ORDINANCE NO. BL2010-614

An ordinance amending Chapters 6.08 and 6.10 of the Metropolitan Code of Laws pertaining to the organizational structure governing the provision of education, community, and arts television programming.

NOW, THEREFORE, BE IT ENACTED BY THE COUNCIL OF THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY:

Section 1. Chapter 6.10 of the Metropolitan Code of Laws is hereby repealed in its entirety and the Public, Educational and Governmental Access Oversight Committee is hereby abolished on the ninetieth (90th) day following the effective date of this Ordinance.

Section 2. Metropolitan Code § 6.08.080(E) is hereby repealed in its entirety and the Community Access Corporation is directed to take such actions, within ninety (90) days of the effective date of this Ordinance, as may be necessary under the laws of the State of Tennessee to dissolve and cease to exist.

Section 3. Metropolitan Code § 6.08.080 is hereby amended by adding the following new subsection (G):

"G. Nashville Education, Community, and Arts Television Corporation.

1. The name of the Metropolitan Educational Access Corporation addressed in section 6.08.080(F) shall be changed to Nashville Education, Community, and Arts Television Corporation.

2. The Metropolitan Educational Access Corporation is directed to amend and restate its charter to reflect the change of its name to Nashville Education, Community, and Arts Television Corporation and incorporate the provisions of this section.

3. It is the intent of the Metropolitan Government to ensure that the public and educational access channels are governed by an independent, nonprofit corporation, termed the "Nashville Education, Community, and Arts Television Corporation" ("NECAT"), such that these channels may be free of censorship, partisan politics, and available for all forms of public expression, community information, and educational programming for persons of all ages.

4. Within ninety (90) days of the effective date of this section, NECAT shall prepare and submit to the Metropolitan County Council for approval by resolution on the advice of the CATV special committee, a proposed amended and restated charter for the NECAT as a not-for-profit corporation under the general corporation laws of the

State of Tennessee. The amended and restated charter for the NECAT shall be structured so that it will meet the appropriate criteria for a nonprofit organization under the federal Internal Revenue Code and rules and shall include, but not be limited to, the following:

a. That the voting members of the board of directors of the NECAT shall be increased from seven (7) to eleven (11) qualified persons, each of whom shall serve for a term of three years or until their successors have been duly appointed and confirmed.

i. The seven (7) current directors of the Metropolitan Educational Access Corporation, as of the effective date of this section, shall continue to serve as directors of NECAT until the expiration of their terms, after which their successors shall be appointed for terms of three (3) years.

ii. The initial terms of two (2) of the four (4) additional voting members of the board of directors authorized by this section shall expire on February 5, 2011, after which their successors shall be appointed for terms of three (3) years.

iii. The initial terms of the remaining two (2) of the four (4) additional voting members shall expire on February 5, 2012, after which their successors shall be appointed for terms of three (3) years.

iv. The voting members of the board of directors of NECAT shall be appointed by the Metropolitan County Mayor and confirmed by the Council. Two (2) voting members of the Board shall be community members who have production experience involving use of the studio used by NECAT.

v. No agent, employee or representative of a franchisee, nor any officer or employee of the Metropolitan Government shall be qualified to serve as a voting member of the board of directors of NECAT. In addition to the eleven (11) voting members, the Mayor shall designate one (1) employee of the Metropolitan Government to serve as a nonvoting ex officio member of the board of directors of NECAT.

vi. Any vacancy occurring during the term of a member shall be filled for the unexpired term in the same manner as the original appointment.

b. That the functions of NECAT shall include, but not be limited to, the following:

i. To devise, establish and administer all rules, regulations and procedures pertaining to the use and schedule of the public and educational access channels;

ii. To hire and supervise staff of NECAT;

iii. To develop additional sources of funding from public and private sources, such as foundation or federal or state grants, to further public and educational programming.

iv. To develop and promote the use of such public and educational access channels by citizens and all schools, colleges, universities and other organizations with educational missions within the franchise area;

v. The Board for NECAT has the responsibility for defining the mission respectively for Education, Community and Arts television channels. The Board will be committed to developing programming guidelines that are compliant with applicable law, including the FCC regulations. The Board shall establish separate Committees of the Board for each of the channels (Education, Community Access, and Arts). Committee membership may include interested and qualified volunteers in addition to Board members to screen and approve programming content; and

vi. To perform such other functions relevant to the public and educational access channels as may be appropriate.

c. That the members of NECAT Board shall be required to comply with the ethics provisions of Chapter 2.222 of the Metropolitan Code of Laws and Mayor Karl F. Dean Executive Orders Nos. 006 and 007, and any subsequent Executive Orders of the Mayor of the Metropolitan Government on Ethics.

5. After the Metropolitan County Council approves the proposed amended and restated charter of NECAT, the amended and restated charter shall be filed with the Secretary of State, State of Tennessee. After same has been issued by the Secretary of State, it shall be recorded in the office of the registrar of Davidson County. The Director of the Department of Metropolitan Finance shall advance the necessary filing and recording fees.

6. NECAT shall allow the Director of the Department of Metropolitan Finance or his duly authorized agent full and complete access to any of its books, records, accounts, financial statements, and other like material for the purpose of auditing in such manner as he may deem appropriate. NECAT shall annually obtain an audit of

its financial statements by a qualified and independent accounting firm approved by the Director of Finance.

7. In no event shall NECAT have any authority or control of government access television, which is managed and operated by the Metropolitan Department of Information Services.

8. Public and educational access production facilities and equipment owned or leased by the Metropolitan Government shall be managed and operated by the Metropolitan Department of Information Technology Services. Nothing herein shall be construed to give the Department of Information Technology Services any control over the content of public or educational access programming.

9. NECAT shall submit channel and/or bandwidth allocation recommendations to the CATV Special Committee. The CATV Special Committee shall allocate and coordinate access to channel and/or bandwidth capacity provided pursuant to the requirements imposed by law or by agreement upon owners and operators of franchises for cable communications, provided such allocation and coordination of access shall not become effective unless and until ratified by the council by resolution.

Section 4. Notwithstanding any of the foregoing, and any general rule of construction to the contrary notwithstanding, this Ordinance shall be liberally construed to effect the purpose of this Ordinance and applicable state and federal law. If any provision in this Ordinance is found to be ambiguous, an interpretation consistent with applicable state and federal law that would render the provision valid shall be favored over any interpretation that would render it invalid.

Section 5. If any provision of this Ordinance, or the application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions of this Ordinance, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, shall not be affected thereby.

Section 6. This Ordinance shall take effect from and after its passage, the welfare of The Metropolitan Government of Nashville and Davidson County requiring it.

RECOMMENDED BY:

Keith Durbin, Director
Information Technology Services

INTRODUCED BY:

Members of Council

APPROVED AS TO AVAILABILITY
OF FUNDS:

Richard Riebeling, Director
Department of Finance

APPROVED AS TO FORM
AND LEGALITY:

Assistant Metropolitan Attorney