. The information may be included in one of the cable system's regular subscriber billings.

(2) The consumer information program shall include the following information:

(i) Cable system operators shall inform their subscribers that some models of TV receivers and videocassette recorders may not be able to receive all of the channels offered by the cable system when connected directly to the cable system. In conjunction with this information, cable system operators shall briefly explain, the types of channel compatibility problems that could occur if subscribers connected their equipment directly to the cable system and offer suggestions for resolving those problems. Such suggestions could include, for example, the use of a cable system terminal device such as a set-top channel converter. Cable system operators shall also indicate that channel compatibility problems associated with reception of programming that is not scrambled or encrypted programming could be resolved through use of simple converter devices without descrambling or decryption capabilities that can be obtained from either the cable system or a third party retail vendor.

(ii) In cases where service is received through a cable system terminal device, cable system operators shall indicate that subscribers may not be able to use special features and functions of their TV receivers and videocassette recorders, including features that allow

the subscriber to: view a program on one channel while simultaneously recording a program on another channel; record two or more consecutive programs that appear on different channels; and, use advanced picture generation and display features such as "Picture-in-Picture," channel review and other functions that necessitate channel selection by the consumer device.

(iii) In cases where cable system operators offer remote control capability with cable system terminal devices and other customer premises equipment that is provided to subscribers, they shall advise their subscribers that remote control units that are compatible with that equipment may be obtained from other sources, such as retail outlets. Cable system operators shall also provide a representative list of the models of remote control units currently available from retailers that are compatible with the customer premises equipment they employ. Cable system operators are required to make a good faith effort in compiling this list and will not be liable for inadvertent omissions. This list shall be current as of no more than six months before the date the consumer education program is distributed to subscribers. Cable operators are also required to encourage subscribers to contact the cable operator to inquire about whether a particular remote control unit the subscriber might be considering for purchase would be compatible with the subscriber's customer premises equipment.

NOTE: The provisions of paragraphs (a) and (b) of this section are applicable as of July 31, 1994, and June 30, 1994, respectively. The provisions of paragraphs (c) through (e) of this section are applicable as of October 31, 1994, except for the requirement under section (d)(1)(i) of this section for cable system operators to supply cable system terminal devices with multiple tuners, which is applicable as of October 31, 1995. The initial offer of special equipment to all subscribers, as required under paragraph (d) of this section shall be made by October 31, 1994.

[59 FR 25342, May 16, 1994]

## Subpart L—Cable Television Access

### §76.701 Leased access channels.

(a) Notwithstanding 47 U.S.C. 532(b)(2) (Communications Act of 1934, as amended, section 612), a cable operator, in accordance with 47 U.S.C. 532(h) (Cable Consumer Protection and Competition Act of 1992, section 10(a)), may adopt and enforce prospectively a written and published policy of prohibiting programming which, it reasonably believes, describes or depicts sexual or excretory activities or organs in a patently offensive manner as measured by contemporary community standards.

(b) A cable operator that does not prohibit the distribution of programming in accordance with paragraph (a) of this section shall place any leased access programming identified by program providers as indecent on one or more channels that are available to subscribers only with their prior written consent as provided in paragraph (c) of this section.

(c) A cable operator shall make such programming available to a subscriber within 30 days of receipt of a written request for access to the programming that includes a statement that the requesting subscriber is at least eighteen years old; a cable operator shall terminate a subscriber's access to such programming within 30 days from receipt of a subscriber's request.

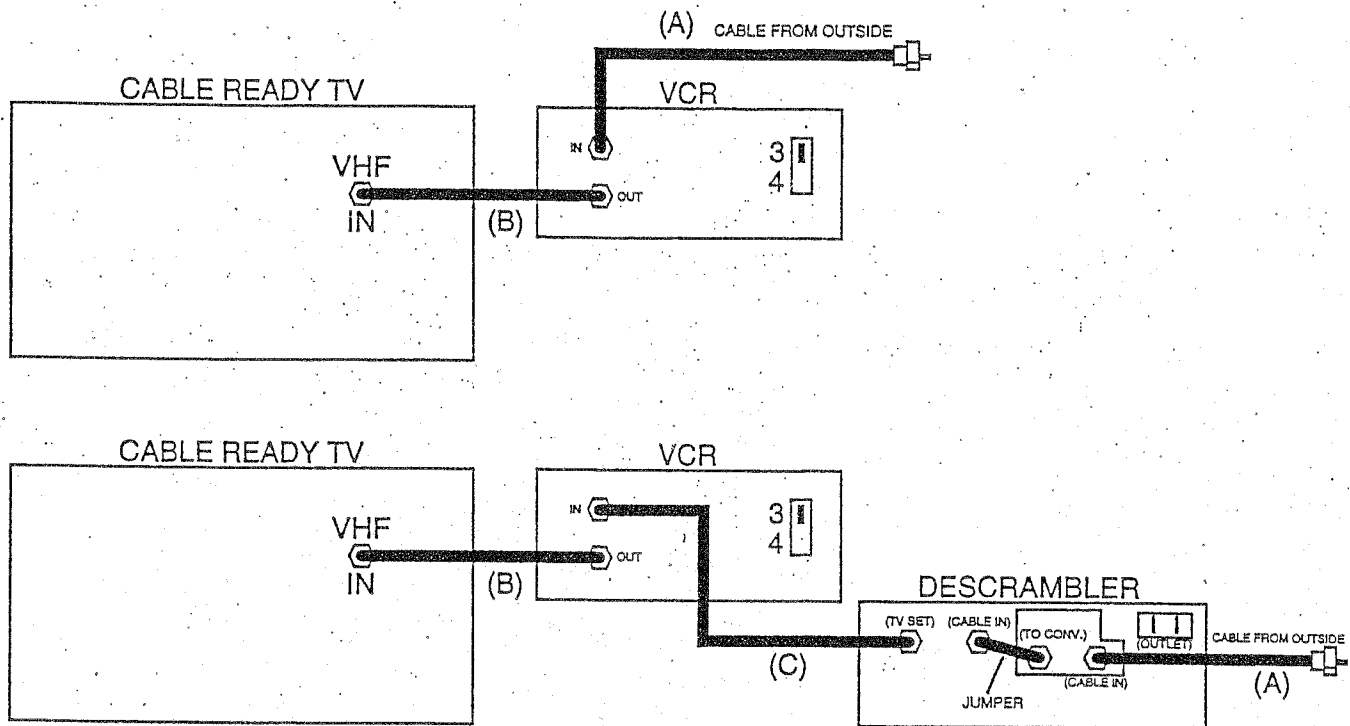
(d) A program provider requesting access on a leased access channel shall identify for a cable operator any programming that is indecent as defined in paragraph (g) of this section. Such identification shall be in writing and include the full name, address, and telephone number of the program provider and a statement that the program provider is responsible for the content of the programming. A cable operator may require that such identification be provided up to 30 days to the requested date for carriage. A program provider requesting carriage of "live programming" on a leased access channel that is not identified as inde-

EXHIBIT 4

VIDEO CASSETTE RECORDER (VCR) POLICIES AND OPTIONS

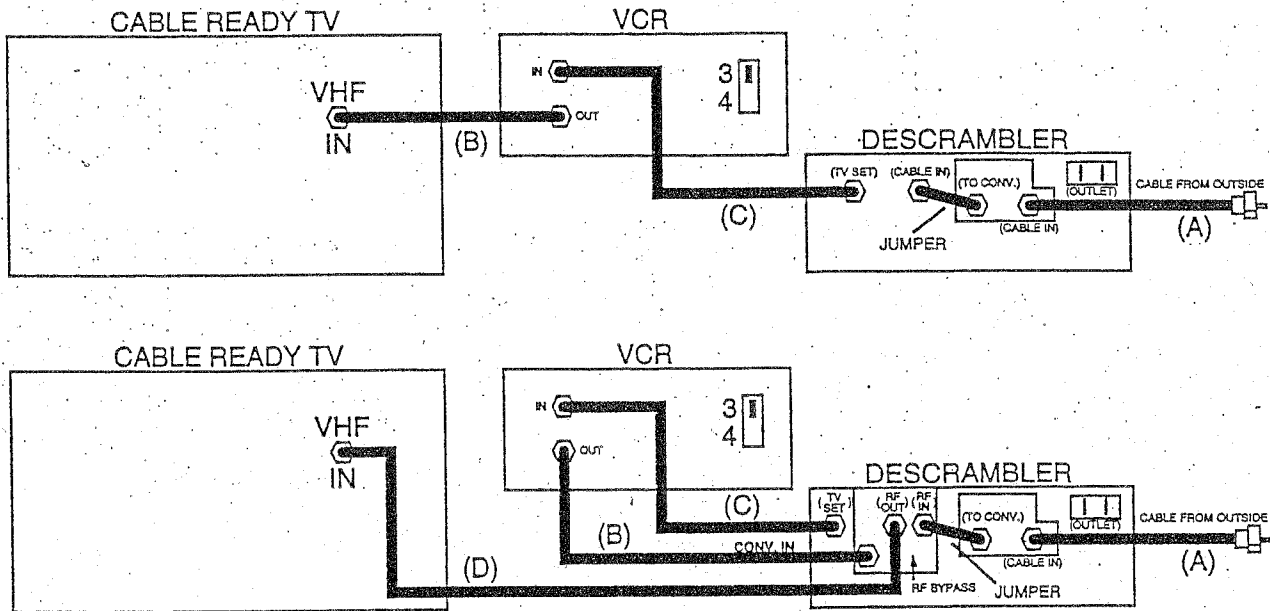
{See Attached}

## CONNECTING DESCRAMBLER TO THE TV SET AND VCR WITH RECORDING INSTRUCTIONS



1. Take the Descrambler out of the box and connect the small jumper from (Cable In) to (To Conv.) as shown above on the back of the Descrambler and set the Descrambler where it is to be located and plug power cord into the wall outlet.
2. Take Cable (A) off the back of the VCR and attach it to (Cable In) next to the outlet on the back of the Descrambler.
3. Take Cable (C) supplied by the cable company and attach one end to the "IN" on the VCR and the other end to (TV Set) on the Descrambler. NOTE: Cable (B) stays as is.
4. Take power cord from the TV set and plug it into outlet on back of the Descrambler. Turn on the TV set. Once this is done, shut the Descrambler off, which at the same time should shut the TV set off.
5. Wait a few minutes, then turn the Descrambler back on. If the TV set comes back on automatically and goes to Channel 3 and the volume comes back to normal, then go to the next step. If TV set does not come back on (in some TVs, this might happen up to 30 minutes after being shut off), then unplug the TV set from the Descrambler and plug TV set back into the wall outlet and use your TV remote to turn your TV set on and off.
6. Turn the Descrambler on (%) and push the F and the number 1 key on the key pad on top of the Descrambler. Display should read either -O or CO. Once this is done, please call the office to have the Descrambler activated.
7. All channels are now selected through the Descrambler instead of the TV set. TV set will always be set to channel 3.
8. For recording, the following steps will need to be followed:
  - A) When setting VCR up for recording, the times will be set the way the manual describes it, but when it asks for a channel to record, you will always set the VCR for Channel 3.
  - B) Descrambler will be set for a channel to be recorded. If you wish to set the Descrambler up for a later time, or for multiple channel recording, please refer to "Time Control Programming" in the instruction manual for the Descrambler.
  - C) This set up will not allow recording and watching another channel at the same time. If you wish to do this, refer to the Diagrams to follow.
9. If you are using the volume control on the Descrambler's remote, then make sure you press F and then the MUTE, which sets the volume to its maximum level. This will make sure your tape will be recorded with the right sound levels.

## RECORDING ANY SCRAMBLED CHANNEL WHILE WATCHING ANY NON-SCRAMBLED CHANNEL



1. You will need one handbook for the descrambler, (1) RF Bypass switch and (1) extra jumper from the Cable Company. You will also need (1) phillips screwdriver. Also be in a position where you can see all connections from the back.
2. Disconnect jumper from (Cable In) on back of Descrambler. Now, take RF Bypass switch and attach it to the back of the Descrambler over (Cable In) connection. Attach with screws that are supplied and then re-attach jumper to (RF In) on the RF Bypass switch.
3. Cable (A) and (C) stay the same.
4. Disconnect cable (B) from input of the TV set and connect it to (Conv. In) on RF Bypass switch.
5. Now take the extra jumper (D) and connect one end to (RF Out) on the RF Bypass switch on back of Descrambler and the other end to Input of the TV set.
6. The RF Bypass switch is controlled by the A/B button located on top of the Descrambler or the remote. When RF Bypass switch is turned on, a red dot will appear on front of the display next to the right-hand number. When RF Bypass switch is turned off, the red dot will not appear.
7. When RF Bypass switch is turned off (dot off) all channels are controlled by the Descrambler for viewing channels on the TV set or watching a tape and using on-screen display from the VCR. TV and VCR on Channel 3.
8. For recording refer to the following steps:
  - A) When setting VCR up for recording, the times will be set the way the VCR manual describes it, but when it asks for a channel to record, you will always set the VCR for Channel 3.
  - B) Descrambler will be set for a channel to be recorded. If you wish to set the Descrambler up for a later time, or for multiple channel recording, please refer to "Time Control Programming" in the instruction manual for the Descrambler.
9. If you are using the volume control on the Descrambler's remote, then make sure you press F and then the MUTE, which sets the volume to its maximum level. This will make sure that your tape will be recorded with the right sound levels.
10. Now that the VCR and Descrambler are set for recording, you can now turn the dot on by pushing the A/B button. This allows you to now watch any non-scrambled channel on your TV set (channels changed at TV) while you are recording a scrambled channel.
11. Once recording is done and you wish to watch the tape or wish to go back to watching a scrambled channel, make sure TV set is on channel 3 and dot is off.
12. If you have a TV set with (1) input and have a picture within a picture TV, you can still use those features for all non-scrambled channels by using this Diagram when the Descrambler is in the Bypass mode (dot on).

EXHIBIT 5

FREE DROPS AND MONTHLY SERVICE  
TO PUBLIC BUILDINGS

The following public buildings shall continue to receive the following Drops and/or Outlets and monthly Service at no charge:

{See Attached}

## EXHIBIT 5 LIST

Corners Fire Station

Academy Building – Gilmanton Town Office

Corners Library

Gilmanton Elementary School

Gilmanton Police Station

Old Town Hall – Gilmanton Iron Works

Gilmanton Iron Works Fire Station

Gilmanton Iron Works Library



EXHIBIT 6

MEDIA PERILS LIABILITY POLICY

Pursuant to Section 8.7, the Access Provider shall obtain a Media Perils Liability Policy similar to that attached hereto.

{See Attached}

## ¶810 FCC Standards for Customer Service

The Cable Act created a federal set of customer standards for cable television (47 U.S.C. §552). FCC regulations (47 C.F.R. 76.309) establish minimum standards for cable system office hours and telephone availability; installations, service calls and outages; and communications between operators and subscribers. The regulations are reprinted in Appendix III of the *Guide*.

Generally, the FCC standards follow congressional intent by addressing areas delineated by the statute, which, in turn, were based on voluntary industry guidelines developed by the National Cable Television Association (NCTA). Nothing that was not specified in the statute was included in the rule (with the commission giving franchising authorities the option to prescribe standards in other areas should they choose). However, in the preamble to its regulations, the FCC noted that it modified the NCTA standards by defining key terms and strengthening other standards to "ensure more satisfactory customer service."

Local franchising authorities, who enforce the standards must give operators 90-days' written notice of their intent to enforce. The act and rules allow franchising authorities to adopt more stringent standards than the federal standards, either by law, regulation or agreement with the cable operator (see ¶812), or standards that address different matters than the federal standards.

### ¶811 Customer Service Requirements

In keeping with congressional intent in the 1992 statute, the FCC regulations prescribe specific requirements for various aspects of cable customer service.

#### Definitions

To avoid confusion, the commission defined some key terms related to customer service:

- *Normal business hours* — those hours "during which most similar businesses in the community are open to serve customers." In all cases, the commission said, normal business hours must include some evening hours at least one night a week and/or some weekend hours.

- *Normal operating conditions* — those conditions "which are within the control of the operator, including special promotions, pay-per-view events, rate increases and maintenance or upgrade of the cable system." Not included are events such as natural disasters, civil disturbances, telephone network outages and severe weather.

- *Service interruption* — "the loss of picture or sound on one or more channels."

- *Standard installations* — installations that "are located up to 125 feet from the existing distribution system."

### Customer interaction with operators

The rules set specific requirements for cable operators as they relate to customer interaction, be it in person or over the phone. Under the rules (§76.309(c)(1)), cable operators must maintain a local, toll-free or collect customer service telephone line that is open 24 hours a day. Calls must be answered within 30 seconds of the first ring and a customer should not receive a busy signal more than 3 percent of the time calls are made. Trained representatives must answer the phone during normal business hours. After normal business hours, however, the customer service telephone line can be answered by a service or an automated response system. Customer calls received after normal business hours must be responded to by a trained representative on the next business day.

Customer service and bill payment centers must be open during normal business hours (including some nights and weekends, as noted above), and must be “conveniently located.”

The FCC noted that operators do not have to acquire equipment or perform surveys to measure compliance with the telephone answering standards unless they have a history of complaints in this area. In the customer service report and order (para. 56), the commission said cable systems should use their “best efforts” to document and demonstrate compliance with telephone answering standards, which would include keeping sufficient written records of all measurement requirements. The standard of compliance requires that 90 percent of calls, measured quarterly, be answered or not be busy within the parameters of the standards.

### Installations and appointments

The rules set standards for installations, appointments and service calls (§76.309(c)(2)), which under normal operating conditions must be met 95 percent of the time (measured quarterly). “Standard” installations of cable service must be performed within seven business days of an order; work on service interruptions must begin no later than 24 hours after the interruption becomes known. Operators must start work on correcting other service problems the next business day after the problems become known.

Under the rules, operators have two options for scheduling installation, service calls and other installation activities. They can either schedule an appointment for a specific time or, at a maximum, for a four-hour “window” (e.g., between 8 a.m. and noon, noon and 4 p.m.) during normal business hours. Appointments outside of normal business hours can be set for a customer’s convenience.

Appointments cannot be cancelled after business hours on the day before the appointment is scheduled. Further, if an installer or technician is running late and cannot keep the appointment, he or she must contact the customer and reschedule the appointment at the customer’s convenience.

### Customer communications

Both the customer service regulations (§76.309(c)(3)) and rate regulation rules (see Tab 300) provide for certain written communications and notifications, including bills, between cable operators and subscribers. The two provisions complement each other in terms of issues covered and, in the case of rate adjustments, overlap. For example, the customer service rules prescribe notice on products, prices and policies offered, while the rate rules cover notices for proposed rate increases and availability of basic service.

There is a difference between the two rules in that the customer service standards are effective to the extent that they are imposed and enforced by the franchising authority. If the franchising authority does not adopt the FCC's customer service standards, operators are not required to comply.

Under the customer service standards, an operator must, at the time of installation and at least yearly thereafter, provide to customers written information on new products and services, option and prices, installation and service maintenance, policies, system instructions, channel positions and billing and complaint procedures (including the address and telephone number of the local franchising authority's cable office).

The customer service standards require that customers be notified in writing before *most* changes in rates and for all changes in channel positions or programming as soon as possible but not later than 30 days. As an exception, under the 1996 Telecommunications Act, a cable operator no longer needs to provide notice to subscribers of rate changes resulting from franchise fees, taxes or similar charges. All required notices should be given through announcements on the cable system and in writing (§76.309(c)(3)(B)), although the 1996 Telecommunications Act now gives a cable operator flexibility in notifying subscribers of service or rate changes: cable operators can now use "any reasonable written means," and no longer must put such a notice in a subscriber's bill. The operator must also notify customers in writing about changes in customer service standards and other significant items at least 30 days in advance. In addition, the act permits the franchising authority to require cable operators to give subscribers 30 days' advance notice of any change in channel assignment or in the video programming service provided over any such channel. The franchising authority can also require cable operators to inform subscribers, via written notice, that comment on programming and channel position changes are being recorded by a designated office (§544(h)).

Although not formally part of the 1992 act, the FCC's revised technical standards, which the commission subsequently implemented to meet the requirements for technical standards under the act, require a cable operator to provide annual notice to subscribers of the system's process for resolving complaints about picture quality (§76.607).

### Previews

\*Cable systems that provide a premium channel (per channel or per program) service free of charge to non-subscribers to the service, such as for promotions or free previews, must notify the subscriber 30 days in advance of the free preview. The notice should inform the subscriber that the cable operator is providing the channel without charge, including the time offered, and that the subscriber has the right to request that the channel be blocked. The cable operator must block the channel carrying the premium channel on the request of the subscriber. A premium channel is defined as "any pay service offered on a per channel or per program basis which offers movies rated by the Motion Picture Association of America as 'R,' 'X,' or 'NC-17'" (§544(B)). This requirement had been overturned as unconstitutional under the First Amendment by a federal district court, but was subsequently upheld as passing constitutional muster by a federal appellate court (see Appendix V:2).

### Billing and refunding requirements

The standards also prescribe certain requirements for billing and refunds. Bills, the FCC stated, must be "clear, concise and understandable," with itemizations for basic and premium service and equipment charges (§76.309(c)(3)(ii)). Bills must also delineate all activity during the billing period, such as optional charges, rebates and credits. Operators must respond to written complaints from subscribers concerning billing disputes within 30 days.

In the case of refunds, the regulations require operators to issue refund checks no later than either:

- the customer's next billing cycle following resolution of the request or 30 days, whichever is earlier; or
- when a customer returns equipment supplied by the operator when service is terminated.

Operators must issue credits to subscribers the next billing cycle after they determine that the credit is warranted.

The FCC decided not to add any provisions concerning flat "late fees" imposed on subscribers to its customer service standards. Questions concerning whether or not a flat fee is appropriate are more appropriately settled at the local or state level, the commission said.

Other billing requirements as of Sept. 1, 1993, include identifying the name and mailing address of the relevant franchising authority and the community unit number on monthly bills to subscribers (§76.952).

### ¶812 Franchising Authority Enforcement of Customer Service Standards

Under the FCC regulations, local franchising authorities have the option of enforcing the act's customer service standards (§76.309(a)). Existing franchise agreements that prohibit local enforcement of or that contain less stringent customer service standards are pre-empted by the 1992 Cable Act if the

\*Indicates new and revised material.

franchising authority chooses to enforce the federal standards, the commission noted in the preamble to its rules. Franchising authorities must provide cable operators with 90 days' written notice by certified mail of their intent to enforce the customer service standards.

The FCC said franchising authorities can unilaterally modify existing franchise agreements to incorporate and implement local enforcement of the FCC standards (customer service R&O, para. 20); (§76.309(b)(1)). The FCC said provisions in franchise agreements or state and local consumer protection laws are proper vehicles through which franchising authorities can enforce customer service standards. Enforcement mechanisms franchising authorities can use include ordering credits or refunds to subscribers, compelling specific performance and making compliance with customer service obligations part of the cable operator's performance evaluation at franchise renewal (customer service R&O, para. 21).

### Tougher standards allowed

The FCC rules are a floor, not a ceiling, for the level of customer service standards that can be imposed on cable operators. Therefore, states and local franchising authorities can, under both the 1992 act (§552(c)) and FCC rules (§76.309(b)(3)-(4)), adopt customer service standards or consumer protection laws that are tougher or address different areas than those issued by the FCC. Franchising authorities and cable operators can agree to more stringent standards, and standards in existing agreements that are more stringent than the federal guidelines will be grandfathered through the end of the franchise term. Although the FCC's standards do not necessarily supersede less stringent customer service standards in franchise agreements, the FCC standards pre-empt if the franchising authority wants to enforce them. State and local governments, by ordinance or statute, may adopt more stringent standards than the FCC's (customer service R&O, para. 3).

### ¶813 Remedies

No specific remedies or penalties for operators who fail to comply with the customer service standards were included in the FCC rules. The commission concluded that local governments, because they will enforce the standards, should be able to decide what would be reasonable remedies to assure customers satisfaction in cases where the subscriber and cable operator are unable to resolve a complaint themselves.

Similarly, the commission decided not to adopt customer service reporting requirements or refund or penalty guidelines that would apply to cable operators nationwide. Again, the commission was concerned that federal penalties could pre-empt and hamper local enforcement of customer service requirements.

### Limited FCC role

Because enforcement will be handled largely at the local level, the FCC generally will have no role in the customer service aspect of the 1992 Cable Act, other than to issue or revise the rules. However, the commission reserved the right to address "systemic abuses that undermine the statutory objectives" concerning customer service standards (customer service R&O, para. 19).

### ¶814 No Small Systems Exemption

Small systems (those with 1,000 or fewer subscribers) are not exempt from the customer service standards, although they can appeal for waivers from the commission if they believe one or more of the requirements are too onerous. When requesting a waiver, the FCC said, a small operator should include the franchising authority's views on the request and a detailed explanation of the compliance costs for each of the specific federal standards for which a waiver is sought (customer service R&O, para. 11, note 18).

The FCC prefers to approve an alternative standard, rather than waive a standard altogether. Therefore, small systems seeking waivers should propose an alternative with which it could comply. The alternative should be crafted to best meet the statutory objectives and track the FCC standards. Also, the system should, where possible, project a date when it can fully comply with the FCC standard.

[The next page is Tab 800, Page 21.]

