

TOWN OF ORFORD FRANCHISE AGREEMENT

This Franchise Agreement (this “Franchise”) is between the Town of Orford, New Hampshire hereinafter referred to as “Franchising Authority” and Topsham Communications, LLC, East Corinth, Vermont hereinafter referred to as “Grantee.”

The Franchising Authority, having determined that the financial, legal, and technical ability of the Grantee is reasonably sufficient to provide services, facilities, and equipment necessary to meet the future cable-related needs of the community, desires to enter into this Franchise Agreement with the Grantee for the construction and operation of a cable system on the terms set forth herein.

SECTION I

Definition of Terms

- 1.1 Terms** For the purpose of this Franchise, the following terms, phrases, words, and abbreviations shall have the meanings ascribed to them below. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the single number, and words in the singular number include the plural number:
- A. “Basic Cable” is the lowest priced tier of service that includes the retransmission of local broadcast television signals. This service includes, at a minimum, over-the-air channels and any local access productions.
 - B. “Cable Act” collectively means the Cable Communications Policy Act of 1984 and the Cable Television Consumer Protection and Competition Act of 1992, as amended by the Telecommunications Act of 1996.
 - C. “Cable Services” shall mean (A) the transmission to Subscribers of (i) video programming, or (ii) other programming service, and (B) Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service. Service shall also include parental control capability and addressable technology.
 - D. “Cable System” shall mean a system of transmission paths and associated signal generation, reception, and control equipment and other types of communication equipment which provide cable and non-cable services to the Town.

- E. "FCC" means Federal Communications Commission or successor governmental entity thereto.
- F. "Franchise" shall mean the 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.
- G. "Franchising Authority" means the Town of Orford, or the lawful successor, transferee, or assignee thereof.
- H. "Grantee" means Topsham Communication, LLC, or the lawful successor, transferee, or assignee thereof.
- I. "Gross Revenues" mean any revenue received by the Grantee from the operation of the Cable System to provide Cable Services in the Service Area, provided, however, that such phrase shall not include any fees or taxes which are imposed directly or indirectly on any Subscriber thereof by any governmental unit or agency, and which are collected by the Grantee on behalf of such governmental unit or agency.
- J. "Person" means an individual, partnership, association, joint stock company, trust, corporation, or governmental entity.
- K. "Public Way" shall mean the surface of, and the space above and below, any public street, highway, freeway, bridge, land, path, alley, court, boulevard, sidewalk, parkway, way, lane, public way, drive, circle, or other public right-of-way, including but not limited to, public utility easements, dedicated utility strips, or rights-of-way dedicated for compatible uses and any temporary or permanent fixtures or improvements located thereon now or hereafter held by the Franchising authority in the Service Area which shall entitle the Franchising Authority and the Grantee to the use thereof 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 utility or public service use dedicated for compatible uses, and shall include other easements or rights-of-way as shall within their proper use and meaning entitle the Franchising Authority and the Grantee to the use thereof for the purposes of installing and operating the Grantee's Cable System over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments, and other property as may be ordinarily necessary and pertinent to the Cable System.

L. "Seasonal Home" means a home with no source of heat.

M. "Service Area" means the present municipal boundaries of the Franchising Authority, and shall include any additions thereto by annexation or other legal means.

N. "Subscriber" means a Person who lawfully receives services of the Cable System with the Grantee's express permission.

SECTION 2

Grant of Franchise

2.1 Grant The Franchising Authority hereby grants to the Grantee a nonexclusive Franchise which authorizes the Grantee to construct and operate a Cable system in, along, among, upon, across, above, over, under, or in any manner connected with Public Ways within the Service Area and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain, or retain in, on, over, under, upon, across, or along any Public Way and all extensions thereof and additions thereto, such poles, wires, cables, conductors, ducts, conduits, vaults, manholes, pedestals, amplifiers, appliances, attachments, and other related property or equipment as many be necessary or appurtenant to the Cable System. Nothing in this Franchise shall be construed to prohibit the Grantee from offering any service over its Cable System that is not prohibited by federal or state law.

2.2 Term The Franchise granted hereunder shall be for an initial term of 10 years commencing on the effective date of the Franchise as set forth below, unless otherwise lawfully terminated in accordance with the terms of this Franchise.

SECTION 3

Standards of Service

3.1 Conditions of Street Occupancy All transmission and distribution structures, poles, other lines, and equipment installed or erected by the Grantee pursuant to the terms hereof shall be located so as to cause a minimum of interference with the proper use of Public Ways and with the rights and reasonable convenience of property owners who own property that adjoins any of such Public Ways.

3.2 Restoration of Public Ways The Grantee shall give notice to the Town and the Town provides permission prior to disturbing any Public Way. If during the course of the Grantee's construction, operation, or maintenance of the Cable System there occurs any disturbance of any Public Way by the Grantee, it shall, at its expense and in a manner

approved by the Franchising Authority, replace and restore such Public Way to a condition reasonably comparable to the condition of the Public Way existing immediately prior to such disturbance. If Grantee fails within 30 days of written notice from Franchising Authority to do so, then Franchising Authority is specifically authorized to make the repairs and bill Grantee for all costs associated therewith. Failure of Grantee to pay Franchising authority such costs within 30 days of billing or within five days after a final written notice from Franchising Authority to Grantee, will be grounds for revocation of this Franchise by Franchising Authority.

3.3 Relocation at Request of the Franchising Authority Upon its receipt of reasonable advance notice, not to be less than five business days, unless it is an emergency situation, the Grantee shall, at its own expense, protect, support, temporarily disconnect, relocate in the Public Way, or remove from the Public Way, any property of the Grantee when lawfully required by the Franchising Authority by reason of traffic conditions, public safety, street abandonment, freeway and street construction, change of establishment of street grade, installation of sewers, drains, gas or water pipes, or any other type of structures or improvements by the Franchising Authority.

3.4 Relocation at Request of Third Party The Grantee shall, on the request of any Person holding a building moving permit issued by the Franchising Authority, temporarily raise or lower its wires to permit the moving of such building, provided: (a) the expense of such temporary raising or lowering of wires is paid by said Person, including, if required by the Grantee, making such payment in advance; and (b) the Grantee is given not less than 10 business days advance written notice to arrange for such temporary wire changes. If public funds are available to any Person using such street, easement, or right of way for the purpose of defraying the cost of any of the foregoing, the Franchise Authority may cooperate in making application for such funds on behalf of the Grantee.

3.5 Trimming of Trees and Shrubbery **The Grantee shall provide notice, in advance, to the Town and owners along the road where work is to be performed.** Grantee shall have the authority to trim trees upon and hanging over streets, alleys, sidewalks, and public places of the Grantor so as to prevent the branches of such trees from coming in contact with the wires and cables of Grantee; provided, however, all trimming shall be done at the expense of Grantee and all work will be done in accordance with any applicable state law and any Town ordinances and regulations. Nothing herein shall be construed as granting to the Grantee the right to enter onto or damage private property. It shall at all time be the responsibility of the Grantee to determine that it is operating properly within the Public Ways.

3.6 Safety Requirements Construction, installation, and maintenance of the Cable System shall be performed in an orderly and workmanlike manner. All such work shall be performed in substantial accordance with applicable FCC or other federal, state, and local

regulations and the National Electric Safety Code. The Cable System shall not unreasonably endanger or interfere with the safety of persons or property in the Service Area.

3.7 Auxiliary Power The Cable System shall incorporate equipment capable of providing standby powering of the headend for a minimum of twenty-four (24) hours upon failure of the power furnished by the electric utility company, unless for reasons of force majeure.

3.8 Aerial and Underground Construction In those areas of the Service Area where all of the transmission or distribution facilities of the respective public utilities providing telephone communications and electric services are underground, the Grantee likewise shall construct, operate, and maintain all of its transmission and distribution facilities underground. In those areas of the Service Area where the transmission or distribution facilities of the respective public utilities providing telephone communications, and electric services are both aerial and underground, the Grantee shall comply with the Town's subdivision restrictions, zoning and all other pertinent regulations.

A. **New Developments** The Franchising Authority shall provide the Grantee with written notice of the issuance of building or development permits for planned commercial/residential developments within the Service Area requiring underground of cable facilities. The Franchising Authority agrees to require as a condition of issuing the permit that developer give the Grantee access to open trenches for deployment of cable facilities and written notice of the date of availability of trenches. Such notice must be received by the Grantee at least 10 business days prior to availability. Developer shall be responsible for the digging and backfilling of all trenches. The Grantee shall be responsible for engineering, deployment labor, and cable facilities. Installation from utility easements to individual homes or other structure shall be at the cost of the home/building owner or developer unless otherwise provided.

3.9 Required Extensions of Service The Cable System as constructed as of the date of the passage and final adoption of this Agreement substantially complies with the material provisions hereof. Grantee is hereby authorized to extend the Cable System as necessary, as desirable, or as required pursuant to the terms hereof within the Service Area. If an area of town meets line extension criteria, installation of cable should be completed within 18 months.

3.10 Customer Charges for Extension of Service No customer shall be refused Cable Service arbitrarily.

Definition: Line extension is to be defined as causing an addition or modification of the Cable System (either trunk and/or feeder cable) to a customer or customers not

presently served. The length of the extension shall be measured from the nearest pole or underground access of the present Cable System (whether trunk or feeder) to the customer's primary receiving device, less 300 feet which is considered to normal installation length.

The Cable System shall provide the extension at no additional cost to the applicant if the requested line extension shall pass a sufficient number of dwelling units so as to yield an average "homes-per-mile" count of twenty (20), **OR** if the Cable System has received fifteen (15) verified customer orders within said one mile extension.

Each seasonal home shall count as one-half (1/2) of a home. Applicants requesting "line extension" for service in areas where "home-per-mile" count is less than twenty (20), or if the Cable System has received less than fifteen (15) verified customer orders within said one (1) mile extension; shall pay in advance a "Contribution in Aid on Construction."

Customers requesting line extension for service in areas where homes-per-mile count less than agreed upon number shall pay according to the following:

- The Grantee will provide an estimate of the construction expenses required to connect such households. Each proposed Line Extension will be engineered and estimated individually.
- The Grantee will then notify all customers along the proposed extension of the total cost estimate for the entire extension and the amount which the Grantee shall bear.
- The Grantee will provide the portion equal to one-fifteenth (1/15) cost for each customer within a continual route mile of cable. The remaining amount shall be borne by the customers along the route of the extension.

Example: If there were 5 customers on a proposed Line Extension of a mile in length and the cost was \$7,500, the Grantee would furnish 5/15ths of the cost (\$2,500), and the 5 customers would pay the remaining 5/15ths (\$5,000), or \$750 each.

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

- 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 expense, then the Grantee shall calculate the pro rata portion of earlier construction to be paid for by the subsequently requesting group. Upon payment thereof to the Grantee, such amount shall be refunded to the affected households. However, the right to receive the foregoing refund will terminate five years after completion of the

construction in each particular outlying section; thereafter the Grantee may add new subscribers without pro rata refunds.

In bringing Cable Service under this Franchise to an applicant's premises from the distribution system or any extension thereof, the Cable System shall furnish the normal service entrance drop and associated facilities required to complete the installation, in accordance with the system's current installation charges.

Line extension costs involving more than one applicant shall be computed on a pro rata basis.

If a line extension policy requires contributions in aid of construction, then that policy shall also allow for the rebating or reallocation of such contributions among original and new subscribers, if new subscribers connect to the extension within five years of the activation of the extension. The reallocation shall not be done until the end of the fifth year after activation of the extension; the rebates shall be paid to the subscriber of record at the time of rebate, and shall be paid as a cash rebate unless the subscriber's share is less than \$5.00.

The minimum service period for an applicant or applicants requesting a "line extension," or their successors and assigns, shall be one (1) year. The minimum seasonal service for applicants requesting a "line extension" shall be two (2) years with one (1) year of service provided. In such cases, the Cable System may require an advance payment in an amount not to exceed the equivalent of twelve (12) months service fee to be credited to the customer's account. If the customer elects to terminate the service prior to the expiration of the one-year service agreement, any moneys paid under the agreement shall become the property of the Cable System. However, should services be re-established within one (1) month from the date of termination, the remaining funds will be credited, less reconnection fee in accordance with the system's current installation charges shall be re-applied to the customer's account. This clause shall not apply on extensions that are provided at no additional cost to the applicant or applicants.

No line extension policy filed in accordance with this section shall specify customer contribution where there are in excess of 20 dwellings per mile.

3.11 Service to Public Buildings The Grantee shall, upon request, provide without charge, one outlet of Basic Service to those Franchising Authority offices, fire station(s), police station(s), and public school building(s) that are passed by its Cable System. The outlets of Basic Service shall not be used to distribute or sell services in or throughout such buildings, nor shall such outlets be located in areas open to the public. The Grantee shall not be required to provide an outlet to such buildings where the drop line from the feeder cable to said buildings or premises exceeds or unless the appropriate governmental entity

agrees to pay the incremental cost of such drop line in excess of 300 cable feet. If additional outlets of Basic Service are provided to such buildings, the building owner will pay as determined finally by the Grantee the usual installation fees associated therewith, including, but not limited to, labor and materials.

- A. The Grantee has no editorial control over programming shown on outlets provided to the public buildings as part of this franchise.

3.12 Emergency Use

- A. In accordance with and at the time required by the provisions of FCC Regulations Part 11, subpart D, Section 11.51 (h)(1), and as such provisions may from time to time be amended, the Grantee shall install, if it has not already done so, and maintain an Emergency Alert System (EAS) for use in transmitting Emergency Act Notifications (AN) and Emergency Act Terminations (EAT) in local and state-wide situations as may be designed to be an emergency by the Local Primary (LP), the State Primary (SP) and/or the State Emergency Operations Center (SEOC), as those authorities are identified and defined within FCC Reg. Section 11.51.
- B. The Franchising Authority shall permit only appropriately trained and authorized Persons to Operate the EAS equipment and shall take reasonable precautions to prevent any use of the Grantee's Cable System in any manner that results in inappropriate use thereof, or any loss or damage to the Cable System. Except to the extent expressly prohibited by law, the Franchising Authority shall hold the Grantee, its employees, officers and assigned harmless from any claims arising out of the emergency use of its facilities by the Franchising Authority, including, but not limited to, reasonable attorney's fees and costs, except for liability which arises from the grantee's negligence or failure of the Grantee's Cable System.

3.13 Emergency Override In the case of any emergency or disaster posing an imminent danger to the health or safety of the public, the Grantee, upon request of the Franchising Authority, shall make available its communication facilities in order to allow the Franchising Authority to communicate emergency information (and instructions) during the emergency or disaster period.

The Franchising Authority shall hold the Grantee, its agents, employees, officers and all hereunder, harmless from any and all claims arising out of the emergency use of its facilities by the Franchising Authority, including, but not limited to, reasonable attorney's fees and costs, except for liability which arises from the Grantee's negligence or failure of the Grantee's Cable System.

3.14 Local Access Channel Upon the effective date of this agreement and subject to applicable law, the Grantee shall make available to the Public Access Corporation and the

Town jointly, one shared regional upstream and one shared regional downstream channel to be used for access programming, education programming, and municipal programming.

3.15 Management and control of Access Programming and Facilities

- A. The access programming transmitted on the access channel shall be established on a first-come, first-served, non-discriminatory, non-commercial policy following all rules and regulations for use of such channels as adopted and established by the Access corporations.
- B. The educational programming transmitted on the access channel shall be the sole responsibility of the School Department. The municipal programming transmitted on the municipal channel shall be the sole responsibility of the Town.

3.16 Maintenance of Access Channels Signal Quality The Grantee shall monitor the system's access channels from the point of upstream transmission for technical quality and shall ensure that they are maintained at standards commensurate with those which apply to the system's commercial channels; provided, however, that this section shall not require Grantee to guarantee the technical quality of access users productions.

3.17 Customer Service and Complaint Resolution

- A. If service is interrupted for 24 hours or more due to Topsham Communication, LLC inability to provide service, the customer shall receive a credit on a per diem basis.
- B. During the term of this franchise and any renewal thereof, the company shall maintain a local presence for the purpose, among others, of receiving and resolving all inquiries and complaints regarding connection, disconnection, the quality of service, billing, equipment malfunctions, and similar matters. A 7 day, 24 hour live answering service will be provided to accommodate calls made outside normal business hours of the company. In lieu of a local office, the company shall maintain a toll-free telephone number to a distant office, and a local business payment facility. Adequate technical personnel will be based in East Corinth for the timely resolution of service requests.
- C. The following complaint resolution procedures will be followed:
 - All complaints shall be investigated within 24 hours and, if due to company's equipment, shall be repaired as soon as reasonably possible.
 - Notice for the procedures for reporting and resolving complaints will be given to each customer by the company at the time of initial installation of cable television service.
 - The Town will be provided, in advance, with materials related to complaint procedures, which shall meet the following standards:

(1) the company shall maintain a record of each complaint received from its subscribers and others, which record shall be retained for at least two years;

- (2) said record shall contain the nature and details of the complaint;
- (3) the record shall include the date of each complaint and the corrective action taken (and the dates thereof) together with comments as to whether the complaint was resolved to the complainant's satisfaction;
- (4) such records shall be open to the Board of Selectmen or its designee at reasonable times and upon giving reasonable notice;
- (5) any complaints which have not been resolved to the satisfaction of the complainant shall be referred to the Board of Selectmen or its designated agent; and
- (6) in all circumstances it shall be the duty of the company to act diligently and promptly to resolve complaints.

- The company will provide reasonable response, seven (7) days a week for all complaints and requests for repairs.
- D. Annually, every cable television system operator shall mail to each of its subscribers a notice which: (a) informs subscribers how to communicate their views to the cable company and to the office of the New Hampshire Attorney General, consumer protection and antitrust bureau; (b) states the responsibility of the office of the attorney general, consumer protection and antitrust bureau to receive and act on consumer complaints. Such notice shall be in nontechnical language, understandable by the general public, and in a convenient format. On or before January 30th of each year, the operator 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 in this section during the previous calendar year as required by this section.
- 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.

SECTION 4

Regulation by the Franchising Authority

4.1 Renewal of Franchise

- A. The Franchising Authority and the Grantee agree that any proceedings undertaken by the Franchising Authority that relate to the renewal of the Grantee's Franchise shall be governed by and comply with the provisions of Section 626 of the Cable Act, as amended, unless the procedures and substantive protections set forth therein shall be deemed to be preempted and superseded by the provisions of any subsequent provision of federal or state law.

B. In addition to the procedures set forth in said Section 626(a), the Franchising Authority agrees to notify the Grantee of all of its assessments regarding the identity of future cable-related community needs and interests, as well as, the past performance of the Grantee under the then current Franchise term. The Franchising Authority further agrees that such preliminary assessments shall be provided to the Grantee promptly so that the Grantee has adequate time to submit a proposal under Section 626(b) of the Cable Act and complete renewal of the Franchise prior to expiration of its term. Notwithstanding anything to the contrary set forth in this Section, the Grantee and the Franchising Authority agree that at any time during the term of the then current Franchise, while affording the public appropriate notice and opportunity to comment, the Franchising Authority and the Grantee may agree to undertake and finalize informal negotiations regarding renewal of the then current Franchise and the Franchising authority may grant a renewal thereof. The Grantee and the Franchising Authority consider the terms set forth in the Section to be consistent with the express provisions of Section 626 of the Cable Act.

4.2 Conditions of Sale If a renewal or extension of the Grantee's Franchise is denied or the Franchise is lawfully terminated, and the Franchising Authority either lawfully acquires ownership of the Cable System or by its actions lawfully effects a transfer of ownership of the Cable System to another party, any such acquisition or transfer shall be at the price determined pursuant to the provisions set forth in Section 627 of the Cable Act.

The Grantee and the Franchising Authority agree that in the course of a final determination of a lawful revocation of the Franchise, at the Grantee's request, which shall be made in its sole discretion, the Grantee shall be give a reasonable opportunity to effectuate a transfer of its Cable System to a qualified third party. The Franchising Authority further agrees that during such a period of time, it shall authorize the Grantee to continue to operate pursuant to the terms of its prior Franchise; however, in no event shall such authorization exceed a period of time greater than six months from the effective date of such revocation. If, at the end of that time, the Grantee is unsuccessful in procuring a qualified transferee or assignee of its Cable System which is reasonably acceptable to the Franchising Authority, the Grantee and the Franchising Authority may avail themselves of any rights they may have pursuant to federal or state law; it being further agreed that the Grantee's continued operation of its Cable System during the six month period shall not be deemed to be a waiver, nor an extinguishment of, any rights of either the Franchising Authority or the Grantee.

4.3 Transfer of Franchise The Grantee's right, title, or interest in the Franchise shall not be sold, transferred, assigned, or otherwise encumbered, other than to an entity controlling, controlled by, or under common control with the Grantee, without the prior consent of the Franchising Authority, such consent not to be unreasonably withheld. No such consent shall be required, however, for a transfer in trust, by mortgage, by other hypothecation, or

by assignment of any rights, title, or interest of the Grantee in the Franchise or Cable System in order to secure indebtedness. Within 30 days of receiving the request for transfer, the Franchising Authority shall, in accordance with FCC rules and regulations, notify the Grantee in writing of the information it requires to determine the legal, financial and technical qualifications of the transferee. If the Franchising Authority has not taken action on the Grantee's request for transfer within 120 days after receiving such request, consent by the Franchising Authority shall be deemed given.

SECTION 5

Books and Records

The Grantee agrees that the Franchising Authority upon reasonable notice to the Grantee may review such of its books and records at the Grantee's business office, during normal business hours and on a non-disruptive basis, as is reasonably necessary to ensure compliance with the terms hereof. Such records shall include, but shall not be limited to, any public records required to be kept by the Grantee pursuant to the rules and regulations of the FCC. Notwithstanding anything to the contrary set forth herein, the Grantee shall not be required to disclose information which it reasonably deems to be proprietary or confidential in nature. The Franchising Authority agrees to treat any information disclosed by the Grantee as confidential and only to disclose it to employees, representatives, and agents thereof that have a need to know, or in order to enforce the provisions hereof. The Grantee shall not be required to provide Subscriber information in violation of Section 631 of the Cable Act.

SECTION 6

Insurance and Indemnification

6.1 Insurance Requirements The Grantee shall maintain in full force and effect, at its own cost and expense, during the term of the Franchise, Commercial General Liability Insurance in the amount of \$1,000,000 combined single limit for bodily injury, and property damage and \$2,000,000 excess liability coverage with an insurance company approved by the Franchising Authority. The Grantee shall provide a Certificate of Insurance to the Franchising Authority within 60 days of execution of this agreement, designating the Franchising Authority as an additional insured. Such insurance shall be non-cancellable except upon 30 days prior written notice to the Franchising Authority. The insurance company shall be authorized to do business in New Hampshire.

6.2 Indemnification The Grantee agrees to indemnify, save and hold harmless, and defend the Franchising Authority, its officers, boards and employees, from and against any

liability for damages and for any liability or claims resulting from property damage or bodily injury (including accidental death), which arise out of the Grantee's construction, operation, or maintenance of its Cable System, including, but not limited to, reasonable attorneys' fees and costs, provided that the Franchising Authority shall give the Grantee written notice of its obligation to indemnify the Franchising Authority within 20 days of receipt of a claim or action pursuant to this Section. If the Franchising Authority determines that it is necessary for it to employ separate counsel, the costs for such separate counsel shall be the responsibility of the Franchising Authority.

SECTION 7

Enforcement and Termination of Franchise

7.1 Notice of Violation In the event that the Franchising Authority believes that the Grantee has not complied with the terms of the Franchise, it shall notify the Grantee in writing of the exact nature of the alleged noncompliance.

7.2 The Grantee's Right to cure or Respond The Grantee shall have 30 days from receipt of the notice described in Section 7.1: (a) to respond to the Franchising Authority, contesting the assertion of noncompliance, or (b) to cure such default, or (c) in the event that, by the nature of default, such default cannot be cured within the 30-day period, initiate reasonable steps to remedy such default and notify the Franchising Authority of the steps being taken and the projected date that they will be completed.

7.3 Public Hearing In the event that the Grantee fails to respond to the notice described in Section 7.1 pursuant to the procedures set forth in Section 7.2, or in the event that the alleged default is not remedied within 30 days or the date projected pursuant to 7.2 © above, the Franchising Authority shall schedule a public hearing to investigate the default. Such public hearing shall be held at the next regularly scheduled meeting of the Franchising Authority which is scheduled at a time which is no less than five business days therefrom. The Franchising Authority shall notify the Grantee in writing of the time and place of such meeting and provide the Grantee with an opportunity to be heard.

7.4 Enforcement Subject to applicable federal and state law, in the event the Franchising Authority, after such meeting, determines that the Grantee is in default of any provisions of the Franchise, the Franchising Authority may:

- A. Foreclose on all or any part of any security provided under this Franchise;
- B. Seek specific performance of any provisions, which reasonably lends itself to such remedy, as an alternative to damages;
- C. Commence an action at law for monetary damages or seek other equitable relief; or

- D. In the case of a substantial default of a material provision of the Franchise, declare the Franchising Authority to be revoked in accordance with the following:

The Franchising Authority shall give written notice to the Grantee of its intent to revoke the Franchise on the basis of a pattern of noncompliance by the Grantee, including one or more instances of substantial noncompliance with a material provision of the Franchise. The notice shall set forth the exact nature of the noncompliance. The Grantee shall have 30 days from such notice to object in writing and to state its reasons for such objection. In the event the Franchising Authority has not received a response satisfactory from the Grantee, it may then seek termination of the Franchise at a public meeting. The Franchising Authority shall cause to be served upon the Grantee, at least 10 days prior to such public meeting, a written notice specifying the time and place of such meeting and stating its intent to request such termination.

At the designated meeting, the Franchising Authority shall give the Grantee an opportunity to state its position on the matter, after which it shall determine whether or not the Franchise shall be revoked. The Grantee may appeal such determination to an appropriate court, which shall have the power to review the decision of the Franchising Authority “do novo” and to modify or reverse such decision as justice may require. Such appeal to the appropriate court must be taken within 30 days of the issuance of the determination of the Franchising Authority.

The Franchising Authority may, at its sole discretion, take any lawful action which it deems appropriate to enforce the Franchising Authority’s rights under the Franchise in lieu of revocation of the Franchise.

7.5 Technical Violations The parties hereby agree that it is not the Franchising Authority’s intention to subject the Grantee to penalties, fines, forfeitures or revocation of the Franchise for so-called “technical” breach(es) or violation(s) of the Franchise or local cable ordinance, which shall include, but are not limited to the following:

- A. In instances for matters where a violation or a breach by the Grantee of the Franchise or local cable ordinance was good faith error that resulted in no or minimal negative impact on the customers within the Service Area; or
- B. where there existed circumstances reasonably beyond the control of the Grantee and which precipitated a violation by the Grantee of the Franchise or local cable ordinance, or which were deemed to have prevented the Grantee from complying with a term or condition of the Franchise or local cable ordinance.

7.6 Bonds & Surety Grantee shall provide and maintain a performance bond in the amount of one million dollars (\$1,000,000).

7.7 Attorney's Fees The reasonable costs of any litigation incurred by the Franchising Authority to enforce the provisions of this Agreement against the Grantee shall be reimbursed to the Franchising Authority by the Grantee. Such costs shall include, but not be limited to, filing fees, costs of depositions, discovery, and expert witnesses, and all other expenses of suit, including reasonable attorneys' fees. The reimbursement of such costs shall be required only if a final judgment should be entered in favor of the Franchising Authority.

7.8 Revocation Reservation The Town reserves the right to revoke this Franchise and rescind all rights and privileges associated with it in the following circumstances:

1. The Town, after public hearing, determines that materially false or significantly misleading information was filed or otherwise furnished by the company.
2. If the company should default materially by omission or commission in the performance of any of its obligations under this Franchise and fails to cure the default within 30 days after receipt of written notice of the default from the Town.
3. If a petition is filed by or against the company under the Bankruptcy Act, or any other insolvency or creditor's rights law, state or federal, and the company shall fail to have it dismissed. If the bankruptcy or other insolvency petition is filed against the company, the company shall have 120 days to have it dismissed or satisfy the Town that its pendency does not jeopardize the Town's interest in this Franchise.
4. If the company arbitrarily ceases to provide service over the Cable Television System or fails to reinstate service after notice.

SECTION 8

Miscellaneous Provisions

8.1 Use of Grantees Equipment by Franchising Authority Subject to any applicable federal regulation or tariffs, the Franchising Authority shall have the right to make additional use, for any public purpose, of any poles or conduits controlled or maintained exclusively by or for the Grantee in any public way; provided that a) such use by Franchising Authority does not interfere with a current or future use by the Grantee, and b) the Franchising Authority holds the Grantee harmless against and from all claims, demands, costs, or liabilities of every kind and nature whatsoever arising out of such use of said poles or conduits, including, but not limited to reasonable attorney fees and costs.

8.2 Documents Incorporated and Made Part Hereof The following documents shall be incorporated herein by this reference and in the case of a conflict or ambiguity between them, the document of latest date shall govern:

- A. Any applicable enabling ordinance in existence as of the date hereof; and

- B. any Franchise agreement, amendment or supplement, jointly approved in writing, between Grantee and Franchising Authority reflecting the renewal of the Franchise, if any.

8.3 Pre-emption If the FCC, or any other federal or state body or agency shall now or hereafter exercise any paramount jurisdiction over the subject matter of the Franchise, then to the extent such jurisdiction shall preempt and supersede or preclude the exercise of the like jurisdiction by the Franchising Authority, the jurisdiction of the Franchising Authority shall cease and no longer exist.

Likewise, if during the term of this Agreement, the jurisdiction or authority of the Franchising Authority is expanded or enhanced by the above-mentioned authorities, it is understood that the Franchising Authority will be permitted to exercise same in pursuit of public health, safety, or welfare.

8.4 Unauthorized Reception Under State (RSA 637:8) and Federal Law, it is illegal for any person, firm, or corporation to create or make use of any unauthorized connection, whether physically, electrically, acoustically, inductively or otherwise, with any part of the Cable System without express consent of the Grantee. Should grantee decide to prosecute any of the above names for such illegal activity, it does so at its own expense. Any conviction and subsequent penalties for such illegal activity shall be in accordance with state and federal law.

8.5 Actions of Parties In any action by the Franchising Authority or the Grantee that is mandated or permitted under the terms hereof, such party shall act in a reasonable, expeditious, and timely manner. Furthermore, in any instance where approval or consent is required under the terms hereof, such approval or consent shall not be unreasonably withheld.

8.6 Force Majeure The Grantee shall not be held in default under, or in noncompliance with, the provisions of the Franchise, nor suffer any enforcement or penalty relating to noncompliance or default (including termination, cancellation or revocation of the Franchise), where such noncompliance or alleged defaults occurred or were caused by strike, riot, war, earthquake, flood, tidal wave, unusually severe rain or snow storm, hurricane, tornado or other catastrophic act of nature, labor disputes, governmental, administrative or judicial order or regulation or other event that is reasonably beyond the Grantee's ability to anticipate and control.

8.7 Equal Protection In the event the Franchising Authority enters into a Franchise, permit, license, authorization, or other agreement of any kind with any other Person or entity other than the Grantee to enter into the Franchising Authority's Public Way for purpose of constructing or operating a Cable System or providing Cable Service to any part

of the Service Area, the material provisions thereof shall be reasonably comparable to those contained herein, in order that one operator not be granted an unfair competitive advantage over another, and to provide all parties equal protection under the law.

8.8 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 seek compliance with any such term or condition.

8.9 Notice Unless expressly otherwise agreed between the parties, every notice or response required by this Franchise to be served upon the Franchising Authority or the Grantee shall be in writing, and shall be deemed to have been duly given to the required party five business days after having been posted in a properly sealed and correctly addressed envelope when hand delivered or sent by certified or registered mail, postage paid.

The notices or responses to the Franchising Authority shall be addressed as follows:

*Board of Selectmen
Town of Orford
2529 Route 25A
Orford, NH 03777*

The notices or responses to the Grantee shall be addressed as follows:

*Topsham Communications, LLC
Charles Davenport, General Manager
PO Box 1075, 113 Fairground Road
East Corinth, VT 05040*

The Franchising Authority and the Grantee may designate such other address or addresses from time to time by giving notice to the other.

8.10 Descriptive Headings The captions to Sections contained herein are intended solely to facilitate the reading thereof. Such captions shall not affect the meaning or interpretation of the text herein.

8.11 Severability If any Section, sentence, paragraph, term, or provision hereof is determined to be illegal, invalid, or unconstitutional, by any court of competent jurisdiction or by any state or federal regulatory authority having jurisdiction thereof, such determination shall have no effect on the validity of any other Section, sentence,

paragraph, term or other provision hereof, all of which will remain in full force and effect for the term of the Franchise, or any renewal or renewals thereof.

8.12 Effective Date The effective date of the Franchise is _____, pursuant to the provisions of applicable law. This Franchise shall expire on _____, unless extended by the mutual agreement of the parties.

IN WITNESS WHEREOF, the parties have entered into this Franchise Agreement on

_____.

Orford Board of Selectmen

Topsham Communications, LLC

John Bouzoun, Chairman

Charles Davenport, General Manager

Paul Dalton, Selectman

Thomas Steketee, Selectman