

TOWN OF NEW IPSWICH, NEW HAMPSHIRE

(Incorporated)

NEW IPSWICH CABLE TELEVISION FRANCHISE AGREEMENT

NOVEMBER 23 , 1987

CABLE TELEVISION FRANCHISING AGREEMENT

An agreement for the Operation and Maintenance of a Cable Television System in the Town of New Ipswich, New Hampshire.

This Agreement entered into this 23 day of NOV., 1987 by and between the TOWN OF NEW IPSWICH, a municipal corporation, organized and existing under the laws of the State of New Hampshire with an address of NEW IPSWICH, N.H., hereinafter called the "Town", and FC NEW ENGLAND LIMITED PARTNERSHIP, a limited partnership organized under the laws of the Commonwealth of Massachusetts and having its principal place of business at Bunker Hill Road, North Pomfret, Vermont 05053, hereinafter called the "Franchisee".

WITNESSETH: That in consideration of the fees and agreements to be paid and performed the parties hereto agree as follows:

1. DEFINITIONS

Town - shall mean the Town of New Ipswich, New Hampshire.

Franchising Authority - shall mean the New Ipswich Board of Selectmen as authorized by vote of the Town Meeting.

Franchisee - shall mean FC New England Limited Partnership (also referred to herein as the "Company") and its lawful successors and assigns.

Person - shall mean any individual, firm partnership, association, corporation, company, or organization of any kind.

Cable Television System (CATV) - shall mean the service of receiving and amplifying signals broadcast by one or more television or radio stations or satellites and distributing such signals by wire cable, microwave, satellite, or other means, whether or not such means are owned by or leased to persons who subscribe to such service.

FCC - shall mean the Federal Communications Commission.

Franchise - shall mean this legal document, duly executed and required by law to regulate the construction and operation of a Cable Television Service.

Subscriber - shall mean a recipient of Cable Television Service, properly paying for such service.

Gross Basic Service Revenues - shall mean any and all compensation, in whatever form, exchange or otherwise derived from the provision of all basic cable services in the Town of New Ipswich.

2. GRANT OF AUTHORITY

Pursuant to RSA 53-C:3, there is hereby granted by the Franchising Authority to the Franchisee the non-exclusive right and privilege to construct, erect, operate and maintain in, upon, along, across, over, above and under the streets, lanes, sidewalks, avenues, alleys, bridges, highways and public ways and places not laid out or dedicated, and all extensions thereof, and additions thereto, in the Town, poles, wires, cables, underground conduits, manholes, and other television conductors and fixtures for the maintenance and operation of a cable television system in the Town; together with the nonexclusive right and privilege to continue in operation existing facilities. The exercise of this right and privilege within, across or under any such location is conditioned upon the Franchisee obtaining any license or permit therefore which may be required under RSA 231:159-182.

3. TERM - RENEWAL

The term of this non-exclusive Agreement shall be for a period of fifteen (15) years beginning 11/23/87, 1987. On the fourteenth (14th) anniversary of the effective date hereof, the Town and the Company shall conduct an overall review of the sufficiency of this document. It is expressly understood that any amendments hereto must be by mutual agreement consistent with all applicable laws.

This Franchise may be further renewed or extended by mutual agreement of the parties at any time during the term of the franchise granted hereunder for an additional period to be agreed upon by the parties at the time of such renewal or extension in accordance with the then existing rules of the FCC and applicable law.

This non-exclusive Franchise Agreement relates to the present territorial limits of the Town, but will include all extensions of present limits and is not intended to prohibit services outside the franchise area.

4. ASSIGNMENT/SALE OF STOCK

In the event that the Franchise is sold, transferred, leased, assigned or disposed of in whole or part, either by forced or voluntary sale, merger, consolidation, mortgage, trust, receivership, sale of assets or transfer of controlling stock interest, or any other means the Franchisee shall give the Town thirty (30) days prior written notice of the consummation of such transfer. No such transfer shall be effective unless the transferee shall file a written statement with the Town agreeing to be bound by all terms and conditions of this Franchise. (It shall not be deemed a transfer if it be transferred to any entity which is more than 50% owned or controlled by the Company.)

5. STATEMENT OF OWNERSHIP

The Franchisee shall provide the Town annually with a statement of ownership and all interests in the cable television system presently serving the Town of New Ipswich, New Hampshire, and all future expansions thereof as well as a current financial statement setting forth the Company's assets and liabilities. The Franchisee shall further provide the Town in March of each year with a current financial statement setting forth the Franchisee's assets and liabilities relative to the above-described cable television system, together with any additional financial information concerning the Franchisee required by the Franchising Authority to evaluate the Franchisee's overall financial position as it may reasonably be expected to affect the operation of the above-described cable television system. This information shall be for the confidential use of the Franchising Authority, and is not to be made available to any other individuals or organizations without the express written authority of the Franchisee.

6. LIABILITY AND INDEMNIFICATION AND OTHER GUARANTEES

A. Indemnification

The Company shall indemnify, protect and save harmless the Town, its officers, agents and employees, or any other entity whose right-of-ways are used by the Company, from and against all claims, damages, losses and expenses, including attorneys' fees, due to any suit, judgment, execution, claim or demand whatsoever, arising from losses and physical damage to property, and bodily injury or death to persons, including payments made under and Workers' Compensation Law, which may arise out of or be caused by the erection, maintenance, presence, use or removal of said attachments on poles within the Town or by any act of the Company, its agents or

employees. The Company shall carry insurance, to protect the parties hereto from and against all claims, demands, action, judgments, costs, expenses, and liabilities which may arise or result, directly or indirectly from or by reason of such loss, injury or damage. The amounts of such insurance against liability due to physical damages to property shall not be less than \$100,000.00 (Dollars) as to any one accident and not less than \$1,000,000.00 (Dollars), aggregate in any single policy year; and against liability due to bodily injury or to death of persons not less than \$500,000.00 (Dollars) as to any one person and no less than \$1,000,000.00 (Dollars) as to any one accident. The Company shall also carry such insurance as it deems necessary to protect it from all claims under the Workers' Compensation Laws in effect that may be applicable to the Company. All insurance required by this Agreement shall remain in full force and effect for the entire life of this Agreement. Said policy or policies of insurance or a certificate of insurance shall be deposited with and kept on file by the Town Clerk or Selectmen's Office. In addition, the Company shall indemnify the Town and its officials and shall hold them harmless of and from any and all liability with respect to alleged copyright infringements, and with respect to the subject matter of any program transmitted by the Company.

Said policies shall be filed with the Town and shall bear a clause naming the Town as an additional insured and requiring at least thirty (30) days prior notice to the Town by the insurance company of any cancellation in said insurance policies.

B. Contravention of Provisions; Costs of Litigation

The reasonable costs of any litigation incurred by the Town to enforce the provisions of this Franchise against the Company shall be reimbursed to the Town by the Company. Such costs shall include filing fees, costs of depositions, discovery, and expert witnesses, all other expenses of suit, and a reasonable attorney's fee. The reimbursement of such costs shall be required only if a final judgment should be entered in favor of the Town.

7. CONSTRUCTION OF TRANSMISSION FACILITIES AND PERFORMANCE

A. The Company shall have the right to erect and maintain its own poles or receiving towers within the Town upon receiving all appropriate permits and approval of the Town. The Company may, if satisfactory arrangements can

be reached with the New England Telephone Company and/or Public Service Company of New Hampshire and any others, business or individual, in the Town, use their physical facilities and attach equipment as required to service to the Town all subject to the approval of the owners of such facilities.

- B. The Company's system shall be located, erected, and maintained so as not to endanger or interfere with the lives of persons, or to interfere with improvements the Town may deem proper to make, or to hinder or obstruct the normal use of the streets, bridges, or other public property. Removal of poles or equipment on behalf of the Town when necessary to avoid such interference will be at the Company's expense.
- C. Construction and maintenance of the system shall be in accordance with the provisions of the National Electrical Safety Code of the National Board of Fire Underwriters and such applicable laws, ordinances, and regulations of the Town or State affecting electrical installations, which may be presently in effect or changed in the future, as well as the regulations of the FCC regarding quality of service rendered to the Town. All installations of equipment shall be of a permanent nature, durable, and installed in accordance with good engineering practice.
- D. In case of any disturbance of pavement, sidewalk, driveway or other surfacing, the Company shall, prior to construction, consult with the property owner of said pavement, sidewalk, driveway, etc., and agree to replace and/or repair, at its own expense, all surfacing so disturbed to its original condition.
- E. The Company shall have the authority to trim trees upon and overhanging streets, sidewalks, and public places of the Town so as to prevent the branches of such trees from coming in contact with the facilities of the Company, only to the extent said Town would have the right to do so, all trimming to be done at the expense and liability of the Company.

- F. The Company shall conduct all trimming operations in a manner consistent with the method used by the Public Service Company and the New England Telephone Company or as otherwise prescribed by the Town. Where trees abut private property, the Company shall confer with the property owner and proceed in accordance with State law.
- G. The company shall have the right to use any public or private easements or rights-of-way with the permission of the appropriate owner of said easement or right-of-way.
- H. The Company shall install a cable television system with a bandwidth of no less than 330 MHz with a maximum capacity of 42 channels with not less than 30 activated channels. All cable will be stranded and lashed with the trunk line being 750 and 875 in size and the feeder lines being 500 and 625 in size. The Company shall have the right to substitute programming at its discretion and shall use its best efforts to maintain the same mix of programming as set forth in Appendix A to the extent available on substantially the same terms. However, the Company will every two years, solicit subscriber input in the form of a telephone poll or questionnaire which shall determine subscriber attitudes as to preferred channel allocation and programming. A copy of the results will be furnished to the Town.
- I. Within thirty (30) days of the execution of this Agreement, the Company shall make its best effort to file with appropriate authorities and utilities all initial papers and applications necessary to permit commencement of construction and operation and shall diligently pursue the acquisition of necessary pole attachment contracts or other necessary easements.
- J. Within sixty (60) days from receipt of all required permits, the company shall commence construction within the meaning set forth in this Agreement of the cable television system. Such construction shall be pursued with reasonable diligence.
- K. Within six (6) months from the receipt of all required permits, the Company shall commence operation of at least some of the system and within 12 months of such permits shall have all the initial build area in operation.

- L. The Town may, in its discretion, extend the time for the Company, acting in good faith, to perform any act required hereafter. The time for performance shall be extended or excused, as the case may be, for any period during which the Company demonstrates to the satisfaction of the Selectmen that the Company is being subjected to delay or interruption due to circumstances beyond its control.

8. SERVICE STANDARDS

A. Complaint Procedures.

The Company will adopt its own complaint procedures with respect to the investigation and resolution of all complaints regarding cable television operations. The Company will establish a telephone number which can be dialed free of charge at any time of day or night for subscribers to call with maintenance requests or service complaints. All complaints shall be investigated within twenty-four (24) hours and, if due to Company's equipment, shall be repaired as soon as reasonably possible. Notice of the procedures for reporting and resolving complaints will be given to each customer by the Company at the time of initial installation of the cable television system. The Town will be provided, in advance, with material related to complaint procedures. Any unresolved complaints may be filed with the Town during business hours. Such complaints may be kept on file by the Town for a period deemed necessary by the Town. The Company's agent shall be available upon fifteen day's notice to meet with the Selectmen's representative to discuss unresolved service complaints.

B. Discrimination.

The Company shall not refuse service to any person or organization who requests such service for a lawful purpose. The Company shall not, as to rates, charges, service facilities, rules, regulations or in any other respect make or grant any preference or advantage to any person, nor subject any person to any prejudice or disadvantage, except for the establishment of a rate schedule to be filed with and approved by the Town as provided herein, except the Company may offer discounted rates to its employees and also may offer special rates for promotional purposes.

C. Privacy.

The Company shall not provide any list designating customer's names and/or addresses to any other third party not involved in the provision of cable television service without prior approval by the Town.

D. Service Response.

The Company will provide reasonable service response, seven (7) days a week for all complaints and requests for repairs. Upon request within thirty (30) days of the service outage, the Company will credit any affected subscriber the pro rata portion of the number of signals affected by the outage, for each twenty-four (24) hour period wherein service is not provided.

E. Interruption and Rebate.

The Company may, whenever it is necessary, interrupt service over the system for the purpose of maintenance, alteration or repair, but will endeavor to do so at such time as will cause the least amount of inconvenience to its subscribers, unless such interruption is unforeseen or due to an emergency. Upon request within thirty (30) days of the service interruption, the Company will credit any affected subscriber the pro rata portion of the number of signals affected by the outage, for each twenty-four (24) hour period wherein service is not provided.

9. FRANCHISE FEES

- A. The Company agrees to pay to the Town two percent (2%) of the Company's gross basic service revenues per year derived from operation in the Town. Payment is to be made by January 31 for the preceding year's receipts.
- B. The amount of the franchise fee shall be reviewable upon each anniversary of the effective date hereof, and upon such review the Town shall have the right with sixty (60) days' notice to the Company to change the amount and method of calculating the franchise fee; provided, however, the franchise fee shall never exceed five percent (5%) of gross receipts or the amount authorized by the Cable Communications Policy Act of 1984 or as subsequently amended, whichever is greater.

- C. Company further agrees to submit to the Town any reasonable financial data requested by the Town to verify gross receipt payments made pursuant to this section.

10. CANCELLATION AND EXPIRATION

The Town shall have the right to revoke the Franchise granted to the Company if the Company fails to comply with any material provision of the Agreement, or any reasonable order, direction, standard, requirement, license or permit issued by the Town or any town agency pursuant to this agreement, or any rule, standard, ordinance or regulation promulgated by the Town. Such cancellation shall be by vote of the Town Selectmen with the following procedures:

- A. (i) The Town shall notify the Company of the alleged failure or persistent failure of compliance and give the Company a reasonable opportunity to correct such failure or persistent failure or to present facts and argument in refutation of the alleged failure or persistent failure to the sole satisfaction of the Town. A reasonable opportunity shall not exceed thirty (30) days.
- (ii) If the Town Selectmen then conclude after a due process hearing that there is a basis for cancellation of the franchise pursuant to the provisions of the above paragraph, they may cancel the franchise agreement.
- B. (i) If for ten (10) consecutive days, the CATV system, or any part thereof, is inoperative, or if the same is inoperative for twenty (20) twenty-four hour (24 hr.) days out of any consecutive twelve (12) month period, the Town may cancel the franchise agreement forthwith. Outages attributable to utilities other than the Company do not apply in this section.
- (ii) Any revocation shall not make the Town liable to the Company for reimbursement of investments or losses including future earnings incurred prior to the revocation or caused by said revocation or to any Company's customers.

11. MUNICIPAL SERVICE AND PUBLIC ACCESS CHANNELS

The Company shall provide single drop basic service at no cost to the New Ipswich Schools, the New Ipswich Town Offices and the New Ipswich Fire Station. Expansion beyond single drop service for such locations will be provided at a cost basis for installation with no monthly charges.

The Company shall provide access to one channel for locally originated public affairs programming and will establish equipment for access at the New Ipswich Town Offices. No entity using this channel shall compete with programming provided by the Company. The Company will provide the air time at no charge, but the entity requesting coverage shall pay all out-of-pocket costs connected with such coverage.

In addition, the Company will, at reasonable cost, make available to the Town the use of its tower facilities for Town communications purposes.

12. LINE EXTENSION POLICY AND STANDARD INSTALLATIONS

The Company will provide service to households beyond the initial build area, which is shown on the map provided with the proposal, however, these customers shall pay a proportionate share of the cost of construction as outlined in this section.

- A. The Company will extend its lines to any dwelling unit where said lines will pass at least an average of fifteen (15) customers per continual mile of cable plant as indicated on the initial build map included with this agreement. Extensions may be made in other areas that do not meet the above conditions so long as the customer shares the cost of construction with the Company as described below.
- B. The Company will provide an estimate of the construction expenses required to connect such households. The estimate will specify the portion of the expense to be assumed by the Company, defined in paragraph D below, with the remaining expense to be borne equally by the requesting households. The Company's type of construction is aerial.

- C. Before proceeding with the construction, the Company may require the requesting households to enter into a contract containing suitable payment requirements and other conditions.
- D. Each proposed Line Extension will be engineered and estimated individually. The Company will then notify all customers along the proposed extension of the total cost estimate for the entire extension and the amount which the Company shall bear. The remaining amount shall be borne by the customers along the route of the extension.

The Company will provide the portion equal to one-eighteenth (1/18) of the cost for each customer within a continual route mile of cable which is consistent with the agreement for the initial build area.

Example: If there were 9 customers on a proposed Line Extension of a mile in length and the cost was \$9,000.00, the Company would furnish 9/18ths (\$4,500.00) and the 9 customers would pay \$500.00 each or \$4,500.00 totally.

For Line Extensions of less than one mile the same criteria of customer density and customer cost sharing would apply.

- E. It is recognized that some households in the outlying Town area may not initially request cable service. In the event that a group of requesting households seeks the extension of lines from outlying Town households which previously bore construction expenses, then the Company shall calculate the pro rata portion of the earlier construction to be paid for by the subsequently requesting group. Upon payment thereof to the Company, such amount shall be refunded to the affected households. However, the right to receive the foregoing refund will terminate one (1) year after completion of construction in each particular outlying section; thereafter, the Company may add new subscribers without pro rata refunds.

- F. Standard Installations.

A Standard Installation includes an aerial or buried service drop to bring the service from the Distribution Cable to the customer's premises and wiring into the first service outlet, provided that the service wire is 200 feet or less in length. Standard Installations

require surface (non-concealed) wiring on the customer premises. Standard Installation charges apply for all new customers or existing customers that move to a new location which has never had service. Service Drops in excess of 200 feet will be installed, with the subscriber responsible for the material plus labor costs of the portion of the installation above 200 feet in length.

Concealed Wiring is defined as wiring through a structure that is concealed within the walls, ceilings or doors to the points of outlet. For concealed wiring installation, customers will be required to make arrangements on their own.

13. RATES

As a result of "The Cable Communications Policy Act of 1984", the various rates and charges of the Company will not be regulated by the Town due to sufficient opportunity for competition. However, a list of all current rates and charges will be provided the Town at all times.

14. SECURITY FUND

Within ninety (90) days after the effective date of the Franchise, the Company shall deposit with the Town a bond, irrevocable letter of credit, or cash, as a security deposit in the amount of fifty-thousand dollars (\$50,000.00). The amount of the security fund may be reduced at the option of the Town to ten-thousand dollars (\$10,000.00) upon the completion of construction of the system. The security fund may be used to compensate the Town for any failure by the Company to perform its obligations under the Franchise including, but not limited to damages, losses, or costs, suffered by the Town by reason of the failure of the Company to satisfactorily complete and activate the system as provided herein.

The Town shall not draw upon the security fund until it shall have provided the Company with reasonable notice of the basis for the claim and an opportunity to be heard concerning the merits of the claim.

15. MISCELLANEOUS

A. Severability. If any section, subsection, sentence, clause, phrase or word of this Franchise, or other Franchise documents including the Company's application, should be held invalid or unconstitutional either by the FCC or any court of

competent jurisdiction, such section, subsection, sentence, clause, phrase or word, shall be deemed severable as a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions hereof.

B. Failure to Enforce Provisions. The Company shall not be excused from complying with any of the terms and conditions of this Franchise by any failure of the Town upon one or more occasions to insist upon or to seek compliance with any such terms or conditions.

C. Unauthorized Connections or Service. No other cable television system may be operated in the Town without specific written authority granted by the Board.

It shall be unlawful for any firm, person, group, company, corporation, or governmental body or agency, without the written consent of the Company, to possess or make any connection, extension, or division whether physically, acoustically, inductively, electronically, or otherwise, with or to any segment of this cable television system for any purpose whatsoever.

It shall be unlawful for any firm, person, group, company, corporation, or governmental body or agency to willfully interfere, tamper, remove, obstruct or damage any part, segment or content of the cable television system for any purpose whatsoever.

The violation of any of the foregoing paragraphs in this section shall subject the violator or violators to reimbursing the Company for losses incurred. Such reimbursement shall be in addition to any other legal remedies which the Company may have regarding the aforementioned violations.

D. Compliance with Applicable Laws. The Franchisee shall at all times during the life of this Agreement be subject to all laws, statutes, codes, ordinances, rules or regulations applicable to its business. The Town shall not pass any ordinances inconsistent with the rights granted in this Franchise.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals on the aforesaid day and year.

WITNESS:

Marilyn Somero

Marilyn Somero

Marilyn Somero

WITNESS:

Marilyn Somero

TOWN:

By: George H. Lawrence
Its Selectman

By: Richard G. Hay
Its Selectman

By: James E. Coffey
Its Selectman

COMPANY:

By: [Signature]
Its President

STATE OF NEW HAMPSHIRE

HILLSBOROUGH

, SS

November 23

, 1987

Personally appeared the above-named Selectmen of the Town of New Ipswich, New Hampshire, and acknowledged the foregoing instrument to be their free act and deed in their said capacity and the free act and deed of the Town.

Before me,

Marilyn E. Somero
Notary Public

MY COMMISSION EXPIRES 11/2/88