

FRANCHISE AGREEMENT  
TOWN OF CHESTERFIELD, CHESHIRE COUNTY, NEW HAMPSHIRE

AN AGREEMENT GRANTING A NON-EXCLUSIVE FRANCHISE TO ARGENT COMMUNICATIONS, LLC TO OPERATE AND MAINTAIN A CABLE TV, INTERNET & COMMUNICATIONS SYSTEM IN THE TOWN OF CHESTERFIELD, CHESHIRE COUNTY, NEW HAMPSHIRE, SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OF A FRANCHISE.

Agreement made this 19<sup>th</sup> day of May .2010 by and between the Town of CHESTERFIELD, New Hampshire, a municipal corporation existing in CHESTERFIELD, New Hampshire (Town) and Argent Communications, LLC, a Limited Liability Company authorized by law with its principal place of business in Bristol NH (Grantee) to grant a franchise for cable & communications services to a cable system pursuant to RSA chapter 53-C.

SECTION I

STATEMENT OF INTENT AND PURPOSE;

AUTHORITY

1.01. Statement intent and Purpose. The Town intends, by the adoption of this Agreement, to authorize the operation of a Cable TV, Internet, Telecommunications & Communications System by Argent Communications, LLC within the Town territorial boundaries.

1.02. Authority. To the extent that the same may be lawfully given and subject to the provisions of any and all acts of the State of New Hampshire and regulations issued thereunder, now or in the future, and insofar as the State of New Hampshire has delegated to the Town the authority to grant a Franchise for the provision of cable television service and other communication and information services, including internet and Telephone, within the Town territorial boundaries, in consideration of the faithful performance and observation of the conditions and reservations mutually agreed upon herein, the Town hereby exercises its authority to grant a non-exclusive Franchise permitting the operation of a cable television system and the provision of other communications and information services within the Town.

SECTION 2

SHORT TITLE

This Agreement shall be known and cited as the "Town of CHESTERFIELD Cable Franchise Agreement." Within this document it shall also be referred to as "this Franchise" or "Franchise".

SECTION 3

DEFINITIONS

For the purpose of this Franchise, the following terms, phrases, words, and their derivations shall have the meaning given herein. Words not defined shall be given their common and ordinary meaning.

3.01. "Cable Service" means: (i) the two-way transmission to and from subscribers of video programming or other programming service; and (ii) subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

3.02. "Cable Service Territory" shall mean the area to be served by Grantee's facilities in CHESTERFIELD, N.H. which includes the Town of CHESTERFIELD, CHESHIRE County, New Hampshire.

3.03 "Board of Selectmen" means the Board of Selectmen of the Town of CHESTERFIELD, CHESHIRE County, New Hampshire.

3.04. "Town" shall mean the Town of CHESTERFIELD, CHESHIRE County, New Hampshire.

3.05. "FCC" shall mean the Federal Communications Commission.

3.06. "Grantee" shall mean Argent Communications, LLC, and its successors, transferees, or assigns.

3.07. "Owner" shall mean a person with a legal or equitable interest in ownership of real property.

3.08. "Person" shall mean any corporation, partnership, proprietorship, individual or organization, governmental organization or any natural person.

3.09. "Public Property" shall mean any real property owned by the Town, other than a street.

3.10. "Street" shall mean the surface of and the space above and below any public street, road, highway, freeway, lane, path, public way, alley, court, sidewalk, boulevard, parkway, drive, or any easement or right-of-way, alley, court, sidewalk, boulevard, parkway, drive, or any easement or right-of-way now or hereafter held by the Town, or dedicated to the Town, or to general public use.

3.11. "System" shall mean a facility consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable TV, Internet, Telephone & communications services which includes video programming and which is provided to multiple subscribers within a community, but such term does not include: (1) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (2) a facility that serves subscribers without using any public right-of-way; (3) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Communications Act of 1934, except that such facility shall be considered a cable system (other than for purposes of section 62 I (c)) to the extent such facility is used in the transmission of video programming directly to subscribers; or (4) any facilities of any electronic utility used solely for operating its electric utility systems. "System" can include additional services such as Telecommunications and Alarm.

3.12. "Subscriber" shall mean any person or entity who subscribes to cable

television service or other communications services provided by Grantee by means of the System.

3.13 "Communications" where used as a description of the system type or services offered, shall mean any one way or two way communication technology and shall incorporate cable television, telephone, internet and alarm in its inherent meaning.

3.14 "Cable TV" shall mean cable television network.

3.15 "Basic video service" shall mean the 1<sup>st</sup> tier of video services offered to subscribers, which includes the retransmission of local television broadcast signals. This tier of video shall include any local carriage of local network channels such as ABC, NBC, CBS, PBS and FOX, if carried on the system.

3.16 "PEG channels" shall mean public access channel(s) designated for the purpose of airing public, educational and government programming.

## SECTION 4

### GRANT OF AUTHORITY

4.01. Grant of Franchise. For the purpose of providing Cable Service and other communications and information services, the Town hereby grants to the Grantee a Franchise as provided herein. Grantee may erect, install, construct, repair, replace, reconstruct, and retain in, on, over, under, upon, across, and along the Streets and Public Property such lines, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, pedestals, attachments, and other property and equipment as are necessary and appropriate to cable TV, communications and information services. Grantee is also authorized to utilize public rights of way and to utilize easements within the Town which have been dedicated for compatible uses, as provided for in Section 621 (a) (2) of the Cable Communications Policy Act of 1984, as amended.

4.02. Franchise Term. The initial term of this Franchise shall commence on May 19, 2010, and shall expire **five (5) years from said date**, unless renewed as herein provided.

## SECTION 5

### DESIGN AND SERVICES PROVISIONS

5.01. Technical Requirements. Grantee shall construct and maintain a System that meets at least the technical standards applied by the FCC. Procedures for testing technical capacity of the System shall conform with the technical and testing standards applied to cable systems by the FCC.

5.02 Interference with Reception Outside Cable System. Grantee's installation shall be installed, maintained and operated in a manner that shall not interfere with television or radio reception by means other than by the cable-type systems.

5.03 **Free Service to Public Buildings**. The Grantee shall provide without charge, up to

three (3) outlets of Basic Service at locations to be designated by the Town, as listed in Exhibit A, where such locations are within 150 feet from the feeder cable of the System.

- a. Service Density. Grantee agrees that it will provide Cable Service to all areas in Town where there is a density of 15 households or more per mile of Street provided that the density is met for the entirety of the route to be built. Grantee shall maintain lines that currently exist as documented in exhibit C, in areas where there are less than 15 households per mile. Grantee may submit a more detailed map within 90 days if so desired. If a more detailed map is provided, it shall be adopted as a new schedule C.
- b. PEG Access Channel. Grantee shall provide a PEG channel for the purpose of public access, education and government affairs. It shall be the Town's responsibility to provide any broadcast equipment as needed [ie, camera's, vcr's, etc.]. There shall be no cost to the Town for use of the PEG channel. PEG access use shall adhere to terms as defined in schedule B.

## SECTION 6

### CONSTRUCTION PROVISIONS

6.01. Construction Requirements. Grantee shall make use of existing poles and other facilities available to Grantee. Grantee may also erect its own poles and install its own conduit in any town highway upon compliance with the provisions of RSA Chapter 231. All poles and conduit installed within the Town shall be made available for attachment or use by Grantee, at just and reasonable rates applied to public utilities under the formula presently established in 47 U.S.C. §224.

6.02. Construction Codes and Permits. Grantee shall obtain any required permits from the Town before commencing construction involving the opening or disturbance of any street or public property. Grantee shall comply with all applicable building and zoning codes. Grantee, in compliance with RSA Chapter 231, shall arrange its lines, cables, and other appurtenances, on any street or public property, in such a manner as to cause no unreasonable interference with the usual and customary use of said street or public property by a person.

6.03. Repair of Streets and Public Property. Any and all streets or public property which are disturbed or damaged during the construction, operation, or maintenance of the System shall be promptly repaired by Grantee, at its expense and to the condition prior to the disturbance or damage.

6.04. Movement of Facilities. In the event it is necessary temporarily to move or remove any of Grantee's wires, cables, poles, or other facilities placed pursuant to this Franchise, in order lawfully to move a large object, vehicle, building, or other structure over the streets of the Town, upon two (2) weeks notice by the Town to Grantee, Grantee shall move same, at the expense of the person requesting the temporary removal, as may be required to facilitate such movements.

6.05. Prudent Installation and Operation. Grantee agrees that its installation and

operation shall be installed, located, and maintained so as not to endanger or interfere with the life and property of any person or thing; nor interfere with improvements which the Town may deem proper; nor hinder or obstruct the free use of streets, alleys, bridges, or other public or private property. In the event the Town relocates a street or makes any other change requiring the removal of utility installations, or in the event Grantee does interfere with the public or private property of others, Grantee, at its sole expense, will remove its installation at this location. In the event that a utility is reimbursed by the Town for the placement of cable underground or the movement of cable, Grantee shall be reimbursed on the same terms and conditions.

6.06. Trees and Shrubberty. The Grantee shall not have the right to cut, mutilate, or injure any shade or ornamental tree, for the purpose of erecting or maintaining poles or structures or installing wires or other attachments or appurtenances thereto, without obtaining the consent of the owner of the land on which such tree grows or the payment or tender in full of damages as provided in RSA Chapter 231.

## SECTION 7

### OPERATION AND MAINTENANCE

#### 7.01. Maintenance and Complaints.

a. Grantee shall maintain a local or toll-free telephone number available to accept service calls and complaints from subscribers.

b. Grantee shall render efficient service and make repairs promptly. To the extent possible, Grantee shall make every effort to restore system outages within a 24 hour period. In the event that it is unfeasible to restore the system within 24 hours, Grantee shall work diligently and continuously to restore the system as soon as possible. Grantee shall make every effort to make non-outage repairs promptly. Grantee shall interrupt service only for good cause, such as, but not limited to, system upgrades, line repairs and pole line relocates.

c. Any complaints from subscribers shall be investigated and acted upon as soon as possible but no later than five business days.

d. In the event Grantee's service to any subscriber is interrupted for 24 or more consecutive hours, grantee will, upon request, grant subscriber a pro rata credit or rebate.

#### 7.02. Safety.

a. Grantee shall at all times take reasonable precautions for preventing failures and accidents which are likely to cause damage or injury to the public, to employees of Grantee, and to public or private property.

b. All lines, equipment, and facilities within the Town shall at all times be kept and maintained in a safe and suitable condition, and in good order and repair.

#### 7.03. Subscriber Practices.

a. Grantee shall not deny service, deny access, or otherwise discriminate against subscribers on the basis of race, color, religion, natural origin, sex, age, or physical disability in accordance with all applicable NH and Federal law. Grantee

shall adhere to the equal employment opportunity requirements of all applicable NH and Federal law.

b. Grantee may conduct promotional campaigns in which standard rates are uniformly discounted or waived.

c. Grantee may make special contracts for non-profit, charitable, educational, government, and religious organizations.

d. Grantee may offer bulk rate discounts for multiple dwellings, hotels, motels and similar institutions.

e. Grantee shall provide parental control devices, at reasonable cost, to Subscribers who wish to be able to prevent certain Cable Services from entering the Subscriber's home.

#### 7.04. Notice to Subscribers Regarding Quality of Service.

a. Annually, the Grantee shall mail to each of its subscribers a notice which:

(i) Informs subscribers how to communicate their views to the cable company 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.

b. 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 operator shall certify to the Town and to the office of the attorney general, consumer protection and antitrust bureau that it has distributed the notice as provided in this section during the previous calendar year as required by this section.

#### 7.05. Recording of Subscriber Complaints.

a. Grantee shall keep a record or log of all written complaints received regarding quality of service, equipment malfunctions, billing procedure, employee relations with customers and similar matters. Such records shall be maintained for a period of 2 years.

b. Such record shall contain the following information for each complaint received:

(i) Date, time, nature of complaint;

(ii) Name, address, telephone number of complainant;

(iii) Investigation of complaint;

(iv) Manner and time of resolution of complaint; and

(v) If the complaint regards equipment malfunction or the quality of reception, a report indicating corrective steps taken, with the nature of the problem stated.

Grantee shall make the logs or records, or both, of such complaints available to any authorized agent of the Town upon request during normal business hours for

on-sight review or if requested in writing by the Chesterfield Board of Selectmen, the log shall be sent to the Town at no cost to the Town on a semi-annual basis.

## SECTION 8

### FRANCHISE FEE

8.01 The Town of CHESTERFIELD shall be eligible to collect a Franchise Fee based on the following terms:

a.) **Fee shall be 3% of Gross sales of basic video service.** Fee shall be calculated using the following formula: (number of video subscribers) x (standard basic plan service fee) x (0.03) = Amount due and payable to Town of CHESTERFIELD.

8.02 Payment shall be due yearly within (60) days of the agreement anniversary date, May 19<sup>th</sup>, and shall be accompanied by a report indicating the amount of video subscribers per month for the year.

8.03 Argent Communications shall provide internet service to Town owned/operated locations as listed in exhibit A at the reduced rate of 50% of the standard billing rate.

## SECTION 9

### REMEDIES, DEFENSES, INSURANCE

9.01. Laws Governing. This Franchise shall be governed by and construed in accordance with the laws of the State of New Hampshire, and applicable Federal law.

9.02. Notice of Violation. The Board of Selectmen shall provide Grantee with a detailed written notice of any Franchise violation upon which it proposes to take action, and a thirty (30) day period within which Grantee may cure an alleged violation. This thirty day period shall not begin to run in the event the alleged violation is beyond the Grantee's control or the Grantee is diligently pursuing corrective action. Grantee shall, within fifteen (15) days of receiving such notice, notify the Board of Selectmen that there is a dispute as to whether a violation has, in fact, occurred. Such notice by Grantee to the Board of Selectmen shall detail the matters disputed by Grantee. The Board of Selectmen shall hear Grantee's dispute at the next regularly scheduled meeting of the Board of Selectmen. The Town and Grantee shall bear their own costs and attorney's fees.

9.03. Indemnity.

a. Grantee shall indemnify and hold harmless the Town at all times during the term of this Franchise, from and against all claims, and including reasonable attorneys' fees and legal costs, for injury or damage to persons or property, both real and personal, caused by the construction, erection, operation, and maintenance of the System.

b. With the exception of programming on any public, educational and governmental access channels, it is expressly understood that the Town has no control, standard or regulation pertaining to the subject matter of programs distributed by Grantee. Grantee agrees to indemnify and save harmless the Town, its officers and employees from all claims, suits and actions at law or equity for libel, slander, patent or copyright infringements; that in the event the Town is made a party defendant in any action arising out of the subject matter of programs transmitted by Grantee. Grantee shall at its sole cost and expense defend such action and appeals there from, including those involving the Town.

9.04. Liability Insurance. Throughout the term of this Franchise, Grantee shall maintain a policy of liability insurance covering the Grantee, and naming the Town as an additional insured, in the minimum amounts of:

- a. \$2,000,000 for property damage in any one occurrence;
- b. \$2,000,000 for bodily injury to any one person; and
- c. \$2,000,000 for bodily injury in any one occurrence.

Grantee will also maintain Worker's Compensation coverage throughout the term of this franchise as required by law. Grantee shall annually furnish a Certificate of Insurance for the required amounts to the Town upon the anniversary date of this Franchise Agreement.

9.05.

- a. No person shall interrupt or receive signals from the System unless specifically authorized to do so by Grantee.
- b. No person shall tamper with, remove, or injure any cable, wires, or equipment used with the System unless specifically authorized to do so by Grantee.
- c. No person shall intentionally deprive Grantee of a lawful charge for cable service.
- d. No person shall resell Grantee's cable services without Grantee's express, written consent.
- e. The Town and Grantee expressly reserve their applicable rights and remedies available in law or in equity.

9.06. Conditions of Access. In addition to the provisions of Section 4.01, no party who owns or controls any residential multiple dwelling unit, trailer park, condominium, or apartment complex, or subdivision, shall interfere with the right of any tenant or lawful resident thereof to receive service from Grantee .

## SECTION 10

### VARIANCE AND RENEWAL

10.01. Variance. Applications for a variance to this Franchise, to accommodate significant change in circumstances, to prevent unreasonable hardship to Grantee, or to permit technical variations which will satisfy the purpose of this Franchise, may be made by the Grantee to the Town. The Town shall review the application at the earliest meeting of the Board of Selectmen, and shall issue a report of the findings of the Town and shall act on a request within forty-five (45) days.

10.02. Periodic Review. Beginning five (5) years after the effective date of the Franchise, and every five (5) years thereafter, the Town may on its own initiative, and may at the request of the Grantee, schedule a public meeting for the purpose of identifying the cable-related community needs and interests and reviewing the performance of the Grantee under the Franchise. The Town shall notify Grantee of the time and place of such meeting and provide the Grantee with an opportunity to be heard. The public shall be afforded appropriate notice and opportunity for comment. Within four (4) months of such meeting, the Town shall provide Grantee with written copy of its findings.



10.03 Grantee shall be permitted to extend this Agreement, prior to its maturity date, so long as the Grantee has demonstrated a reasonable effort to maintain and operate the system as detailed per the terms of this agreement. Such extension[s] shall be in (5) year increments.

a. In the event that the Town finds the Grantee in default of the terms provided in this agreement and chooses not to grant the extension, it shall notify the Grantee in writing ninety days prior to the maturity of this Agreement. Such notification shall include reason[s] for the denial of extension.

b. The Grantee shall have the right to appeal a decision of the Town to deny an extension of this Agreement. A Letter of Appeal must be presented to the Town within thirty days of the notice to deny the extension of this Agreement.

c. Upon deliverance of a Letter of Appeal, the current agreement shall be extended until such time as the matter has been exhausted by legal means.

## SECTION 11

### MISCELLANEOUS

11.01. Severability. If any law, Agreement, regulation, or Court decision shall render any provision of this Franchise invalid, the remaining provisions of the Franchise shall remain in full force and effect.

11.02. Assignability. Grantee shall have the right to assign its rights and privileges hereunder, subject to the terms and conditions herein imposed, such assignment to become effective only upon the Assignee's filing with the Town a written acceptance of the rights and subject to the terms and conditions herein imposed and subject to the approval of the Town, whose approval shall be limited to an examination of the legal, technical and financial qualifications of the assignee, and such approval shall not be unreasonably withheld. The Town shall have sixty days upon notification of assignment to approve or deny the assignee, after which time the assignee shall be deemed acceptable should there be no response from the Town.

11.03. Regulations. Town reserves the right to adopt such additional generally applicable regulations as it deems necessary in the exercise of its police power, provided that such regulations shall be reasonable and not in conflict with the rights granted by agreement or in this contract.

11.04. Force-Majeure. Prevention or delay of any performance under this Franchise due to circumstances beyond the control of Grantee or the Town, unforeseen circumstances, or acts of God, shall not be deemed noncompliance with or a violation of this Franchise.

11.05. The Grantee acknowledges and agrees that the Town reserves the right to grant one or more additional franchises to other cable service providers within the Town for the right to use and occupy the public ways; provided, however, that in accordance with RSA 53-C and consistent with federal law, the Town shall not grant any additional franchises for cable service within its jurisdiction on terms or conditions more favorable or less burdensome than those in any existing franchise within the Town. The issuance of

additional franchises shall be subject to all applicable federal and state laws, including RSA 53-C:3-b and applicable regulations promulgated thereunder.

11.06. Regulatory Bodies. Grantee shall conduct the operation of its business in accordance with the rules, regulations, and statutes, as amended from time to time, of the Federal Communications Commission and any other duly authorized federal, state, or local authority having jurisdiction. In particular, the Grantee shall, at all times, comply with the rules and regulations governing cable television operations promulgated by the FCC, specifically those set out in The Cable Communications Policy Act of 1984, as amended, and of the FCC Rules and Regulations, and any FCC Rules and Regulations regarding technical and engineering specifications involved in the construction of the CATV system and signal carriage thereon.

11.07. Modification of FCC Rules. Consistent with the requirements of The Cable Communications Policy Act of 1984. and of the FCC Rules, any modification of The Cable Communications Policy Act of 1984 resulting from amendment thereto by the FCC shall be to the extent applicable, be considered as a part of this Franchise as of the effective date of the amendment made by the Cable Communications Policy Act of 1984 and the FCC.

11.08. Repealer. This agreement supersedes all previous agreements between the parties. Any subsequent modifications or changes made to this Agreement must be in writing and signed by both parties.

11.09. This Agreement shall be effective per section 4.02.

11.10. Franchise Document Filing. Within 60 days of the granting of an initial franchise and any renewal of such franchise, the Grantee shall file a copy of the franchise and any Federal Communications Commission rulings or other rulings affecting the Grantee with the Secretary of State.

## SECTION 12

### ASSURANCE OF CONTINUANCE

12.01 Grantee shall make every effort to continue service, uninterrupted for the term of this agreement.

- a. The Grantee shall not give less than ninety days' notice that it is seeking to fully cease operation of the system, prior to shutting the system down. Such notice shall be in writing and delivered to the Town Selectmen.
- b. In the event that the Grantee is unable to keep the system operable and has given notice to the Town indicating it's intent to stop all operations of the system, the Town shall have the option to take over ownership of the system in it's entirety and use whatever means within its power to operate or to induce other individuals or entities to own and/or operate the system.

12.02 No part of section 12 of this Agreement shall impede the Grantee from adding, modifying, canceling, or removing any individual services from the system so long as the remainder of the service[s] are kept intact and active nor.

## SECTION 13

### RESERVATION OF RIGHTS

Town and Grantee reserve all rights that they may possess under the law unless expressly waived herein. By entering into this Agreement, neither Grantee nor Town waives any rights which it now or may later enjoy under applicable law, and specifically Town and Grantee reserve their rights under applicable federal and state constitutions and laws.

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Dated this 19<sup>th</sup> day of May, 2010.

TOWN OF CHESTERFIELD, NEW HAMPSHIRE  
BOARD OF SELECTMEN

Signed \_\_\_\_\_

[Print] Jon McKeon Title Selectman

Signed \_\_\_\_\_

[Print] Robert Brockmann Title Selectman

Signed \_\_\_\_\_

[Print] Cliff Emery Title Selectman

Grantee's acceptance of this Franchise Agreement is a binding contract upon the Grantee and Grantee's acceptance of this Agreement established a binding contractual relationship between the Town of CHESTERFIELD and the Grantee in accordance with the provisions and conditions set forth in the Agreement and Grantee here, by virtue of having its Vice President of Business & Marketing and Vice President of System Operations sign this Agreement, agrees to be legally bound by all of the provision and conditions set forth in it.

Signed and sealed this \_\_\_\_\_ day of May, 2010 by Argent Communications, LLC

PER: Andrew Bauer, VP, Business & Marketing \_\_\_\_\_

EXHIBIT A

Internet Connections to Town Schools, Town Buildings and Libraries

1. Town Highway Garage
2. Town Transfer Station
3. Chesterfield School
4. Chesterfield Library
5. Chesterfield Town Hall
6. Chesterfield Fire and Rescue Precinct
7. Spofford Fire Station
8. Chesterfield Police Department
9. Chesterfield Town Office
10. Chesterfield Office of Emergency Management

## Exhibit B

### PEG Access

Channels. Grantee agrees to provide to the Town throughout the term of this franchise, one (1) PEG Access channel currently in use by the Town. In accordance with federal law, Grantee will be entitled to use any PEG access channel capacity for the provision of other services at any time such channel capacity is not being used for the designated PEG access purposes.

Non-Commercial. An access channel is a channel made available to Town by Grantee for the purpose of cablecasting non-commercial programming by Town's residents and its administration and educational institutions. The Town agrees not to use the access channels to provide commercial or revenue-generating services or services that may compete, directly or indirectly, with services provided by Grantee, provided, however, that Town may cablecast acknowledgments of funding sources and the underwriting of Programming costs. The Town shall be responsible for any content that it broadcasts.

Argent Communications shall have (60) days to activate peg upon request in writing from the board of selectmen.