

**A CABLE FRANCHISE AGREEMENT BETWEEN
THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON
COUNTY, TENNESSEE
AND**

DIGITAL ACCESS CORPORATION OF TENNESSEE, INC

October 17, 2000

THIS CABLE FRANCHISE AGREEMENT (the "Franchise Agreement") is entered into by and between the Metropolitan Government of Nashville and Davidson County, Tennessee ("Grantor"), and Digital Access Corporation of Tennessee, Inc. ("Grantee").

WHEREAS, Grantee has asked Grantor to grant Grantee a nonexclusive Franchise to construct, install, maintain and operate a cable communications system in Grantor; and

WHEREAS, the construction, installation, maintenance and operation of such a Cable System involves the occupation of and placement of private commercial facilities in the Public Rights-of-Way within Grantor; and

WHEREAS, Grantor has considered the financial, technical and legal qualifications of Grantee, and has determined that Grantee is fit, willing and able to construct, operate and maintain a Cable System within the Franchise Area and that Grantee's plans for constructing, operating and maintaining its Cable System are adequate, in a full public proceeding affording due process to all parties; and

WHEREAS, Grantor has relied on Grantee's representations and has considered the information that Grantee has presented to it; and

WHEREAS, based on Grantee's representations and information, the Grantor Council has determined that, subject to the provisions of Chapter 6.08 of the Code of the Metropolitan Government of Nashville and Davidson County, known as the Cable Communications Franchise and Regulations (the "Cable Ordinance"), and the terms and conditions set forth herein, the grant of a nonexclusive Franchise to Grantee on the terms and conditions herein and subject to applicable law, is consistent with the public interest; and

WHEREAS, Grantor and Grantee have reached agreement on the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of Grantor's grant of a Franchise to Grantee; Grantee's promise to provide Cable Service to residents of Grantor pursuant to and consistent with the Cable Ordinance, the terms and conditions set forth herein, the promises and undertakings herein, and other good and valuable consideration, the receipt and the adequacy of which is hereby acknowledged,

THE SIGNATORIES DO HEREBY AGREE AS FOLLOWS:

1. **DEFINITIONS.**

For purposes of this Franchise Agreement, the definitions appearing in the Cable Ordinance are applicable herein when used herein, unless expanded in this Franchise Agreement, in which case the expanded definition shall apply. In addition to the foregoing, the terms, phrases, words, abbreviations and their derivations set out in this section, shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future tense; words in the plural number include the singular number; words in the singular number include the plural number; and the masculine gender includes the feminine gender. Unless otherwise expressly stated, words not defined herein shall be given the meaning set forth in applicable law and, if not defined therein, the

words shall be given their common and ordinary meaning. The words "shall" and "will" are always mandatory and not merely directory. The word "may" is directory and discretionary, and not mandatory.

(a) **Access Channel:** Any channel on a Cable System set aside by Grantee for non-commercial public, educational, or governmental use.

(b) **Actual Cost:** The cost to Grantee of materials and labor necessary to install and construct fiber-optic lines, coaxial cable and/or equipment.

(c) **Affiliate:** Subject to the limitations contained in the definition of Affiliate in Section 8.08.020 of the Cable Ordinance, any Person who owns or controls, is owned or controlled by, or in under common ownership or control with a franchisee.

(e) **Basic Cable Service:** The lowest priced Service Tier that contains the retransmission of all signals of locally-received analog television broadcast stations provided to any Subscriber (except a signal secondarily transmitted by a satellite carrier beyond the local service area of such stations, regardless of how such signal is ultimately received by the Cable System), any public, educational and governmental programming required by this Franchise Agreement to be carried on Basic Cable Service, and any additional video programming signals or service added to Basic Cable Service by Grantee.

(f) **Cable Act:** The Cable Communications Policy Act of 1984, 47 U.S.C. Sections 521 et seq., as amended from time to time.

(g) **Cable Commission:** The CATV Special Committee as defined in the Cable Ordinance.

(h) **Cable Modem:** An electronic device, commonly referred to as such, and at a minimum, containing a modulator and demodulator, tuner, interface, media access control mechanism and CPU, which acts as an interface between a Subscriber's customer premises equipment and the Cable System and is capable of converting analog signals to digital signals and digital signals to analog signals, thereby allowing data communications to be carried over Cable System facilities.

(i) **Cable Ordinance:** Chapter 6.08 of the Code of Grantor, as it may be amended from time to time.

(j) **Cable Service:** (i) The one-way transmission to Subscribers of video programming or other programming services; (ii) Subscriber interaction, if any, which is required for the selection of such video programming or other programming service; and (iii) any other lawful non-video communications services provided over, or derived from operation of, the Cable System, but only to the extent consistent with the definition of "Cable Service" pursuant to applicable federal or State law or regulations, and further provided that Grantee includes all revenues derived therefrom in Gross Revenues, to the extent the incumbent providers of such services pay

franchise fees for such services.

(k) **Cable System:** A facility consisting of a set of closed transmission paths and associated signal generation, reception and control equipment that is designed to provide Cable Service which includes video programming and which is provided to multiple Subscribers within Grantor, but such term does not include (i) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (ii) a facility that serves Subscribers without using any Public Rights-of-Way; (iii) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Communications Act, except that such facility shall be considered a Cable System if such facility is used in the transmission of video programming directly to Subscribers; (iv) an open video system that complies with 47 U.S.C. § 573; or (5) any facilities of any electric utility used solely for operating its electric utility system. A reference to the Cable System refers to any part thereof, including, without limitation, Converters. The foregoing definition of "Cable System" shall not be deemed to circumscribe or limit the valid authority of Grantor to regulate or franchise the activities of any other communications system or provider of communications services to the full extent permitted by law.

(l) **Control:** The legal or practical ability to exert actual working control over the affairs of Grantee, either directly or indirectly, whether by contractual agreement, majority ownership interest, any lesser ownership interest, or in any other manner.

(m) **Converter:** An electronic device which may serve as an interface between the Cable System and a Subscriber's television receiver or other terminal equipment, and which may perform a variety of functions, including signal security, de-scrambling, electronic polling, frequency conversion and channel selection.

(n) **Drop:** The cable that connects the ground block on the Subscriber's residence

(o) **Educational Access Channel:** Any channel on a Cable System set aside by Grantor for educational use.

(p) **FCC:** The Federal Communications Commission, its designee, or any successor governmental entity thereto.

(q) **Franchise:** A non-exclusive authorization granted in accordance with the Cable Ordinance to construct, operate, and maintain a Cable System along the Public Rights-of-Way and provide Cable Service within all or a specified area of metropolitan Nashville and Davidson County. Unless otherwise provided in this franchise agreement, any such authorization, in whatever form granted, shall not mean or include or be in lieu of, any franchise or permit required for the privilege of transacting and carrying on a business within metropolitan Nashville and Davidson County, Tennessee as required by the ordinances and laws of Grantor, or for

attaching devices to poles or other structures, whether owned by Grantor, Nashville Electric Services or a private entity, or for excavating or performing other work in or along Public Rights-of Way.

(r) **Franchise Agreement:** This contract and any amendments, exhibits or appendices hereto.

(s) **Franchise Area:** The entire present territorial limits of Grantor and any area annexed thereto during the term of the Franchise.

(t) **Government Access Channel:** Any channel on a Cable System set aside by Grantor for government use.

(u) **Grantor:** The Metropolitan Government of Nashville and Davidson County, and any agency, department or agent thereof.

(v) **Grantor Code:** The code of the Metropolitan Government of Nashville and Davidson County.

(w) **Grantor Council:** The Council of the metropolitan government of Nashville and Davidson County, or any lawful successor thereto.

(x) **Grantee: Digital Access Corporation of Tennessee, Inc.,** a Delaware Corporation, and its lawful and permitted successors, assigns, and transferees.

(y) **Gross Revenue:** Any and all revenues of any kind or nature, as determined in accordance with generally accepted accounting principles, derived by Grantee, its Affiliates, or any Person in which Grantee has a financial interest, or by any other entity that is a cable operator of a Cable System, from the operation of Grantee's Cable System for the provision of Cable Service in the Franchise Area, including any other facilities associated therewith. Gross revenues include, by way of illustration and not limitation (i) periodic fees and charges to Subscribers for any basic, optional, premium, per-channel, or per-program service, (ii) installation, disconnection, reconnection, maintenance, and change-in-service fees, (iii) leased channel fees, (iv) late fees and administrative fees, (v) fees, payments, or other consideration received from video programmers for carriage of video programming on the Cable System, (vi) revenues from rentals or Sales of Converters or other Cable Service equipment, (vii) Cable Service advertising revenues, (viii) barter, (ix) revenues from program guides, (x) revenues from the Sale or carriage of, or lease of capacity for, any other lawful communications service authorized to be provided by this Franchise Agreement, including information, bypass or other telecommunications services, (xi) and revenues from home shopping and bank-at-home channels provided, however, that any such revenue from (x) and (xi) shall not be included in Gross Revenue to the extent Grantee otherwise pays compensation or fees on such revenue consistent with Section 2(a)(2) - (3) or such compensation or fees is not levied in a reasonable competitively neutral non-discriminatory fashion on other providers.

Gross revenues shall be the basis for computing the franchise fee under the Franchise granted by this Franchise Agreement. Gross revenues shall not include (i) programming revenues of any Affiliate of Grantee whose programming is carried on the Cable System where such revenues are paid to said Affiliate by Grantee and recovered by Grantee through charges to Subscribers that are included in Gross Revenues, (ii) the revenues of any Affiliate of Grantee that has been granted a separate franchise by Grantee and whose revenues are thereby subject to a separate franchise fee, (iii) to the extent consistent with generally accepted accounting principles, actual bad debt write-offs (provided, however, that all or any part of any such actual bad debt that is written off but subsequently collected shall be included in Gross Revenues in the period collected), and (iv) any taxes on services furnished by Grantee which are imposed directly on any Subscriber or User by the State, Grantor, or other governmental unit and which are collected by Grantee on behalf of said governmental unit provided, however, that a franchise fee is not such a tax.

(z) **Institutional Network or I-Net System:** The dark optical fiber provided by Grantee as described and set forth in Exhibit "A".

(aa) **Leased Access Channels:** Any channels on the Cable System which are designated or dedicated for use by a Person unaffiliated with Grantee pursuant to 47 U.S.C. § 532.

(bb) **Node:** The transition point between optical light transmission (fiber-optic cable) and the RF transmission (coaxial cable) of video and data signals being delivered to and received from Subscriber's homes, or in the case of the Institutional Network, signals being delivered to and received from Institutional Network User sites and all necessary equipment related to such transition point.

(cc) **PEG:** Non-commercial public, educational and/or governmental access.

(dd) **Person:** An individual, partnership, association, joint stock company, joint venture, domestic or foreign corporation, stock, or non-stock corporation, limited liability company, professional limited liability corporation, or organization of any kind or any lawful successor thereto or transferee thereof, but such term does not include Grantor or the Cable Commission.

(ee) **Public Access Channel:** Any channel on a Cable System set aside by Grantee for use by the general public, including groups and individuals, and which is available for such non-commercial use on a non-discriminatory basis.

(ff) **Public Rights-of-Way:** The surface, the air space above the surface, and the area below the surface of any public street, highway, lane, path, alley sidewalk, boulevard, drive, bridge, tunnel park, partway, waterway, easement, or similar property in which Grantor now or hereafter

holds any property interests, which, consistent with the purposes for which it was dedicated, may be used for the purpose in installing and maintaining a Cable System. Provided, however, Public Rights-of Way shall not be deemed to be a representation or guarantee by Grantor that its interest or other right to control the use of such property is sufficient to permit its use for such purposes, and Grantee shall be deemed to gain only those rights to use as are properly in metropolitan Nashville and Davidson County, Tennessee and as Grantor may have the undisputed right and power to give.

(gg) **Sale:** Any sale, exchange, or barter transaction.

(hh) **School:** Any public educational institution, including primary and secondary Schools, colleges and universities.

(ii) **Service Tier:** A package of two or more Cable Services for which a separate charge is made by Grantee, other than a package of premium and pay-per-view services that is also sold on an a la carte basis.

(jj) **State:** The State of Tennessee, its agencies and departments.

(kk) **Subscriber:** Any Person who legally receives any service delivered over a Cable System.

(ll) **Telecommunications Ordinance:** Chapter 2.26 of the Code of Grantor, and, Grantor Ordinance No. 094-1103.

(mm) **Transfer:** Any transaction in which (i) any ownership or other right, title, or interest of fifty (50) percent or more in Grantee, its Franchise, or its Cable System is sold, assigned, leased, sublet, or otherwise transferred, either directly or indirectly, in whole or in part, or any lesser ownership, right, title or interest is sold, assigned, leased, sublet, or otherwise transferred to a Person holding a minority interest in Grantee, its Franchise, or its Cable System such that such Person would hold fifty (50) percent or more interest upon consummation of such transaction, or (ii) there is any change, acquisition, or Transfer of Control of Grantee, or (iii) the rights and/or obligations held by Grantee under its Franchise are transferred, directly or indirectly, to another party, or (iv) any change or substitution occurs in the managing general partners of Grantee.

(nn) **User:** A Person or organization utilizing a channel or equipment and facilities for purposes of producing or transmitting material, as contrasted with the receipt thereof in the capacity of a Subscriber.

2. GRANT OF AUTHORITY; LIMITS AND RESERVATIONS.

(a) Grant of Authority:

(1) Subject to the terms and conditions of this Franchise Agreement and the Cable Ordinance, Grantor hereby grants Grantee the right to own, construct, operate and maintain a Cable System along the Public Rights-of-Way within the Franchise Area, for the sole purpose of providing Cable

Service. No privilege or power of eminent domain is bestowed by this grant; nor is such a privilege or power bestowed by this Franchise Agreement. This Franchise Agreement does not confer any rights other than as expressly provided herein or as mandated by federal, State or local law.

(2) This Franchise authorizes only the use of Public Rights-of-Way for the operation of a Cable System providing Cable Service. Therefore, the grant of this Franchise and the payment of franchise fees hereunder shall not exempt Grantee from the obligation to pay compensation or fees for the use of Grantor property, both real and personal, other than Public Rights-of-Way, or that Grantee wishes to occupy for purposes other than the provision of Cable Service; provided, however, only to the extent such compensation or fees are required by applicable federal law, State law or local ordinance.

(3) This Franchise Agreement authorizes only the use of the Public Rights-of-Way for the operation of a Cable System, and does not take the place of any other certificate, license, permit or approval which might be required of Grantee by law or regulation. Prior to commencing any construction required by this Franchise Agreement or undertaking any other actions requiring Grantor approval, Grantee shall obtain and hereby agrees fully to comply with all applicable permit and license requirements.

(b) Area Served:

(1) The Franchise is granted for the Franchise Area defined herein.

(2) Subject to the provisions of the Cable Ordinance, Grantee shall build its Cable System so that it is able to provide Cable Service to all areas located in the Franchise Area as they existed on the Effective Date of this Franchise Agreement. Grantee must build the Cable System so that Grantee can extend service to residents of Grantor, including residents located in areas which may be annexed in the future unless this requirement is waived in writing by Grantor.

(c) Term: The Franchise and this Franchise Agreement shall extend for a term of fifteen (15) years, commencing on the date accepted below by Grantee, unless the Franchise is earlier revoked as provided herein or in the Cable Ordinance.

(d) Grant Not Exclusive: The Franchise and the right it grants to use and occupy the Public Rights-of-Way shall not be exclusive, and Grantor reserves the right to grant other franchises for similar uses or for other uses of the Public Rights-of-Way, or any portions thereof, to any Person, or to make any such use itself, at any time during the term of this Franchise Agreement, with or without a franchise.

(e) Franchise Agreement Subject to Other Laws: This Franchise Agreement is subject to and shall be governed by all applicable provisions of federal, State, and local law.

(f) Franchise Agreement Subject to Exercise of Police Powers: All rights and privileges granted herein are subject to the police powers of Grantor and its rights under applicable laws and regulations to exercise its governmental powers to

their full extent and to regulate Grantee and the construction, operation and maintenance of Grantee's Cable System, including, but not limited to, the right to adopt and enforce additional ordinances and regulations as Grantor shall find necessary in (i) the exercise of its police powers, (ii) the right to adopt and enforce applicable zoning, building, permitting and safety ordinances and regulations, (iii) the right to adopt and enforce ordinances and regulations relating to equal employment opportunities, and (iv) the right to adopt and enforce ordinances and regulations containing right-of-way, telecommunications, utility and cable television consumer protection and service standards and rate regulation provisions.

(g) Customer Service Standards: Grantee shall satisfy the cable customer service standards and consumer protection standards applicable to the provision of Cable Service set forth in the Cable Ordinance, consistent with the Cable Act and the rules and regulations of the Federal Communications Commission, as are amended or enacted from time to time.

(h) Effective Date: This Franchise Agreement shall become effective (i) after all conditions precedent to its execution are satisfied, (ii) it has been approved by Grantor Council in accordance with applicable law, and (iii) it has been accepted and signed by Grantee and Grantor.

(i) Effect of Acceptance: By accepting the Franchise and executing this Franchise Agreement, Grantee:

(1) accepts and agrees to comply with each provision of the Cable Ordinance and this Franchise Agreement, and all applicable federal, State, and local laws and regulations;

(2) acknowledges and accepts Grantor's legal right to grant the Franchise, to enter into this Franchise Agreement, and to enact and enforce ordinances and regulations related to the Franchise;

(3) agrees that the Franchise was granted pursuant to processes and procedures consistent with applicable law, and that it will not raise any claim to the contrary, or allege in any claim or proceeding by Grantee against Grantor that any provision, condition or term, (but not the enforcement or application) of the Cable Ordinance or the Franchise Agreement at the time of the acceptance of the Franchise was illegal, unreasonable or arbitrary, or that at the time of the acceptance of the Franchise any such provision, condition or term was void or that Grantor had no power or authority to make or enforce any such provision, condition or term;

(4) agrees that it will not oppose intervention by Grantor in any proceeding affecting Grantee's Cable System;

(5) agrees to reimburse Grantor for its prorated share all costs incurred in its review, preparation, evaluation of proposals and qualifications, and negotiations involving this Franchise Agreement. Grantor shall provide Grantee with an accounting of these expenses, such as consultant fees, and shall supply Grantee with invoices for said expenses. Grantee shall deliver payment to Grantor within thirty (30) days of receipt of

said invoices. Such payments are in addition to the franchise fee. Failure to make timely payment of said expenses, except for any expenses that are the subject of legitimate dispute, shall constitute a material violation of this Franchise Agreement.

(j) No Waiver:

(1) The failure of Grantor on one or more occasions to exercise a right or to require compliance or performance under this Franchise Agreement, the Cable Ordinance or any other applicable law shall not be deemed to constitute a waiver of such right or a waiver of compliance or performance by Grantor, nor to excuse Grantee from complying or performing, unless such right or such compliance or performance has been specifically waived in writing.

(2) Waiver of a breach of this Franchise Agreement shall not be a waiver of any other breach, whether similar to or different from that waived. Neither the granting of the Franchise, nor any provision herein, nor any action by Grantor hereunder shall constitute a waiver of or a bar to the exercise of any governmental right or power of Grantor, including without limitation the right of eminent domain.

(k) No Recourse: Grantee shall have no recourse against Grantor for any loss, cost, expense, claim, liability or damage arising out of any action undertaken or not undertaken by Grantee pursuant to the Franchise, this Franchise Agreement or the Cable Ordinance, whether or not such action or non-action was required by the Franchise, the Franchise Agreement or the Ordinance, arising out of the enforcement or non-enforcement by Grantor of any provision or requirement of this Franchise Agreement or the Cable Ordinance, or otherwise arising out of the Franchise, the Franchise Agreement or the Cable Ordinance.

(l) Construction of Franchise Agreement: The provisions of this Franchise Agreement constitute a valid and enforceable contract between the parties, and shall be construed in accordance with generally accepted rules of contract construction, including any such rules concerning construction of municipal franchise contracts. References to applicable law or applicable requirements refer to applicable law or requirements as the same may be amended from time to time. In the event of a clear conflict between the Cable Ordinance and this Franchise Agreement, the Cable Ordinance shall prevail, unless Grantor and Grantee mutually agree that application of the Cable Ordinance would be contrary to the public interest. References to applicable law or applicable requirements refer to applicable law or requirements as the same may be amended from time to time.

(m) Amendment of Franchise Agreement: Grantor may liberally amend this Franchise Agreement upon the application of Grantee whenever necessary to enable Grantee to take advantage of developments in the field of telecommunications which, in Grantor's opinion, will afford Grantee an opportunity to serve its Subscribers more efficiently, effectively and economically. Such amendments shall be subject to such conditions as Grantor determines are

appropriate to protect the public interest. However, subject only to the provisions herein and applicable provisions of the Cable Ordinance, this Franchise Agreement shall not be amended except in writing signed by both Grantor and Grantee.

(n) **Non-Discrimination:** Grantee shall not deny service, deny access, set rates or charges or other wise discriminate against Subscribers, programmers, or residents of Grantor on the basis of race, color, religion, national origin, sex, or age. Grantee shall not discriminate against any residential Subscriber or potential Subscriber in its rates, charges, service facilities, rules or regulations. Grantee shall not deny access to its Cable Services to any group of potential Subscribers because of the income of the residents in the local area in which the group resides. To the extent permitted by applicable law, the foregoing requirement shall not prohibit Grantee from using bulk, commercial, promotional, or other non-uniform rates and charges permitted by federal law. In planning and undertaking construction, Grantee shall treat all areas and neighborhoods in the Franchise Area on a substantially equal basis.

3. TRANSFERS.

(a) No Transfer of the Franchise shall occur without prior written notice to and approval of Grantor Council, and only then upon such terms and conditions as Grantor reasonably deems necessary and proper consistent with federal and state law. The obligations of the Franchise involve personal services whose performance involves personal credit, trust, and confidence in Grantee, and Transfer without the prior written approval of Grantor shall be considered to impair assurance of due performance by Grantor. The granting of approval for a Transfer of the Franchise in one instance shall not render unnecessary approval of any subsequent Transfer.

(b) **Transfer Application.**

(1) Grantee shall promptly notify Grantor of any proposed Transfer. If any Transfer should take place without prior notice to Grantor, Grantee will promptly notify Grantor that such a Transfer has occurred.

(2) At least one hundred twenty (120) calendar days prior to the contemplated effective date of a Transfer, Grantee shall submit to Grantor a written application for approval of the Transfer. Such an application shall provide complete information on the proposed transaction, including details on the legal, financial, technical, and other qualifications of the transferee, and on the potential impact of the Transfer on Subscriber rates and service. At a minimum, the following information must be included in the application; provided, however, that Grantor may waive any of the following for good cause shown:

- (A) all information and forms required under federal law;
- (B) all information required in Sections 6.08.040(D) (1)--(5), (10)--(12), and (14) of the Cable Ordinance;
- (C) a detailed statement of the corporate or other business entity organization of the proposed transferee, together with an

explanation of how decisions regarding the Cable System will be made if the proposed transaction is approved;

(D) any business relationships or transactions of any kind, past, present, or anticipated, between Grantee, or its owners, subsidiaries, or Affiliates, and any potential transferees, or their corporate parents, subsidiaries, or affiliates, other than the proposed transaction that relate to the Transfer or are relevant to consideration of the Transfer;

(E) any contracts, financing documents, or other documents that relate to the proposed transaction, and all documents, schedules, exhibits, or the like referred to therein;

(F) any documents related to the transaction (including any documents regarding rates the transferee expects to charge) that have been provided to any entity that has been asked to provide financing (debt, equity, or any other kind) for, or to underwrite any offering made in connection with, the proposed transaction;

(G) any shareholder reports or filings with the Securities and Exchange Commission (SEC) or the Federal Trade Commission (FTC) that discuss the transaction, and any filings required under the Clayton Act in connection with the proposed transaction;

(H) complete financial statements for any potential transferees for the last three (3) years, including balance sheets, income statements, profit and loss statements, and documents detailing capital investments and operating costs;

(I) a detailed description of the sources and amounts of the funds to be used in the proposed transaction, indicating how the debt-equity ratio of the Cable System will change in the course of the transaction; what entities will be liable for repayment of any debt incurred; what interest, payment schedule, and other terms or conditions will apply to any debt financing; any debt coverages or financial ratios any potential transferees will be required to maintain over the Franchise term if the proposed transaction is approved; what financial resources would be available to the Cable System under the control of the proposed transferee; whether the proposed transferee can meet debt-equity or any other required ratios without increasing rates, with any assumptions underlying that conclusion, and if not, what increases would be required and why;

(J) any other information necessary to provide a complete and accurate understanding of the position of the Cable System before and after the proposed Transfer, including but not limited to, information regarding any anticipated effect of the Transfer on Subscriber rates and services, and any projected or pro forma income statements or cash flow statements prepared in connection with the

proposed Transfer or the transaction that would result in the Transfer;

(K) to the extent not already provided by the annual report of Grantee on Gross Revenues, a detailed analysis of franchise fee payments made by Grantee, or any Affiliate, during the life of the Franchise, showing (a) total Gross Revenues, by category (e.g., basic, pay, pay-per-view, advertising, installation, equipment, late charges, miscellaneous, other); (b) what revenues, by category, were included in the calculation of the franchise fee, so that it is clear what, if any, revenues were not included and the dollar value of those exclusions; (c) the value of any non-cash compensation received (e.g., trades for advertising spots), showing what amounts of non-cash compensation were included in the franchise fee calculation; (d) what, if any, deductions were made from revenues in calculating the franchise fee (e.g., bad debt), and the amount of each deduction; (e) if an outside agency was used to collect revenue (e.g., a collection agency, an advertising agency paid on the basis of percentage of sales), how much revenue was received by these agencies, and the total amount of revenues included for purposes of the franchise fee calculation;

(L) information related to any alleged violation of this Franchise sufficient to permit Grantor to determine Grantee's compliance with its Franchise obligations over the term of the Franchise, including specific descriptions of any noncompliance of which Grantee or any potential transferee is aware; and

(M) a brief summary of the proposed transferee's plans for at least the next five (5) years regarding line extension, plant and equipment upgrades, channel capacity, expansion or elimination of services, and any other changes affecting or enhancing the performance of the Cable System.

(c) Every Transfer application that is filed with Grantor, or its designee, shall be accompanied by the application fee specified in the Cable Ordinance.

(d) For the purposes of determining whether it shall consent to a Transfer, Grantor or its agents may inquire into all financial, technical and legal qualifications of the prospective transferee and such other relevant matters as Grantor may reasonably deem necessary to determine whether the Transfer is in the public interest and should be approved, denied, or conditioned. Grantee and any prospective transferees shall assist Grantor in any such inquiry, and if they fail to do so, the request for Transfer may be denied.

(e) In making a determination as to whether to grant, deny, or grant subject to conditions an application for a Transfer of the Franchise, Grantor shall consider (i) the legal, financial, and technical qualifications of the transferee to operate the Cable System; (ii) any potential impact of the Transfer on Subscriber rates or services; (iii) whether Grantee is in compliance with this Franchise Agreement and the Cable Ordinance and, if not, the proposed transferee's

commitment to cure such noncompliance; (iv) whether the transferee owns or controls any other Cable System in Grantor, and whether operation by the transferee may eliminate or reduce competition in the delivery of Cable Service in the Franchise Area G; and (v) whether operation by the transferee or approval of the Transfer would adversely affect Subscribers, Grantor's interest under the Cable Ordinance, this Franchise Agreement, other applicable law, or the public interest, or make it less likely that the future cable-related needs and interests of the community would be satisfied at a reasonable cost.

(f) Except to the extent federal law deems a Transfer approved based on the failure to act by Grantor, any Transfer without the prior written approval of Grantor shall be ineffective, shall make the Franchise subject to cancellation at the sole discretion of Grantor, and shall afford Grantor any other remedies available under the Franchise or other applicable law.

(g) Grantee shall be fully liable under this Franchise for any Transfer that is in violation of the terms of this Franchise Agreement or the Franchise and caused in whole or in part by any other entity or entities, including but not limited to any parents or Affiliated entities, as if such Transfer had been caused by Grantee itself.

(h) Grantor reserves the right to be informed of, inter alia, the purchase price of any Transfer or assignment of the Cable System of Grantee, and to the extent permitted by applicable law, to take any necessary steps to ensure that any negotiated Transfer value which Grantor deems unreasonable will not adversely affect Subscriber rates, including denial of the Transfer.

(i) Any mortgage, pledge or lease of the Franchise shall be subject and subordinate to the rights of Grantor under the Cable Ordinance or other applicable law.

(j) Grantor shall have no obligation to Transfer the Franchise unless the transferee agrees in writing that it will abide by and accept all terms of the Cable Ordinance and this Franchise Agreement, and that it will assume the obligations, liabilities, and responsibility for all acts and omissions, known and unknown, of Grantee under the Cable Ordinance and this Franchise Agreement for all purposes, including renewal, unless Grantor, in its sole discretion, expressly waives this requirement in whole or in part.

(k) Approval by Grantor of a Transfer of the Franchise shall not constitute a waiver or release of any of the rights of Grantor under the Cable Ordinance or this Franchise Agreement, whether arising before or after the date of a Transfer.

(l) As a condition of considering a Transfer, Grantor may require that the transferee pay the reasonable out-of-pocket costs and expenses of Grantor and a reasonable fee, less the applicable filing fee specified in Section 6.08.040(F) of the Cable Ordinance, in considering the application for Transfer of the Franchise. Any payments made by the transferee hereunder shall be requirements or charges incidental to the enforcing of the Franchise within the meaning of 47 U.S.C. Section 542(g)(2)(D).

4. PROVISION OF CABLE SERVICE.

(a) **Non-Commercial Line Extension Requirements.** Subject to the provisions of the Cable Ordinance, Grantee shall extend its trunk and distribution system to serve potential Subscribers requesting Cable Service after the date hereof at no charge where:

(1) The potential Subscriber requesting Cable Service is located within five hundred (500) feet or less from the termination of the Cable System, or

(2) The density of potential Subscribers to be passed by such extension is equal to or greater than ten potential Subscribers per mile measured from the nearest point of the feeder, trunk or distribution plant of Grantee.

(c) **Cost Sharing.** Subject to the provisions of Section 6.08.050(E)(3) of the Cable Ordinance, Grantee must, upon the request of a potential Subscriber, extend its Cable System based upon the following cost-sharing formula: Grantee shall contribute an amount equal to the construction costs per quarter mile multiplied by the length of the extension in quarter miles, multiplied by a fraction where the numerator equals the number of actual potential Subscribers per quarter mile at the time of the request and whose denominator equals 4.9 provided, however, that where the numerator equals or exceeds 2.5, Grantee shall be obligated to extend without cost to the Subscriber pursuant to Section 6.08.050(E)(1)(b) of the Cable Ordinance. Grantee, at its discretion, can require the Person(s) requesting Cable Service to bear the remainder of the total construction costs on a pro-rata basis. Grantee may require that the potential Subscribers pay such costs in advance, said payment to be held in escrow until construction is completed, no longer than six months after the request.

(1) As used in this section of this Franchise Agreement, "construction costs" are defined as the actual turn-key cost to construct the entire extension including electronics, pole make-ready charges, and labor, but not the cost of the Drop.

(2) All extensions where Grantee requires the potential Subscriber to pay a share of the cost of extension shall be memorialized by contract. The contract shall provide that whenever a potential Subscriber who did not originally contribute to the cost of extending the distribution line wants to obtain Cable Service by connecting to that line and the distribution line does not need to be extended further to serve the potential Subscriber, Grantee may require the potential Subscriber to pay Grantee a pro-rata share of the extension cost. Such share shall be calculated using the above-described formula as a percentage of the total cost to the Person(s) who originally paid to extend the line.

(3) When Grantee connects the potential Subscriber, Grantee shall promptly tender payment to the Person(s) who originally paid to extend the line the pro-rata payment the potential Subscriber could have been required

to pay. This requirement shall cease at the earlier of five (5) years after the contract is signed or when the Person who originally paid to extend the line has received full reimbursement for his or her costs of extension. Grantee shall maintain copies of such contracts and records of such construction costs for review by Grantor in the event of a dispute between Grantee and a potential Subscriber.

(d) Commercial Account Line Extension Obligations. Subject to the provisions of the Cable Ordinance, Grantee shall have the obligation to extend its trunk and distribution line and make service available to nonresidential, commercial businesses and buildings under the following terms and conditions:

(1) Grantee can require the building owner to bear the cost of post-wiring; provided, however, that in such circumstances, such inside wiring shall then be the property of the building owner.

(2) Grantee shall extend its trunk and distribution plant to any commercial business or building at no charge where no street cut is required.

(3) Upon the request of Grantee, Grantor will use its best efforts to make available at no cost Grantor-owned under-street conduits or accessible rights-of-way to enable Cable Service to be provided to downtown commercial buildings.

(4) As a condition to providing Cable Service to a multi-story commercial building, Grantee may require the building owner to sign a contract and offer Cable Service individually to building tenants, with such contracts being based on a predetermined penetration of a minimum of forty percent.

(e) Continuity of Service:

(1) All Subscribers in the Franchise Area of Grantee shall receive all available Cable Services from Grantee as long as their financial and other obligations to Grantee are satisfied.

(2) Grantee shall ensure that all Subscribers receive continuous uninterrupted Cable Service. At the request of Grantor, Grantee shall operate its Cable System for a temporary period (the "transition period") following the termination, or Transfer of its Franchise as necessary to maintain Cable Service to Subscribers, and shall cooperate with Grantor to assure an orderly transition from it to another franchisee. The transition period shall be no longer than the reasonable period required to select another franchisee and build a replacement Cable System, and shall not be longer than thirty-six (36) months, unless extended by Grantor for good cause. During the transition period, Grantee will continue to be obligated to comply with the terms and conditions of this Franchise Agreement and applicable laws and regulations.

(3) If Grantee abandons its Cable System during the Franchise term, or fails to operate its Cable System in accordance with the terms of the Cable Ordinance during any transition period, Grantor, at its option, may

operate the Cable System, designate another entity to operate the Cable System temporarily until Grantee restores service under conditions acceptable to Grantor or until the Franchise is revoked and a new franchisee selected by Grantor is providing service, or obtain an injunction requiring Grantee to continue operations. If Grantor is required to operate or designate another entity to operate the Cable System, Grantee shall reimburse Grantor or its designee for all reasonable costs and damages incurred that are in excess of the revenues from the Cable System.

(4) For purposes of the preceding section of this Franchise Agreement, Grantee shall be deemed to have abandoned its Cable System if the Cable System is abandoned within the meaning of applicable law or if either of the following conditions is satisfied:

(A) Grantee fails to provide Cable Service in accordance with its Franchise over a substantial portion of the Franchise Area for ninety-six (96) consecutive hours, unless Grantor authorizes a longer interruption of service; or

(B) Grantee, for any period, willfully and without cause refuses to provide Cable Service in accordance with its Franchise over a substantial portion of the Franchise Area.

(f) Location of Drops. Except as federal regulations may otherwise require, in any area where Grantee would be entitled to install a Drop above ground, Grantee will provide the homeowner the option to have the Drop installed underground, but Grantee may charge the homeowner the difference between the Actual Cost of the aboveground installation and the Actual Cost of the underground installation.

(g) Time for Extension. Subject to the provisions of the Cable Ordinance, Grantee must extend Cable Service to any Person who requests it, (i) within five (5) working days of the request, where service can be provided by activating or installing a Drop; (ii) within thirty (30) days of the request in any area otherwise meeting the requirements of Section 6.08.050(E)(1) of the Cable Ordinance, or where an extension of one-half (1/2) mile or less is required; or (iii) within six (6) months where an extension of one-half (1/2) mile or more is required. Grantor will grant extensions of the time periods specified herein for good cause shown, such as demonstration by Grantee that pole make-ready work requires more than thirty (30) days or that extension of Cable Service within thirty (30) days in an area where another operator has ceased providing service under the Cable Ordinance is not economically feasible.

(h) House Drops/Installation. Except as federal regulations may otherwise require, Grantee shall not assess any additional cost beyond its standard installation charge for Cable Service Drops of one hundred fifty (150) aerial feet or seventy-five (75) underground feet or less unless Grantee demonstrates to the satisfaction of Grantor that extraordinary circumstances justify a higher charge. Where a Drop exceeds one hundred fifty (150) aerial feet or seventy-five (75)

underground feet in length, Grantee may charge the potential Subscriber for the difference between the Actual Costs of Grantee associated with installing a one hundred fifty (150) foot aerial Drop or seventy-five (75) foot underground Drop, and the Actual Cost of Grantee for installing the longer Drop, provided that Drop length shall be the shorter of (a) the actual length of installed Drop or (b) shortest distance to the point where Grantee would be required to extend its distribution system.

5. **CONSTRUCTION AND MAINTENANCE.**

(a) Construction Standards.

(1) The construction, operation, maintenance, and repair of the Cable System shall be in accordance with all applicable sections of the Occupational Safety and Health Act of 1970, as amended; the most current edition of the National Electrical Safety Code and the National Electric Code; Obstruction Marking and Lighting, AC 70/7460 i.e., Federal Aviation Administration; Construction, Marking and Lighting of Antenna Structures, Federal Communications Commission Rules Part 17; Tennessee Utility Construction Requirements; Grantee's Construction Procedures Manual; and other applicable federal, State, or local laws and regulations that may apply to the operation, construction, maintenance, or repair of a Cable System, including, without limitation, local zoning and construction codes and laws and accepted industry practices, all as hereafter may be amended or adopted. In the event of a conflict among codes and standards, the most stringent code or standard shall apply (except insofar as that standard, if followed, would result in a Cable System that could not meet requirements of federal, State or local law, or is expressly preempted by other such standards). Grantor may adopt additional standards as required to ensure that work continues to be performed in an orderly and workmanlike manner.

(2) All installation of electronic equipment shall be of a permanent nature, using durable components, except where maintenance for emergency repairs requires the installation of temporary equipment. Temporary equipment shall be replaced as soon as possible. If replacement cannot occur within sixty (60) days, Grantee shall provide notification to Grantor.

(3) Without limiting the foregoing, antennae and their supporting structures (towers) shall be designed in accordance with the Uniform Statewide Building Code, as amended, and shall be painted, lighted, erected, and maintained in accordance with all applicable rules and regulations of the Federal Aviation Administration and all other applicable State or local laws, codes, and regulations, all as hereafter may be amended or adopted.

(4) Without limiting the foregoing, all of Grantee's plant and equipment, including, but not limited to, the antennae site, headend and distribution system, towers, house connections, structures, poles, wires, cable, coaxial cable, fiber-optic cable, fixtures, and apparatuses shall be installed, located, erected, constructed, reconstructed, replaced, removed,

repaired, maintained, and operated in accordance with good engineering practices, performed by experienced and properly trained maintenance and construction personnel so as not to endanger or interfere with improvements Grantor shall deem appropriate to make or to interfere in any manner with the Public Rights-of-Way or legal rights of any property owner or to unnecessarily hinder or obstruct pedestrian or vehicular traffic.

(5) All safety practices required by law shall be used during construction, maintenance, and repair of the Cable System.

(6) Grantee shall at all times reasonable employ ordinary care and shall install and maintain in use commonly accepted methods and devices preventing failures and accidents that are likely to cause damage, injury, or nuisance to the public.

(7) Grantee shall install and maintain such devices as will reasonably apprise or warn Persons using the Public Rights-of-Way of the existence of work being performed on the Cable System in Public Rights-of-Way.

(8) Grantee shall be a member of the One Call Notification System or its successor, and shall field mark the locations of its underground facilities upon request. Throughout the term of this Franchise, Grantee shall identify the location of its facilities for Grantor at no charge to Grantor.

(9) Grantee shall at all times employ ordinary care and shall install and maintain in use commonly accepted methods and devices preventing failures and accidents that are likely to cause damage, injury, or nuisance to the public.

(10) Grantee shall install and maintain such devices as will apprise or warn Persons using the Public Rights-of-Way of the existence of work being performed on the Cable System in the Public Rights-of-Way.

(11) In the event of a failure by Grantee to complete any work required for the protection or restoration of the Public Rights-of-Way, or any other work required by municipal law or ordinance, within the time specified by and to the reasonable satisfaction of Grantor, Grantor, following notice and an opportunity for Grantee to cure, may cause such work to be done, and Grantee shall reimburse Grantor the cost thereof within thirty (30) days after receipt of an itemized list of such costs, or Grantor may recover such costs through the letter of credit provided by Grantee.

(12) Grantee shall not place facilities, equipment, or fixtures where they will interfere with any gas, electric, telephone, water, sewer, or other utility facilities, or obstruct or hinder in any manner the various utilities serving the residents of Grantor or their use of any Public Rights-of-Way.

(13) Grantee shall publicize proposed construction work (i) by causing written notice of such construction work to be delivered to Grantor at least one (1) week prior to commencement of work; and (ii) by notifying those Persons most likely to be affected by the work at least one (1) day in advance

in at least two (2) of the following ways: by telephone, in person, by mail, by distribution of flyers to residences, by publication in local newspapers, or in any other manner reasonably calculated to provide adequate notice. In addition, before entering onto the property of any Person, Grantee shall contact the property owner or (in the case of residential property) the resident at least one (1) day in advance. If Grantee must enter premises, Grantee must schedule an appointment at the convenience of the owner or resident.

(14) Any and all Public Rights-of-Way, public property, or private property that is disturbed or damaged during the construction, repair, replacement, relocation, operation, maintenance, or construction of a Cable System shall be promptly repaired by Grantee, and restored to a condition at least as good as that which existed before the disturbance or damage occurred.

(15) Grantee shall at its own expense and by a time specified by Grantor, protect, support, temporarily disconnect, relocate, or remove any of its property when required by Grantor by reason of (i) traffic conditions, (ii) public safety, (iii) Public Rights-of-Way construction, (iv) Public Rights-of-Way maintenance or repair (including resurfacing or widening), (v) change of Public Rights-of-Way grade, (vi) construction, installation or repair of sewers, drains, water pipes, power lines, signal lines, tracks, or any other type of government-owned communications system, public work or improvement or any government-owned utility, or (vii) Public Rights-of-Way vacation. Provided, however, in connection with the preceding requirement is in this Section, Grantor shall not impose any greater burden on Grantee than on any other occupant of the Public Rights-of-Ways that provides one or more similar services to that provided by Grantee.

(16) If any removal, relaying, or relocation is required to accommodate the construction, operation, or repair of the facilities of another Person that is authorized to use the Public Rights-of-Way, Grantee shall, after thirty (30) days advance written notice, take action to effect the necessary changes requested by the responsible entity. Grantor may resolve disputes as to responsibility for costs associated with the removal, relaying, or relocation of facilities as among entities authorized to install facilities in the Public Rights-of-Way if the parties are unable to do so themselves, and if the matter is not governed by a valid contract between the parties or a State or federal law or regulation.

(17) In the event of an emergency, or where the Cable System creates or is contributing to an imminent danger to health, safety, or property, Grantor may remove, relay, or relocate any or all parts of the Cable System without prior notice and with full reimbursement from Grantee for all associated costs and expense.

(18) Grantee shall, on the request of any Person holding a building

moving permit issued by Grantor, temporarily raise or lower its wires to permit the moving of buildings. The expense of such temporary removal or raising or lowering of wires shall be paid by the Person requesting same, and Grantee shall have the authority to require such payment in advance, except in the case where the requesting Person is Grantor, in which case no payment shall be required. Grantee shall be given not less than forty-eight (48) hours' advance notice to arrange for such temporary wire changes.

(19) To the extent consistent with generally applicable Grantor Code provisions, rules and regulations, Grantee shall have the authority to remove, cut, trim and keep clear of its Cable System trees or other vegetation in and along or overhanging the Public Rights-of-Way. However, in the exercise of this right, Grantee agrees not to cut or otherwise injure said trees to any greater extent than is reasonably necessary. This Franchise does not give Grantee any authority to remove trees on private property in the Franchise Area. All trimming shall be performed at the sole cost of Grantee.

(20) Where existing poles, underground conduits, ducts or other wire-holding structures are available for use by Grantee, but Grantee does not make arrangements for such use, Grantor may require, through the established permit, or any other applicable procedure, Grantee to use such poles and wire holding structures if Grantor determines that the public convenience would be enhanced thereby and the terms available to Grantee for the use of such poles and structures are just and reasonable. Copies of agreements for use of conduits or other facilities between Grantee and any telecommunications provider, utility or public service company shall be filed with Grantor upon request.

(21) Cable System cable and facilities may be constructed overhead where poles now exist and electric or telephone lines or both are now overhead, but where no overhead poles exist, all cables and facilities, excluding Cable System passive or active electronics that may be housed in low-profile, above-ground pedestals, shall be constructed underground. Whenever and wherever electric lines and telephone lines are moved from overhead to underground placement, all Cable System cables shall be similarly moved and the cost of movement of its cable shall be solely the obligation of Grantee.

(22) Grantor shall have the right to use Grantee's poles, conduits, ducts and manholes free of charge, provided that such use is consistent with pole agreements and will not unreasonably interfere with the present or future Cable System operations of Grantee nor in any way provide services in competition with Grantee.

(23) Prior to erection of any towers, poles, or conduits or the construction, upgrade, or rebuild of a Cable System, Grantee shall first submit to Grantor for approval a concise description of the Cable System facilities proposed to be erected or installed, including engineering drawings,

if required by Grantor, together with a map and plans indicating the proposed location of all such facilities. No such erection or construction shall be commenced by any Person until approval therefore has been received from Grantor.

(24) No placement of any pole or wire holding structure of Grantee is to be considered a vested interest in the Public Rights-of-Way or in Grantor property, and such poles and structures are to be removed or modified by Grantee at its own expense whenever Grantor determines that the public convenience would be enhanced thereby. All transmission and distribution structures, lines, wires, cables, equipment, and poles or other fixtures erected by Grantee within the Franchise Area are to be so located and installed as to cause minimum interference with the rights and convenience of property owners.

(25) Any contractor or subcontractor used for work or construction, installation, operation, maintenance, or repair of Cable System equipment must be properly licensed under laws of the State and all applicable local ordinances, where applicable, and each contractor or subcontractor shall have the same obligations with respect to its work as Grantee would have if the work were performed by Grantee. Grantee must ensure that contractors, subcontractors and all employees who will perform work for it are trained and experienced. Grantee shall be responsible for: (i) ensuring that the work of contractors and subcontractors is performed consistent with this Franchise Agreement and applicable law; (ii) all acts or omissions of contractors or subcontractors related to this Franchise Agreement; (iii) promptly correcting acts or omissions by any contractor or subcontractor; and (iv) implementing a quality control program to ensure that the work is properly performed.

(26) Grantor does not guarantee the accuracy of any maps showing the horizontal or vertical location of existing substructures.

(b) Cable System Tests and Inspections.

(1) Compliance Tests. Grantee shall perform, at no cost to Grantor, all compliance tests necessary to demonstrate compliance with the requirements of this Franchise Agreement and other performance standards established by law or regulation. All tests shall be conducted in accordance with federal rules and in accordance with the most recent edition of the NCTA Recommended Practices for Measurements on Cable Television Systems, or if no recent edition exists, such other appropriate manual as the parties may designate. Grantee shall perform at least the following tests:

(A) Pre-construction quality tests on Cable System components. In case of passive components, this will include testing a significant sample of devices to verify compliance with manufacturer specifications.

(B) Sweep tests on all trunk and distribution cable on the reels to verify compliance with manufacturer specifications for

frequency response and structural loss.

(C) Bench tests on all trunk and distribution amplifiers to verify compliance with manufacturer specifications. No component shall be used in the Cable System which fails to meet manufacturer specifications. Grantee shall maintain in Grantor records of all pre-construction tests, which Grantor may inspect on reasonable notice.

(2) Acceptance Tests. Grantee shall perform acceptance tests on each construction area segment prior to Subscriber connection. The tests shall demonstrate that the Cable System components are operating as expected. Grantor has the option of witnessing the tests. The test results shall be submitted to Grantor for review. Grantee shall have the obligation, without further notice from Grantor, to take corrective action if any segment is not operating as expected. Grantor will review the tests and approve each Cable System segment for Subscriber connection. Unless Grantor determines test results are not adequate to demonstrate Cable System compliance with the standards for Cable Service described above and objects within three (3) working days of receipt of the tests, a segment will be deemed approved for Subscriber connection.

(3) Continuing Tests. Grantee and Grantor will jointly select locations at the extremities of Cable System service area to install equipment to establish permanent test points. The test points shall be installed in locked enclosures so as to be accessible from ground level. Grantee shall perform proof-of-performance tests at these locations as provided in Section 6.08.060(F) of the Cable Ordinance. The number of required test points may be specified by Grantor in accordance with federal law and with good engineering practice, as appropriate to ensure all Subscribers are receiving adequate service.

(4) Inspections During Construction. Grantor may conduct inspections of construction areas and Subscriber installations, including to assess compliance with the construction and installation practices manual and design plans. Grantee shall be notified of any violations found during the course of inspections. Grantee must bring violations into compliance within thirty (30) days of the date notice of violation is given, and must submit a report to Grantor describing the steps taken to bring itself into compliance. Inspection does not relieve Grantee of its obligation to build in compliance with all provisions of this Franchise Agreement.

(5) Proof of Performance Tests.

(A) At least annually, unless otherwise limited by this Franchise Agreement, applicable law or FCC rules, Grantee shall perform proof of performance tests at the test points designated pursuant to Section 6.08.050(F)(1)(c) of the Cable Ordinance and at other points where Cable System User complaints indicate tests for Cable Service are warranted. Grantee shall also perform such other

tests as may be specified in this Franchise Agreement, designed to demonstrate compliance with this section, this Franchise Agreement, applicable law and FCC requirements. Tests shall be supervised by Grantee's professional engineer, who shall sign all records of tests provided to Grantor. Grantee shall provide Grantor ten (10) days advance written notice when a proof-of-performance or other required test is scheduled so that Grantor may have an observer present. Grantor shall have the right to inspect the Cable System during and after its construction to ensure compliance with this section, this Franchise Agreement, and applicable provisions of local, State and federal law, and based on the results of such inspection, may require Grantee to perform additional tests based on an investigation by Grantor of Cable System performance or on Subscriber complaints.

(B) Grantor reserves the right to conduct its own tests upon reasonable notice to Grantee. If noncompliance is found, the expense thereof shall be borne by Grantee. Grantor will endeavor to arrange any request for such tests so as to minimize hardship or inconvenience to Grantee or to Subscribers.

(C) A written report of test results shall be filed with Grantor within seven (7) days of each test. If the location fails to meet performance specifications, Grantee, without requirement of additional notice or request from Grantor, shall take corrective action, retest the locations and advise Grantor of the action taken and results achieved.

(c) **System Maintenance.**

(1) **Interruptions to be Minimized.** Grantee shall schedule maintenance on its Cable System so that activities likely to result in an interruption of Cable Service are performed during periods of minimum Subscriber use of the Cable System.

(2) **Maintenance Practices Subject to Regulation.** Maintenance of the Cable System shall be performed in accordance with the technical performance and operating standards established by FCC rules and regulations. Grantor may monitor Grantee's maintenance practices and, to the extent permitted by applicable law, may waive requirements or adopt additional requirements as reasonable to ensure the Cable System remains capable of providing high-quality Cable Service.

6. CABLE SYSTEM FACILITIES, EQUIPMENT AND SERVICES.

(a) **General Cable System Characteristics:** Grantee's Cable System shall, at all times during the Franchise term, meet or exceed the following requirements:

(1) **Compliance With FCC Rules.** All maintenance performed on the Cable System by Grantee shall be in accordance with the FCC rules and regulations governing the technical performance and operating standards for such Cable System. The Cable System shall at all times meet or exceed all

applicable FCC technical performance standards, as amended from time to time, and any other applicable technical performance standards. End of the line performance must meet or exceed FCC specifications at the end of the Subscriber Drop.

(2) Compliance Other Applicable Rules and Regulations. The Cable System shall at all times comply with applicable federal, State and local rules, regulations, standards, practices and guidelines pertaining to the construction, upgrade, operation, extension and maintenance of Cable Systems.

(3) Continuous 24-Hour Operation. The Cable System shall be capable of continuous twenty-four (24) hour daily operation without severe material degradation of signal except during extremely inclement weather or immediately following extraordinary storms that adversely affect utility services or damage major Cable System components.

(4) Standby Power. The Cable System shall have standby generating capacity at the headend. Grantee shall maintain standby power generators capable of powering all headend equipment for at least twenty-four (24) hours. The back-up power supplies serving the Cable System shall be capable of providing power to the Cable System for not less than three (3) hours per occurrence measured on an annual basis according to manufacturer specifications in the event of an electrical outage. Grantee shall maintain sufficient portable generators to be deployed in the event that the duration of a power disruption is expected to exceed three (3) hours.

(5) Status Monitoring. The Cable System shall include status monitoring equipment which monitors Cable System performance, including signal level and distortion parameters, and, among other things, alerts Grantee when and where back-up power supplies are being used.

(6) Preventative Maintenance. The Cable System shall have all facilities and equipment required to properly test the Cable System and to conduct an ongoing and active program of preventative maintenance and quality control.

(7) Temperature Specifications. The Cable System shall be capable of operating over an outdoor temperature range of -40 degrees Fahrenheit to +130 degrees Fahrenheit and over variation in supply voltages from 105 to 130 volts AC without catastrophic failure or irreversible performance changes. The Cable System shall meet all applicable specifications over an outdoor temperature range of 0 degrees F to 100 degrees F and over variation in supply voltages from 105 to 130 volts AC.

(8) No Interference. The Cable System shall be operated in such a manner as to avoid causing interference with the reception of off-the-air signals by a Subscriber. Grantee shall insure that signals carried by the Cable System, or originating outside the Cable System wires, cables, fibers, electronics and facilities, do not ingress or egress into or out of the Cable

System in such a manner as to pose unwarranted interference with emergency radio services, aeronautical navigational frequencies or any airborne navigational reception in normal flight patterns, or any other type of wireless communications, pursuant to FCC regulations.

(9) No Deterioration to Access Signals. The Cable System shall be so constructed and operated so that there is no perceptible deterioration in the quality of Access Channel signals, either upstream or downstream, as compared with any other channel on the Cable System. Deterioration refers to any signal problem, including but not limited to ghost images and other interference and distortions.

(10) Industry-accepted Equipment. The Cable System shall use equipment generally used in high-quality, reliable, modern systems of similar design. In addition, the design and construction of the Cable System shall include modulators, antennae, amplifiers and other electronics that permit and are capable of passing through the signals received at the headend without substantial alteration or deterioration, in accordance with FCC technical standards (thus, for example, the Cable System shall include components so that a signal received at the headend in color may be received by a Subscriber in color, a stereo signal in stereo, and an ATV or HDTV signal in the form transmitted). Grantee shall comply with all applicable laws and regulations concerning Cable System compatibility with Subscribers' television receivers and/or videocassette recorders.

(11) Clear Channels. Grantee shall comply with all FCC regulations regarding scrambling or other encryption of signals. (12) Basic Converter Equipment For Lease or Sale. Subject to applicable law or regulation, as part of the Cable System, Grantee shall, consistent with 47 C.F.R. § 76.984 and 47 U.S.C. § 543(d), offer every Subscriber, at uniform prices and regardless of the level of Cable Service taken, the opportunity to lease or buy Basic Converters that utilize wireless remote controls and that allow Subscribers to view a program on one channel while taping a program on another channel. To the extent permitted by applicable law, Subscribers shall have the right to attach devices to Grantee's Cable System to allow them to transmit signals or service to video cassette recorders, DVD recorders, receivers and other terminal equipment, and to use their own remote control devices lawfully acquired and Converters, and other similar equipment, as long as such devices do not interfere with the operation of Grantee's Cable System or the reception of any Subscriber, nor serve to circumvent Grantee's security procedures, nor for any purpose to obtain services illegally. Grantee shall provide information to Subscribers which will allow them to adjust such devices so that they may be used with Grantee's Cable System.

(13) Parental Control. Grantee shall ensure that means are available to enable Subscribers upon request to block out audio and video on any undesired channels on the Cable System.

(14) Program Security. The Cable System shall include equipment so that any pay-per-view programming can only be activated by the positive action of a Subscriber using, for example, a private identification number or other individual selection procedure.

(15) Handicapped Service. All closed-caption programming retransmitted by the Cable System shall include the closed-caption signal. For hearing impaired Subscribers, Grantee shall provide information concerning the cost and availability of equipment to facilitate the reception of all Basic Cable Services for the hearing impaired. In addition, Grantee must have TDD/TTY (or equivalent) equipment at the company office, and a publicly listed telephone number for such equipment, that will allow hearing impaired customers to contact the company. Upon request, Grantee shall, consistent with 47 C.F.R. § 76.984 and 47 U.S.C. § 543(d), provide, for purchase or lease at the lowest uniform price, a remote control device to those Subscribers who are mobility limited, or where a member of the Subscriber's household is mobility limited. For purposes of this subsection, rates for equipment shall be treated as equipment used to receive Basic Cable Service, regardless of whether such equipment is additionally used to receive other tiers of regulated programming and/or unregulated service.

(b) Specific Cable System Characteristics: Grantee's Cable System shall, at all times during the Franchise term, meet or exceed the following requirements:

(1) The Cable System shall continue to have a minimum bandwidth of 850 MHz on all active components, and a minimum channel capacity of at least 75 channels, downstream to all Subscribers.

(2) The Cable System shall continue to utilize a fiber-optic wire trunk and distribution design ("fiber-to-the-neighborhood"), with fiber-optic cable from the headend to hubs and from hubs to Nodes. At no place in the Cable System shall more than 500 residences, businesses and other structures be served by any single Node. A minimum of two fibers shall connect each Node to Cable System headends and hubs.

(3) The Cable System shall be segmented to that sufficient capacity is available for interactive services at all times.

(4) There shall be no more than an average of four amplifiers in a cascade from any Node. Specific cascades from a Node may use more than four amplifiers, provided there is no adverse impact on performance characteristics.

(5) Each Node shall be located and designed to allow adequate space for several fiber receivers and transmitters, standby power, and signal processing and switching.

(6) As part of the Cable System, Grantee shall offer every Subscriber, at the same price and regardless of the level of Cable Service taken, the opportunity to lease or buy equipment that utilizes wireless remote controls, and allows Subscribers to view a program on one channel

while taping a program on another channel.

(7) The Cable System shall include computer-controlled audio leveling equipment, capable of sampling and controlling the entire audio frequency spectrum for each channel and of sampling over time. Such equipment must maintain consistent audio volume levels over time and across channels, regardless of large fluctuations in dB levels.

(c) Integration of Advancements in Technology.

(1) It is the responsibility of Grantee to periodically upgrade its Cable System to integrate advancements in technology as may be required so that the Cable System is as advanced as the current state of technology will allow, taking into account community needs, economic and financial considerations.

(2) To ensure that Grantee is carrying out its responsibilities hereunder, Grantor may require Grantee to submit a report on cable technology from time to time, but no more often than once every three (3) years during the Franchise term. Each report shall describe developments in cable technology and shall state whether, and by what date Grantee plans to incorporate these technological developments into the Cable System. In addition the report shall describe the effect of these developments public, educational, and government use of the Cable System, and the effect and compatibility of those technological changes on consumer electronic equipment.

(3) In addition to such upgrades as may be required under this Franchise Agreement, it is the responsibility of Grantee to periodically upgrade its Cable System to integrate advancements in technology as may be required to meet the needs and interests of the community in light of the costs thereof.

(d) Cable System Design Review Process.

(1) Upon request and reasonable advance notice, Grantee shall provide a detailed Cable System design and construction plan (where applicable), available for review by Grantor at the local office of Grantee, which shall include at least the following elements:

(A) Design type, trunk and feeder design, and number and location of hubs or Nodes;

(B) Distribution Cable System-cable, fiber, and equipment to be used;

(C) Plans for standby power at headend;

(D) Longest amplifier cascade in Cable System (number of amplifiers, number of miles, type of cable/fiber); and

(E) Design maps and tree trunk maps for the Cable System.

(2) The Cable System design will be shown on maps of industry standard scale using standard symbology, and shall depict all electronic and physical features of the cable plant. Grantor may take

any appropriate and reasonable action it is entitled to take under this Franchise Agreement, the Cable Ordinance, or other applicable law if it believes the design plan fails to satisfy or is likely to fail to satisfy the obligations of Grantee. Grantor's review does not excuse any nonperformance under this Franchise Agreement, the Cable Ordinance or other applicable law.

(e) Types of Service: Should Grantee desire to change the selection of programs or Cable Services offered on any of its tiers, it shall maintain the mix, quality and level of Cable Services provided over the Cable System. Any change in such programs or Cable Services offered shall comply with all lawful conditions and procedures contained in this Franchise Agreement and in applicable law. To the extent required by federal law Grantee shall provide thirty (30) days advance written notice to Subscribers and Grantor of any change in channel assignment or in the video programming service provided over any channel, unless this requirement is waived by Grantor or by operation of federal or State law, or due to events beyond the reasonable control of Grantee.

(f) Leased Access Channels: Grantee shall provide Leased Access Channels as required by federal law.

(g) Interconnection.

(1) Grantee shall, at Grantor's request, interconnect its Cable System to other commonly owned, adjacent Cable Systems located in the Franchise Area. Interconnection shall be completed within a reasonable timeframe specified by Grantor, unless an extension is granted upon petition by Grantee.

(2) Every interconnection link established pursuant to this subsection shall, at a minimum: (i) use a transmission medium that is not inferior to any other transmission medium used in the Cable System; (ii) allow for the seamless transmission of all required video signals on both Cable Systems; and (iii) be fully bi-directional.

(3) Grantee shall cooperate with any interconnection, any regional interconnection authority, State or federal regulatory agency which may be hereafter established for the purpose of regulating, facilitating, financing or otherwise providing for the interconnection of communications Cable Systems beyond the boundaries of Grantor.

(h) Customer Service Monitoring: Grantee shall keep such records as are required to enable Grantor to determine whether Grantee is complying with all telephone answering standards required by applicable customer service laws, ordinances and/or regulations, as amended from time to time as lawfully applicable to Cable Service.

(i) Emergency Alert System:

(1) Grantee shall install and thereafter maintain for use by Grantor an Emergency Alert System ("EAS") that complies with 47 C.F.R. Part 11.

(2) This EAS shall be remotely activated by telephone and shall

allow a representative of Grantor to (i) override the audio on all channels, (ii) override the video on at least one channel on Grantee's Cable System that may lawfully be overridden, and (iii) scroll a message that can be inserted on all analog channels without the assistance of Grantee, for emergency broadcasts from a location designated by Grantor in the event of a civil emergency or for reasonable tests. (3) Grantor will provide reasonable notice to Grantee prior to any test use of the EAS. Grantee shall cooperate with Grantor in any such test.

(j) Home Wiring: Grantee shall comply with all applicable FCC requirements with respect to home wiring.

7. CHANNELS AND FACILITIES FOR PUBLIC, EDUCATIONAL AND GOVERNMENTAL USE.

Grantee shall provide a capital grant, equipment, channels and facilities for public, educational and/or governmental use as provided in this Franchise Agreement.

(a) Capital Grant: Grantee shall provide a capital grant in the amount of Five Hundred Thousand Dollars (\$500,000) to be used by Grantor in its sole discretion, for public, educational and governmental access equipment, facilities and support. Such grant shall be paid to Grantor in three equal payments over the first three years of the Franchise, with the first payment due no later than thirty (30) days from the Effective Date of the Franchise and each subsequent payment due on the two (2) succeeding anniversary dates of the Effective Date. Also, no later than thirty (30) days from the Effective Date of the Franchise, Grantee shall provide a grant of One Hundred Thousand Dollars (\$100,000). On each of the fourteen (14) succeeding anniversary dates of the Effective Date, Grantee shall provide an additional grant to Grantee of One Hundred Thousand Dollars (\$100,000), to be used by Grantee, in its sole discretion, for public, educational and governmental access equipment, facilities and support. On or before each of the fourteen (14) succeeding anniversary dates of the Effective Date of the Franchise, Grantee shall cause to be delivered to Grantee a report summarizing PEG access plans for the coming year. Grantee shall not offset any such payments against its franchise fee obligations, but Grantee shall have the right to pass through and itemize such payments on Subscriber bills.

(b) Grantee shall provide, install and maintain all coaxial, fiber and other transport and headend processing equipment for signals to be used for PEG access purposes on the Cable System between the locations specified in this section of this Franchise Agreement, and the headend on the Cable System of Grantee. In addition, Grantee shall:

(1) cooperate with and provide technical and procurement advice to Grantor in procuring and deploying all equipment for conversion, receiving, transmitting, and switching of signals to be used for governmental, educational, and public access purposes on the Cable System; and

(2) provide adequate space at its headend for switching and any other terminal equipment required for the utilization of the PEG capacity required by this Franchise Agreement.

(c) Grantee shall provide a total of four (4) activated standard (6 MHz) Access Channels for PEG use.

(d) In addition to the channel capacity specified elsewhere in this Franchise Agreement of this Franchise Agreement, beyond the capacity required in Subsection (d), Grantor may require Grantee to make available additional capacity for PEG use, whenever use of existing PEG capacity at a given time exceeds the following thresholds:

(A) For Subscriber PEG programming, Grantor may require Grantee to make available one additional 6 MHz channel (or digital equivalent) whenever all then-existing PEG channels are programmed with qualified programming at least seventy percent (70%) of the cumulative time between the test hours of 9:00 a.m. and 10:00 p.m., Monday through Friday, for a period of ten (10) consecutive weeks. All qualified programming shall count in this measurement for actual running time shown. Repeat programs as defined in this subparagraph are qualified programming only to a maximum of twenty-five percent (25%) of total qualified programming. Programs that are neither locally produced nor programming related to Grantor region are qualified programming only to a maximum of fifty percent (50%) of total qualified programming. Any program broadcast locally within three (3) years of the measurement period is not qualified programming. Notwithstanding, Grantee may, in its sole discretion, permit the program to be qualified programming upon written request by Grantor. Grantor and Grantee agree to meet within four (4) years of the effective date of this Franchise Agreement to discuss amending the treatment of programs broadcast locally as qualified programming. As used in this Franchise Agreement:

(i) "broadcast locally" means transmitted on the signal of a local commercial television station or a qualified local noncommercial educational television station with signal carriage rights on Grantee's Cable System pursuant to 47 U.S.C. Sec. 535, as in effect on the effective date of this Franchise Agreement.

(ii) "repeat programs" mean the running time of any program only to the extent it is shown more than four (4) times during the test hours over the ten (10) week measurement period.

(iii) "locally produced programming" means programming (a) produced within Grantor, or (b) produced by any Grantor resident or any agency, public or private, which

provides services to residents within Grantor regardless of the location at which the programming was produced.

(iv) "programming related to Grantor region" means programming that is not locally produced which addresses the educational, political, social or cultural interests of any segment of the residents of Grantor or the region of Middle Tennessee.

(v) "qualified programming" includes video bulletin board material if the material consists of multiple and different text (or video and text) screens transmitted to different Subscribers simultaneously. The term does not include video bulletin board materials such as character generated material to the extent the same text (or video and text) screen is sent simultaneously without variation to all Cable System Subscribers, or non-video, data uses of the Cable System by Subscribers.

(e) Grantee shall have the right to petition the Cable Commission to recapture any unused portion of PEG capacity. In deciding whether to grant such petition, the Cable Commission shall consider the comments and views of Grantee and all other interested Persons or entities.

(f) Additional capacity beyond that required in this section of this Franchise Agreement shall be in analog format provided that total analog channels do not exceed four channels. Any required additional capacity in excess of the analog allotment shall be in digital format, provided, however, that unless or until Grantee activates digital capacity, on the Basic Tier available to all Subscribers all additional PEG capacity shall be analog. Grantee may convert analog PEG capacity to digital format when all Subscribers have the necessary equipment available to receive PEG programming in digital format. The bandwidth for digital PEG channels shall equal or exceed the bandwidth and transmission quality of standard commercial digital video channels on the Cable System.

(g) Grantor may designate one (1) or more entities, including the Community Access Corporation, as defined in the Cable Ordinance, to manage the non-commercial use of all or part of the Public, Educational, and Governmental Access Channel capacity dedicated pursuant to the provisions of this Franchise Agreement. Until further action is taken, the Community Access Corporation shall continue to be responsible for those areas for which it has been responsible to date, and Grantor shall be responsible for all other functions.

(h) Except as expressly permitted by federal law, Grantee shall not exercise any editorial control over the content of programming on any Access Channel capacity (except for such programming Grantee may produce and cablecast on those channels).

(i) If Grantor makes a schedule of PEG programming available to Grantee within the time required to meet Grantee's publication deadline, Grantee shall include such a schedule in any publication or video channel listing which it controls

in Grantor area, and Grantee shall cooperate with Grantor in making the schedule available to all Subscribers and to appropriate news sources, in the same manner as it does all other programming on the Cable System. Grantee is not, however, responsible for any decision by an independent publisher or news source to not publish the schedule. Prior to the completion of the Cable System rebuild, Grantee may fulfill its obligation under this paragraph of including a PEG schedule in a publication it controls by including PEG programming on its on-screen program guides and by using its best efforts to include regularly-scheduled PEG programming in its pre-rebuild printed program guide.

(j) Editorial Control: Except as expressly permitted by federal law, Grantee shall not exercise any editorial control over the content of programming on the designated Public, Educational and Governmental Access Channels (except for such programming as Grantee may produce and cablecast on such channels).

(k) Indemnification: All local producers and Users of any of the PEG access facilities or channels shall agree in writing to hold harmless Grantee, Grantor, the Cable Commission and any responsible educational institution, from any and all liability or other injury (including the reasonable cost of defending claims or litigation) arising from or in connection with claims for failure to comply with applicable federal laws, rules, regulations or other requirements of local, State or federal authorities; for claims of libel, slander, invasion of privacy, or the infringement of common law or statutory copyright; for unauthorized use of any trademark, trade name or service mark; for breach of contractual or other obligations owing to third parties by Grantee, Grantor, the Cable Commission or responsible educational or other institution; and for any other injury or damage in law or equity, which claims result from the use of a PEG access facility or channel.

(l) Cable Service to Certain Facilities:

(1) Upon request, Grantee shall provide one activated Drop and outlet and one Converter capable of receiving Basic Cable Service to the following, at no charge: Grantor government buildings, Grantor public Schools and Grantor public libraries and such buildings within Grantor that are used for public purposes as may be designated by Grantor. Provided, however, if it is necessary to extend Grantee's trunk or feeder lines more than three hundred feet solely to provide service to any such building, Grantor shall have the option of paying Grantee's Actual Costs for such extension in excess of the three hundred feet itself, or of releasing Grantee from or postponing Grantee's obligation to provide service to such building.

(2) Grantee shall provide Basic Cable Service and any equipment necessary to receive such service, free of charge to those facilities specified above. At its sole discretion, Grantee may also provide higher levels of Cable Service to such facilities free of charge.

(3) Upon request, Grantee shall offer one (1) free Cable Modem and free monthly Cable Modem service (residential level of access, including Internet access), to the following entities if they cannot access the

Institutional Network for high-speed data transmission: (i) each elementary and secondary School located in Grantor; and (ii) each public library located in Grantor.

(4) Additional Drops and/or outlets of Basic Cable Service will be installed at designated institutions by Grantee on an Actual Cost basis. Alternatively, said institutions may add outlets at their own expense, as long as the installation of such outlets meets Grantee's standards. Grantee shall have three (3) months from the date of Grantor designation of additional institution(s) to complete construction of the Drop and outlet, unless weather or other conditions beyond the control of Grantee require more time.

(m) Institutional Network: Grantee shall provide Grantee the Institutional Network described in Exhibit "A" attached hereto as a part of this Franchise Agreement.

(n) Access Obligations: Except as expressly provided in this Franchise Agreement, Grantee shall not make any changes in PEG access support or in the transmission, reception and carriage of Access Channels, and equipment associated therewith, without the consent of Grantor.

8. FRANCHISE FEE.

(a) Payment to Grantor: Each year during the Franchise term, as compensation for use of Public Rights-of-Way, Grantee shall pay to Grantor, on a quarterly basis, a franchise fee of five percent (5%) of Gross Revenues. Such payments shall be made no later than thirty (30) days following the end of each calendar quarter.

(b) Supporting Information: Each franchise fee payment shall be submitted with supporting detail and a statement certified by Grantee's authorized financial officer or an independent certified public accountant, reflecting the total amount of monthly Gross Revenues for the payment period and a breakdown by major revenue categories (such as basic service, cable programming service, premium service, etc.). Grantor shall have the right to require further supporting information.

(c) Late Payments: In the event any franchise fee payment or re-computation amount is not made on or before the required date, Grantee shall pay additional compensation and interest charges computed from such due date, at an annual rate equal to the commercial prime interest rate of Grantor's primary depository bank during the period such unpaid amount is owed.

(d) Audit:

(1) Grantor shall have the right to inspect records, to require the Franchise to provide copies of records at Grantee's expense and to audit and recompute any amounts determined to be payable under this Franchise Agreement, whether the records are held by Grantee, an Affiliate, or any other entity that collects or receives funds related to Grantee's operation in Grantor, including, by way of illustration and not limitation, any entity that

sells advertising on Grantee's behalf.

(2) Grantee shall be responsible for providing to Grantor upon request, all records necessary to confirm the accurate payment of franchise fees, without regard to the identity of the entity which holds such records.

(3) Any additional amounts due to Grantor as a result of the audit shall be paid within thirty (30) days following written notice to Grantee by Grantor of the underpayment, which notice shall include a copy of the audit report. If re-computation results in additional revenue of over ten percent (10%) is due and payable to Grantor, such amount shall be subject to a ten percent (10%) interest charge and Grantee shall reimburse Grantor its actual out of pocket expenses for conducting the audit.

(e) No Limitation on Taxing Authority:

(1) Nothing in this Franchise Agreement shall be construed to limit any authority of Grantor to impose any tax, fee, or assessment of general applicability.

(2) The franchise fee payments required by this section shall be in addition to any and all taxes or fees of general applicability. Except as provided for in Section 1(y) (Gross Revenues), Grantee shall not have or make any claim for any deduction or other credit of all or any part of the amount of said franchise fee payments from or against any of said Grantor taxes or other fees of general applicability, except as expressly permitted by applicable law. Grantee shall not apply nor seek to apply all or any part of the amount of said franchise fee payments as a deduction or other credit from or against any of said Grantor taxes or fees of general applicability, except as expressly permitted by applicable law. Except as provided for in Section 1(y) (Gross Revenues), Grantee shall not apply or seek to apply all or any part of the amount of any of said taxes or fees of general applicability as a deduction or other credit from or against any of its franchise fee obligations, except as expressly permitted by law.

9. REPORTS AND RECORDS.

(a) Grantor shall have the right to inspect and copy at any time during normal business hours at Grantee's local office or at such location as Grantor may designate, all books, receipts, maps, plans, financial statements, contracts, service complaint logs, performance test results, records of requests for service, computer records, codes, programs, and disks or other storage media and other like material that are relevant to monitor compliance with the terms of the Cable Ordinance, this Franchise Agreement, or applicable law. This includes not only the books and records of Grantee, but any books and records Grantor deems relevant held by an Affiliate, a cable operator of the Cable System of Grantee, or any contractor, subcontractor or any Person holding any form of management contract for the Cable System. Grantee shall be responsible for collecting the information and producing it at the location specified above (or at some other location) at the expense of Grantee

as provided in this Franchise Agreement, and by accepting its Franchise Grantee affirms that it can and will do so.

(b) Grantee shall maintain separate financial records governing its operations in the Franchise Area, that shall contain the following information:

(1) The true and entire cost of construction, of equipment, of maintenance and of the administration and operation thereof; the amount of stock issued, if any; the amount of cash paid in, the number and par value of shares, the amount and character of indebtedness, if any; the rate of taxes, the dividends declared; the character and amount of all fixed charges; the allowance, if any, for interest, for wear and tear or depreciation; all amounts and sources of income;

(2) the amount collected annually from Grantor treasury, if any, and the character and extent of the service rendered therefore; and

(3) the amount collected annually from other Users and the character and extent of the service rendered therefore to them.

(c) Access to the records of Grantee shall not be denied by Grantee on the basis that said records contain "confidential" or "proprietary" information. Refusal to provide information required herein to Grantor shall be grounds for revocation. All such information received by Grantor and explicitly designated by Grantee as "confidential" or "proprietary" shall remain confidential insofar as permitted by applicable State and federal law. To the extent permitted by applicable law, Grantor shall return all copies of materials designated "confidential" or "proprietary" to Grantee upon conclusion of use thereof by Grantor. Grantor shall not copy, reproduce, scan or otherwise make any type of image of any materials designated by Grantee as "confidential" or "proprietary."

(d) Grantee shall maintain a file of non-confidential and non-proprietary records open to public inspection in accordance with applicable FCC rules and regulations

(e) Waiver of Reporting Requirements: Grantor may, at its discretion, waive in writing the requirement of any particular report specified in this Franchise Agreement.

10. INSURANCE, SURETY AND INDEMNIFICATION.

(a) Insurance Required:

(1) Grantee shall maintain, and by its acceptance of the Franchise specifically agrees that it will maintain, throughout the entire length of the Franchise term, at least the following liability insurance coverage insuring Grantor, the Cable Commission and Grantee: workmen's compensation and employer liability insurance to meet all requirements of Tennessee law, and comprehensive general liability insurance with respect to the construction, operation, and maintenance of the Cable System, and the conduct of Grantee's business in the Franchise Area. Said insurance shall be in the minimum amounts of:

- (A) \$3,000,000 for property damage resulting from any one accident;
- (B) \$1,000,000 for personal bodily injury or death for one person;
- (C) \$5,000,000 for bodily aggregate per single accident and occurrence;
- (D) \$2,000,000 for all other types of liability; and

(2) Grantor may review insurance amounts no more than once every three (3) years and may require reasonable adjustments to them consistent with the public interest. In the event that Grantee objects to an increase in a policy limit and the parties are unable to agree on a mutually acceptable amount, the dispute shall be resolved by arbitration in accordance with the procedures of the American Arbitration Association.

(3) Qualifications of Sureties: All insurance policies shall be with sureties qualified to do business in the State, with an A-1 or better rating of insurance by Best's Key Rating Guide, Property/Casualty Edition, and in a form approved by Grantor. Any insurance coverage obtained by self-insurance shall guarantee payment of claims in the same manner and to the same extent as a commercial insurance policy.

(4) Policies Available for Review: All insurance policies shall be available for review by Grantor, and Grantee shall keep on file with Grantor certificates of insurance.

(5) Additional Insureds; Prior Notice of Policy Cancellation: All required insurance policies, excluding workmen's compensation coverage, shall include Grantor, its officers, boards, commissions, commissioners, agents, and employees as additional named insureds and shall further provide that any cancellation or reduction in coverage shall not be effective unless thirty (30) days prior written notice thereof has been given to Grantor. Grantee shall not cancel any required insurance policy without submission of proof that Grantee has obtained alternative insurance satisfactory to Grantor which complies with this Franchise Agreement.

(6) Failure Constitutes Material Violation: Failure to comply with the insurance requirements set forth in this section shall constitute a material violation of the Franchise.

(b) Indemnification:

(1) Grantee shall, at its sole cost and expense, release, indemnify, hold harmless, and defend Grantor, its elected and appointed officials, officers, boards, commissions, commissioners, agents, and employees, against any and all claims, suits, causes of action, proceedings, and judgments for damages or equitable relief arising out of (i) the construction, maintenance, or operation of Grantee's Cable System, (ii) copyright infringements involving a failure by Grantee to secure consents from the owners, authorized distributors, or franchisees of programs to be delivered by the Cable System,

(iii) the conduct of Grantee's business in the Franchise Area, and (iv) acts or omissions in any way arising out of Grantee's enjoyment or exercise of its Franchise, regardless of whether the act or omission complained of is authorized, allowed, or prohibited by the Cable Ordinance or this Franchise Agreement.

(2) Grantee shall also fully indemnify, defend, and hold harmless Grantor, and its elected and appointed officials, officers, boards, commissions, commissioners, employees and agents from and against any and all claims, suits, or causes of action of any kind or nature, and the resulting losses, costs, expenses and reasonable attorneys' fees, orders, decrees, liabilities and judgments, whether for damages or otherwise, subject to 47 U.S.C. § 558, arising out of or alleged to arise out of any claim against Grantee for invasion of the right of privacy, defamation of any Person, firm or corporation, or the violation or infringement of any copyright, trade mark, trade name, service mark, or patent, or of any other right of any Person, firm, or corporation. This indemnity does not apply to (i) programming carried on any channel set aside for PEG use, (ii) channels leased pursuant to 47 U.S.C. § 532, (iii) any use of the Institutional Network by Grantor, its elected and appointed officials, officers, boards, commissions, commissioners, employees, and agents and other permitted Users of the Institutional Network unless Grantee was in any respect engaged in determining the editorial content of any program, or adopts a policy of prescreening programming for the purported purpose of banning or regulating obscene programming.

(3) The indemnity provisions of this section include, but are not limited to, Grantor's reasonable attorneys' fees incurred in defending against any covered claims, suits, actions or proceedings, in addition to the reasonable value of any non-duplicative services rendered by Grantor Attorney or Grantor staff or employees.

(4) The indemnity provisions of this subsection shall survive the term of this Franchise Agreement for acts Grantee committed while the Franchise Agreement was in effect or performed under color of the Franchise Agreement after the expiration, revocation, cancellation or termination of the Franchise Agreement.

(5) Nothing in this Franchise Agreement shall be construed to waive the tort or any other immunity or applicable defense of Grantor, and its elected and appointed officials, officers, boards, commissions, commissioners, agents and employees under this Franchise Agreement.

(c) No Limit of Liability: Neither the provisions of this section nor any damages recovered by Grantor shall be construed to limit the liability of Grantee for damages to Grantor, its elected and appointed officials, officers, boards, commissions, commissioners, agents and employees under the Franchise.

11. PERFORMANCE GUARANTEES AND REMEDIES.

(a) Performance Bond.

(1) On the Effective Date of this Franchise, Grantee shall obtain and maintain during the entire term of the Franchise, and any renewal or extensions thereof, except as provided below, a performance bond in Grantor's favor in the amount of Two Million (\$2,000,000) Dollars, to ensure Grantee's faithful performance of its obligations. Such bond shall be reduced to Two Hundred Thousand Dollars (\$200,000) upon completion of construction of the Cable System. Such bond shall be subject to the notice and opportunity to cure rights of the Grantee.

(2) The performance bond shall be issued by a surety with an A-1 or better rating of insurance in Best's Key Rating Guide, Property/Casualty Edition; shall be subject to the approval of Grantee; and shall contain the following endorsement: "This bond may not be canceled, or allowed to lapse, until sixty (60) days after receipt by Grantor, by certified mail, return receipt requested, of a written notice from the issuer of the bond of intent to cancel or not to renew."

(3) The performance bond shall provide the following conditions:

(A) Subject to the notice and opportunity to cure rights of the Grantee, there shall be recoverable by Grantor from the principal and surety, any and all fines and penalties due to Grantor and any and all damages, losses, costs, and expenses suffered or incurred by Grantor resulting from: (i) the failure of Grantee to faithfully comply with the material provisions of this Franchise Agreement, the Cable Ordinance, and other applicable law; (ii) Grantee's failure to comply with all orders, permits and directives of any municipal agency or body having jurisdiction over its acts or defaults; (iii) the failure of Grantee to pay fees due to Grantor; and/or (iv) Grantee's failure to pay any claims or liens due Grantor. Such losses, costs and expenses shall include but not be limited to reasonable attorney's fees and other associated expenses.

(4) Reduction of Bond. Upon written application by Grantee, Grantor may, at its sole option, in writing, permit the amount of the bond to be reduced or waive the requirements for a performance bond. Reductions granted or denied upon application by Grantee shall be without prejudice to Grantee's subsequent applications or to Grantor's right to require the full bond at any time thereafter. However, no application shall be made by Grantee within one (1) year of any prior application.

(b) Letter of Credit:

(1) On the Effective Date of this Franchise, Grantee shall file and maintain with Grantor an irrevocable letter of credit from a financial institution licensed to do business in Tennessee in the amount of Fifty Thousand (\$50,000) Dollars. The form and content of the letter of credit shall

be approved by Grantor.

(2) Grantee and its surety shall be jointly and severally liable under the terms of the letter of credit.

(3) Subject to the notice and opportunity to cure rights of the Grantee, there shall be recoverable by Grantor from the letter of credit any and all fines and penalties due to Grantor and any and all damages, losses, costs and expenses suffered or incurred by Grantor resulting from the failure of Grantee: (i) to faithfully comply with the provisions of this Franchise Agreement, the Cable Ordinance and other applicable law; (ii) to comply with all orders, permits and directives of any municipal agency or body having jurisdiction over Grantee's acts or defaults; (iii) to pay fees due Grantor; and/or (iv) to pay any claims or liens due Grantor. Such losses, costs and expenses shall include but not be limited to reasonable attorneys' fees and other associated expenses.

(4) The total amount of the letter of credit shall be forfeited in favor of Grantor in the event:

(A) Grantee abandons the Cable System at any time during the term of its Franchise or any extension thereto; or

(B) Grantee carries out a Transfer without the written consent of Grantor as provided herein.

(5) The letter of credit shall provide for ninety (90) days prior written notice to Grantor of any intention on the part of the financial institution or Grantee to cancel, fail to renew, or otherwise materially alter its terms. The letter of credit shall further provide that, during such ninety (90) day period, Grantor may draw upon the total amount of the letter of credit, unless Grantee has filed an alternative letter of credit with Grantor, and the alternative has been accepted by Grantor.

(6) The letter of credit shall be released only upon expiration of the Franchise or upon the replacement of the letter of credit within the time specified herein.

(c) Rights Cumulative: The rights reserved to Grantor herein are in addition to all other rights of Grantor, whether reserved herein or authorized by applicable law, and no action, proceeding, or exercise of a right with respect to letter of credit or the performance bond will affect any other right Grantor may have. Neither the filing of a letter of credit with Grantor, the establishment of a performance bond, nor the receipt of any damages recovered by Grantor thereunder, shall be construed to excuse faithful performance by Grantee or limit the liability of Grantee under the terms of its Franchise, either to the full amount of the letter of credit, the performance bond or otherwise.

(d) Letter of Credit Procedures: The following procedures shall apply to drawing on the letter of credit:

(1) If Grantee fails to make timely payment to Grantor of any amount due under this Franchise Agreement or applicable law, or fails to

compensate Grantor within ten (10) days of written notification that such compensation is due, for any damages, costs, or expenses Grantor suffers or incurs by reason of any act or omission of Grantee in connection with this Franchise Agreement or its enforcement, or fails, after ten (10) days written notice, to comply with any provision of this Franchise Agreement or the Cable Ordinance that Grantor determines can be remedied by an expenditure from the letter of credit, Grantor may withdraw the amount thereof, with interest and any penalties, from the letter of credit.

(2) Within three (3) days of a withdrawal from the letter of credit, Grantor shall mail, by certified mail, return receipt requested, written notification of the amount, date, and purpose of such withdrawal to Grantee.

(3) If at the time of a withdrawal from the letter of credit by Grantor, the amounts available are insufficient to provide the total payment towards which the withdrawal is directed, the balance of such payment shall continue as the obligation of Grantee to Grantor until it is paid.

(4) No later than fifteen (15) days after mailing of notification to Grantee by certified mail, return receipt requested, of a withdrawal from the letter of credit, Grantee shall restore the letter of credit to the total amount specified herein.

(5) Upon termination of the Franchise under conditions other than those stipulating forfeiture of the letter of credit, the balance then remaining in the letter of credit shall be returned to Grantee within ninety (90) days of such termination, provided that there is then no outstanding default on the part of Grantee.

(6) The rights reserved to Grantor with respect to the letter of credit are in addition to all other rights of Grantor. An action, proceeding or exercise of a right with respect to the letter of credit does not affect any other right Grantor may have.

(e) Failure Constitutes Material Violation: Failure to maintain or restore the performance bond or letter of credit shall constitute a material violation of this Franchise Agreement.

(f) Remedies: In addition to any other remedies available at law or equity, Grantor may apply any one or a combination of the following remedies in the event Grantee violates the Cable Ordinance, this Franchise Agreement, or applicable State or federal law:

(1) Apply any remedy provided for in this Franchise Agreement, Grantor Code or other applicable laws or regulations.

(2) Revoke the Franchise pursuant to the procedures specified in this Franchise Agreement.

(3) Impose penalties available under the Cable Ordinance or other applicable federal, State and local laws for violation of Grantor ordinances.

(4) In addition to or instead of any other remedy, seek legal or equitable relief from any court of competent jurisdiction.

(g) Liquidated Damages:

(1) Because Grantee's failure to comply with provisions of the Cable Ordinance and this Franchise Agreement will result in injury to Grantee, and because it will be difficult to estimate the extent of such injury, Grantee and Grantor agree to the following liquidated damages for the following violations of the Franchise and of this Franchise Agreement, which represent both parties' best estimate of the damages resulting from the specified violation. To maintain that estimate, the parties agree that the liquidated damage amounts are in 1995 dollars and shall be increased each year by the increase in the U.S. Metropolitan Average of the Consumer Price Index.

(A) For failure to substantially complete construction in accordance with the Cable Ordinance or this Franchise Agreement: \$1,000/day for each violation for each day the violation continues;

(B) For transferring the Franchise without approval: \$1,000/day for each violation for each day the violation continues;

(C) For failure to comply with the requirements of the Public, Educational and Governmental Access Channel provisions of this Franchise Agreement of the Cable Ordinance: \$1,000/day for each violation for each day the violation continues;

(D) For any other material violation of any applicable ordinance, provision of this Franchise Agreement or lawful orders of Grantor for which actual damages may not be ascertainable: \$200/day for each violation for each day the violation continues.

(2) Grantee shall be liable to Grantor for the amounts specified above unless, within sixty (60) days of written notice from Grantor, or such longer period as Grantor may specify, either (i) Grantee has cured the violation or breach; (ii) if such violation or breach is such that it cannot reasonable be cured within sixty (60) days, Grantee has, to the reasonable satisfaction of Grantor, commenced action to cure the violation or breach and as promptly as practicable thereafter in fact cures such violation or breach; or (iii) Grantee presents written facts and arguments in refutation or excuse of each such violation or breach that reasonably satisfies Grantor.

12. REVOCATION OR TERMINATION OF FRANCHISE:

(a) Upon completion of the term of the Franchise granted under this Franchise Agreement, if a new, extended, or renewed Franchise is not granted to Grantee by Grantor, Grantee's right to occupy the Public Rights-of-Way shall terminate, subject to applicable federal law. If requested by Grantor, Grantee shall, at its sole expense, remove its facilities from the Public Rights-of-Way and restore the Public Rights-of-Way to their proper condition. Notwithstanding anything in this Franchise Agreement to the contrary, should Grantee fail, refuse or neglect to remove such facilities, Grantor may remove the facilities at the expense of Grantee.

Grantor shall not be liable to Grantee for any damages caused to Grantee's facilities as a result of such removal. Regardless of the existence or amount of any letter of credit or performance bond, the obligation of Grantee to remove shall survive the termination of this Franchise Agreement.

(b) Grantor shall have the right to revoke the Franchise, for Grantee's material failure to construct, operate, or maintain the Cable System as required by this Franchise Agreement or the Cable Ordinance; for defrauding or attempting to defraud Grantor or Subscribers; or for any other material breach of this Franchise Agreement or material violation of the Cable Ordinance.

(c) Before revocation of the Franchise for cause, Grantor shall give Grantee written notice of the default in its performance. If, within sixty (60) calendar days following such written notice from Grantor to Grantee, or such other period as Grantor Code shall require or Grantee and Grantor shall agree, Grantee (i) has not cured the default, (ii) if such default cannot be cured within sixty (60) days, Grantee has not taken corrective action, to the reasonable satisfaction of Grantor to cure the default, or (iii) presents written facts or arguments in refutation or excuse of each default that reasonably satisfies Grantor, then Grantor may give written notice to Grantee of its intent to revoke the Franchise, stating its reasons; provided that no opportunity to cure shall be provided where Grantee has been found in a proceeding affording Grantee due process to have defrauded or attempted to defraud Grantor or its Subscribers.

(d) Prior to revoking the Franchise, Grantor shall hold a public hearing, on thirty (30) calendar days notice, at which time Grantee and the public shall be given an opportunity to be heard. Following the public hearing, Grantor may determine to revoke the Franchise based on the information presented at the hearing, and other information of record, or, where applicable, grant additional time to Grantee to effect any cure. If Grantor determines to revoke the Franchise, it shall issue a written decision setting forth the reasons for its decision. A copy of such decision shall be transmitted to Grantee.

(e) If Grantor lawfully revokes the Franchise, or if for any other reason Grantee abandons, terminates, or fails to operate or maintain Cable Service to its Subscribers, the following procedures and rights shall be effective:

(1) Grantor may require the former Grantee to remove its facilities and equipment at the former Grantee's expense and restore affected sites as required in this Franchise Agreement. If the former Grantee fails to remove its facilities and equipment within a reasonable period of time, Grantor may have the removal done at the former Grantee's and/or surety's expense. Grantor will not be liable to Grantee for damages resulting from such removal.

(2) Grantor may require the former Grantee to continue operating the Cable System as specified in this Franchise Agreement.

(f) If Grantee fails to operate or maintain service to its Subscribers, the ownership of all portions of the Cable System in Public Rights-of-Ways shall revert

to Grantor and Grantor may sell, assign, or Transfer all or part of the assets of the Cable System.

(g) The Franchise may, at the option of Grantor following a public hearing, be revoked by Grantor one hundred twenty (120) calendar days after an assignment for the benefit of creditors or the appointment of a receiver or trustee to take over the business of Grantee, whether in a receivership, reorganization, bankruptcy assignment for the benefit of creditors or other action or proceeding, unless within that one hundred twenty (120) day period:

(1) Such assignment, receivership or trusteeship has been vacated;

or

(2) Such assignee, receiver or trustee has fully complied with the terms and conditions of Grantor Code and this Certificate and has executed an agreement, approved by a court of competent jurisdiction, under which it assumes and agrees to be bound by the terms and conditions of this Franchise Agreement and Grantor Code, and such other conditions as may be established or as are required under Grantor Code.

(h) Notwithstanding any other provision of this Franchise Agreement, in the event of foreclosure or other judicial Sale of any of the facilities, equipment or property of Grantee, Grantor may revoke this Franchise Agreement and Franchise, following a public hearing, by serving notice on Grantee and the successful bidder, in which event the Franchise and all rights and privileges of Grantee will be revoked and will terminate thirty (30) calendar days after serving such notice, unless:

(1) Grantor has approved the Transfer of the Franchise to the successful bidder; and

(2) The successful bidder as covenanted and agreed with Grantor to assume and be bound by the terms and conditions of this Franchise Agreement and Grantor Code, and such other conditions as may be established or as are required pursuant to Grantor Code or this Franchise Agreement.

13. MISCELLANEOUS PROVISIONS.

(a) **Binding Acceptance:** This Franchise Agreement shall bind and benefit the parties hereto and their respective heirs, beneficiaries, administrators, executors, receivers, trustees, successors and assigns, and the promises and obligations herein shall survive the expiration date hereof.

(b) **Severability:** If any term, condition, or provision of this Franchise Agreement shall, to any extent, be held to be invalid or unenforceable, the remainder hereof shall be valid in all other respects and continue to be effective. If such a term, condition, or provision is material, Grantor may, upon the provision of ten (10) days notice to Grantee, terminate the Franchise and this Franchise Agreement. Alternatively, Grantor may negotiate in good faith with Grantee to reconstitute this Franchise Agreement in a form that, to the maximum extent

possible, is consistent with the original intent of Grantee and Grantor, and preserves the benefits bargained for by each party. In the event of a subsequent change in applicable law so that the provision which had been held invalid is no longer invalid, said provision shall thereupon return to full force and effect without further action by Grantor and shall thereafter be binding on Grantee and Grantor.

(c) Preemption: In the event that federal or State laws, rules or regulations preempt a provision or limit the enforceability of a provision of this Franchise Agreement, then, subject to Grantor's rights under this Franchise Agreement, the provision shall be read to be preempted to the extent and for the time, but only to the extent and for the time, required by law. In the event such federal or State law, rule or regulation is subsequently repealed, rescinded, amended or otherwise changed so that the provision hereof that had been preempted is no longer preempted, such provision shall thereupon return to full force and effect, and shall thereafter be binding on the parties hereto, without the requirement of further action on the part of Grantor.

(d) Compliance With Federal and State Laws: Grantee or Grantor shall, at all times during the term of this Franchise, including all extensions and renewals hereof, comply with all applicable federal, State, and local laws and regulations.

(e) Grantee Bears Its Own Costs: Unless otherwise expressly provided in this Franchise Agreement, all acts that Grantee is required to perform must be performed at Grantee's own expense.

(f) Force Majeure: Grantee shall not be deemed in default of provisions of this Franchise Agreement or the Cable Ordinance where performance was rendered impossible by war or riots, labor strikes or civil disturbances, floods, or other causes beyond Grantee's control, and the Franchise shall not be revoked or Grantee penalized for such noncompliance, provided that Grantee takes immediate and diligent steps to bring itself back into compliance and to comply as soon as possible under the circumstances with the Franchise without unduly endangering the health, safety, and integrity of Grantee's employees or property, or the health, safety, and integrity of the public, Public Rights-of-Way, public property, or private property.

(g) Governing Law: This Franchise Agreement shall be governed in all respects by the law of the State of Tennessee.

(h) Order of Precedence: The terms of this Franchise Agreement are subject to the Cable Ordinance and all other provisions of Grantor Code, and in the event of any conflict, Grantor Code shall prevail.

(i) Notices: Unless otherwise expressly stated herein, notices required under this Franchise Agreement shall be mailed first class, postage prepaid, to the addressees below. Each party may change its designee by providing written notice to the other party, but each party may only designate one entity to receive notice.

(1) Notices to Grantee shall be mailed to:

Digital Access Corporation of Tennessee, Inc.
c/o Digital Access, Inc.
Three Bala Plaza East, Suite 605
Bala Cynwyd, PA 19004-3481
Attention: President

With a copy to:

Digital Access Corporation of Tennessee, Inc.
c/o Digital Access, Inc.
Three Bala Plaza East, Suite 605
Bala Cynwyd, PA 19004-3481
Attention: General Counsel

- (2) Notices to Grantor shall be mailed to:

Director of Information Systems
Information Systems Department
Metro Government of Nashville and Davidson County
700 Second Avenue, South
Nashville, TN 37210

With a copy to:

Metro Legal Department
Room 204
Metro Court House
Nashville, TN 37201

(3) Grantee shall at all times keep Grantor advised as to which individual(s) are authorized to act on behalf of Grantee and whose acts will be considered to bind Grantee.

(4) Unless otherwise provided by Grantor Code or by this Franchise Agreement, notices shall be effective upon receipt.

(j) Time of Essence; Maintenance of Records of Essence: In determining whether Grantee has substantially complied with this Franchise Agreement, the parties agree that time is of the essence. As a result, Grantee's failure to complete construction, to extend service, to seek approval of Transfers or to provide information in a timely manner may constitute material breaches. The maintenance of records and provision of reports in accordance with the Franchise and this Franchise Agreement is also of the essence to this Franchise Agreement.

(l) Captions and References:

(1) The captions and headings of sections throughout this Franchise Agreement are intended solely to facilitate reading and reference to the

sections and provisions of this Franchise Agreement. Such captions shall not affect the meaning or interpretation of this Franchise Agreement.

(2) When any provision of the Cable Ordinance is expressly mentioned herein, such reference shall not be construed to limit the applicability of any other provision of the Cable Ordinance or Grantor Code that may also govern the particular matter in question.

(m) Rights of Third Parties: This Franchise Agreement is not intended to, and shall not be construed to, grant any rights to or vest any rights in third parties, except as expressly provided herein.

(n) Merger of Documents: This Franchise Agreement supersedes all prior oral or written agreements, drafts, commitments, or understandings with respect to the matters provided for herein. The parties recognize, however, the right of Grantor to establish and amend Grantor Code and Grantor regulations from time to time, including the Cable Ordinance, as empowered by the State of Tennessee, and Grantee agrees to abide by all such applicable laws and regulations.

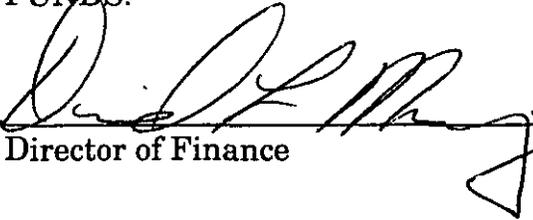
AGREED TO THIS 17th DAY OF October, 2000:

Grantor: Metropolitan Nashville and Davidson County, a municipal corporation of Tennessee

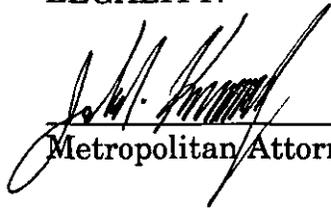
By: 

Metropolitan Mayor

APPROVED AS TO AVAILABILITY OF FUNDS:


Director of Finance

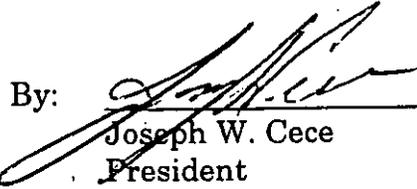
APPROVED AS TO FORM AND LEGALITY:


Metropolitan Attorney

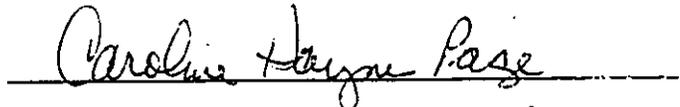
APPROVED AS TO INSURANCE REQUIREMENTS:


Director of Insurance and Safety

Digital Access Corporation of Tennessee, Inc.

By: 
Joseph W. Cece
President

Sworn to and subscribed before me this 12th day of September, 2000.


Notary Public

My Commission Expires: September 29, 2001

EXHIBIT A

SECTION 1. INSTITUTIONAL NETWORK SYSTEM. For purposes of creating an I-Net System for Grantor, Grantee agrees to provide the following:

(A) Dark Fiber. Grantee agrees to provide Grantor with the use of four (4) [two (2) pair] dark optical fibers in Grantor's Backbone Cable System during the Term of the Franchise. Grantee reserves the right to select the Backbone Fiber strands which will be used by Grantor pursuant to this provision. During the term of this Franchise, Grantee shall, at its cost, maintain and test the Backbone Fiber; provided, however, Grantee shall have no obligation to light the Backbone Fiber or to provide equipment, personnel or facilities to operate the Backbone Fiber. Operation of Grantor's I-Net System on these fibers shall be the sole responsibility of Grantor.

(B) Managed Bandwidth. In addition to the dark fiber allocation in subsection (A), for the Term of this Franchise, Grantee agrees to provide Grantor the exclusive right to use capacity on the Cable System; such capacity provided for Grantor's use shall be up to 155 megabits (OC-3 or equivalent at the Effective Date of this Franchise).

(C) Connectivity. In order to enable Grantor to utilize the managed bandwidth provided in subsection (B), Grantee shall provide Drops from certain Mini-Hubs to buildings designated by Grantor, subject to the provisions below. Grantee will bear the sole expense of providing the Drops and the proportional cost of electronics associated with the size of the circuit on a pro rata basis, up to an amount not to exceed \$250,000. Such proportional costs shall be based upon Grantee's actual costs. Any and all direct, fixed and incremental costs above the first \$250,000 shall be the sole obligation of the Grantor. Grantee shall not be responsible for any internal building wiring or any equipment commonly referred to as "end-user equipment" or "customer premise equipment".

SECTION 2. COOPERATION. Grantee shall cooperate with Grantor in determining the locations of Grantee's Mini-hubs in an effort to reduce the costs of connectivity described in Section 1.

SECTION 3. PAYMENT OF INCREMENTAL COSTS. Grantor shall pay Grantee all amounts due under the terms of Exhibit A within thirty (30) days of Grantee's submission of an invoice for payment to Grantor, unless otherwise agreed to by the parties.

SECTION 4. RESTRICTIONS ON USE OF I-NET SYSTEM. The I-Net System described in Section 1 shall only be used by Grantor or by affiliated governmental and educational entities designated by Grantor for governmental and educational,

non-commercial purposes. Grantor may not use or permit third parties to use the I-Net System to transport or provide voice, video or data services to consumers, or to businesses, or to the public for compensation without the prior written consent of Grantee, or its successors or assigns, which consent may be withheld for any reason.

The restrictions contained in this Section 4 shall not be interpreted to limit Grantor's ability to interconnect I-Net System capacity with other components of Grantor's internal data network or the data network of other local governments in Tennessee.

The parties agree that monetary damages for breach of the obligations and restrictions on use contained in this Section 4 will not be adequate and that the non-breaching party shall be entitled to a temporary restraining order and preliminary and permanent injunctive relief, in addition to any other available remedies for breach of this Section 4.

SECTION 5. I-NET SYSTEM SATISFIES GRANTEE'S OBLIGATIONS.

Grantor acknowledges and agrees that Grantee's provision of the I-Net System as described in this Exhibit A fully satisfies any and all requirements and/or obligations for Grantee to provide facilities under the Telecommunications Ordinance, or to provide an Institutional Network as provided in the Cable Act or in the Cable Ordinance.

SECTION 6. LIMITATION OF DAMAGES. Neither party nor their Affiliates shall be liable to the other for any special, indirect or consequential damages or loss of use, lost revenues or lost profits arising out of the use of the I-Net System.

SECTION 7. INDEMNIFICATION. Grantor shall and hereby agrees to indemnify and hold harmless and defend Grantee and all employees, directors, officers, shareholders, agents, representatives, counsel, Affiliates, parents, successors and permitted assigns of Grantee (the "Indemnified Grantee Parties") from and for any and all liabilities, damages, lawsuits, obligations, claims, costs, expenses, assessments, and penalties, including reasonable attorneys' fees and expenses and court costs, incurred by or asserted against any such Indemnified Grantee Parties by reason of, arising out of, or related to:

1. any use, nonuse, possession, occupation, operation, maintenance, or management of the I-Net System by Grantor or its employees, agents, representatives, contractors, customers, licensees or invitees, or for which Grantor or any of its employees, agents, representatives, contractors, customers, licensees or invitees is directly or indirectly responsible;

2. any negligent or tortuous or illegal act of Grantor or any of its employees, agents, representatives, contractors, customers, licensees, or invitees in connection with the I-Net System;

3. any claim for or liability to any Person using part or all of the transmission capacity leased by Grantor to the extent such claim, judgment, or liability is related to such use of the I-Net System;

4. Grantor's use, misuse, abuse, misapplication or improper use of the I-Net System, including without limitation claims for defective transmission, actions for libel, slander, and actions for infringement of copyright and/or unauthorized use of material; or

5. any property damage, bodily injury or death caused by Grantor's acts or omissions related to this Franchise Agreement.