

CITY OF BONITA SPRINGS, FLORIDA  
ORDINANCE NO. 16-12

AN ORDINANCE OF THE CITY OF BONITA SPRINGS, FLORIDA, TO REPEAL IN ITS ENTIRETY BONITA SPRINGS ORDINANCE NO. 04-02, GRANTING A FRANCHISE WITH COMCAST CABLEVISION OF THE SOUTH, INC., PURSUANT TO THE CITY OF BONITA SPRINGS, FLORIDA CABLE TELEVISION ORDINANCE; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, in 2003, the City of Bonita Springs City Council adopted a cable television franchise with Comcast Cablevision of the South which at the time was consistent with federal and state law; and

WHEREAS, in 2007, pursuant to Florida Statutes § 610.105, if an incumbent cable or video service provider has been granted a state-issued certificate of franchise authority that the municipality, any obligation under any existing municipal franchise that exceeds the obligations imposed on the certificate holder in the area covered by the certificate shall be against public policy and void; and

WHEREAS, this ordinance has proven out of date; and

WHEREAS, City Council desires to repeal in its entirety the City of Bonita Springs Cable Television Franchise Ordinance.

THE CITY OF BONITA SPRINGS HEREBY ORDAINS:

1. Bonita Springs Ordinance No. 04-02, as set forth in Exhibit A, attached hereto, is hereby repealed in its entirety and upon the effective date of this ordinance, the terms and conditions thereof are of no further force and effect.
2. The effective date of this ordinance shall be thirty (30) days from its adoption date.


DULY PASSED AND ENACTED by the City Council of the City of Bonita Springs, Lee County, Florida, this 17<sup>th</sup> day of August, 2016.

AUTHENTICATION:

  
\_\_\_\_\_  
Mayor

  
\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
City Attorney

Vote:

|         |     |          |     |
|---------|-----|----------|-----|
| DeWitt  | Aye | Quaremba | Aye |
| Forbes  | Aye | Simmons  | Aye |
| Gibson  | Aye | Slachta  | Aye |
| O'Flinn | Aye |          |     |

Date filed with City Clerk: 8/18/16

Exhibit A  
**CABLE TELEVISION FRANCHISE AGREEMENT**  
**BY, BETWEEN AND AMONG**  
**THE CITY OF BONITA SPRINGS, FLORIDA AND COMCASTCABLEVISION OF THE**  
**SOUTH, INC.**

**CITY OF BONITA SPRINGS ORDINANCE NO. 04-02**

**~~AN ORDINANCE OF THE CITY OF BONITA SPRINGS, CREATING THE FRANCHISE AGREEMENT, BY, BETWEEN AND AMONG THE CITY OF BONITA SPRINGS, FLORIDA AND COMCAST CABLEVISION OF THE SOUTH, INC., PURSUANT TO THE CITY OF BONITA SPRINGS, FLORIDA CABLE TELEVISION ORDINANCE AND GRANTING A FRANCHISE TO OWN, OPERATE AND MAINTAIN A CABLE TELEVISION SYSTEM IN THE CITY OF BONITA SPRINGS, FLORIDA, AND SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OF SUCH FRANCHISE AND PROVIDING FOR REGULATION AND USE OF SUCH SYSTEM.~~**

~~THIS AGREEMENT, effective the 20<sup>th</sup> day of February, 2004, is by and between BONITA SPRINGS, FLORIDA (the "City") and COMCAST CABLEVISION OF THE SOUTH, INC., (hereinafter "Comcast" or "Franchisee").~~

~~WHEREAS, pursuant to the Communications Act of 1934, as amended, 47 U.S.C. §§ 521 et seq., the City may grant or renew a Franchise to construct, operate and maintain a Cable Television System; and~~

~~WHEREAS, on December 17, 2003, the City Council of the City of Bonita Springs, Florida ("Council"), adopted Ordinance No. 03-23, providing for the issuance and regulation of cable television franchises for, and the installation, construction and operation of Cable Television Systems within the City; and~~

~~WHEREAS, Comcast is currently operating within the City pursuant to the transitional agreement between the City and Lee County; and~~

~~WHEREAS, Comcast desires to obtain a Franchise to construct, install, maintain, and operate a Cable System within the incorporated area of the City of Bonita Springs; and~~

~~WHEREAS, the Franchise granted herein shall supercede any other agreement or franchise previously granted to Comcast for the installation, construction or operation of a Cable System in the City; and~~

~~WHEREAS, the construction, installation, maintenance, and operation of such a System involves the use and occupation of the Streets of the City, over which the City exercises governmental control; and~~

~~WHEREAS, the Council has evaluated Comcast's request in light of the requirements of Federal and State law and the Ordinance, and has conducted a public hearing concerning Comcast's request; and~~

~~WHEREAS, the Council has relied on Comcast's representations both orally made on the record at a public hearing and written and has considered all information presented to it by Comcast, the City Staff, the City's consultants, and the public; and~~

~~WHEREAS, based on said representations and information, the Council has determined that a grant of a nonexclusive Franchise to Comcast to construct, install, maintain and operate a Cable Television System in the City, subject to the terms and conditions set forth herein and in the Ordinance is consistent with the public interest; and~~

~~WHEREAS~~, in consideration of the City's grant of a Cable Television Franchise to Comcast to own, construct, install, maintain and operate a Cable System within the City, and to use and occupy the Streets of the City for that purpose, and in consideration of Comcast's promise to provide Cable Service to residents of the City pursuant to the terms and conditions set forth herein, and in consideration of the promises and undertakings herein, and other good and valuable consideration, the receipt and the adequacy of which is hereby acknowledged, the Franchise is hereby granted; and

~~WHEREAS~~, the City and Comcast have reached agreement on the terms and conditions of this Franchise Agreement.

~~NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL BENEFITS, COVENANTS, PROMISES AND CONDITIONS CONTAINED HEREIN, THE CITY OF BONITA SPRINGS HEREBY ORDAINS, AND COMCAST AGREES, THAT:~~

~~SECTION 1:~~ The above recitals are true, correct, and incorporated herein by reference.

~~SECTION 2:~~ ~~Definitions~~

~~Except as otherwise provided herein, the definitions in Section II of the City's Ordinance No. 03-23, as such existed as of the Effective Date of this Franchise Agreement, shall govern this Franchise Agreement. In addition, the following definitions shall apply:~~

- ~~A. Ordinance shall mean Ordinance No. 03-23, as such existed as of the Effective Date of this Franchise Agreement.~~
- ~~B. Franchisee shall have the meaning set forth in the preamble, above.~~
- ~~C. Franchise Area shall mean the entire incorporated area within the legal boundaries of the City as defined in the Ordinance.~~
- ~~D. Non-Public School shall mean any school serving grades K-12 (as defined in Chapter 205.022(6)(b), Florida Statutes) in the Franchise Area that is not a public school and receives funding pursuant to Title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6301, et seq.), as may be amended. For purposes of this Franchise Agreement, "Non-Public School(s) expressly excludes any 'home school'."~~
- ~~E. Charter School shall mean that all charter schools in Florida shall be part of the State's program of public education. All charter schools in Florida are public schools. A charter school may be formed by creating a new school or converting an existing public school to charter status. A public school may not use the term "charter" in its name unless it has been approved under Fla. Stat § 1002.33.~~
- ~~F. State of the Art shall mean that level of Cable System technical performance, equipment, components and service (without reference to the content of service) equal to that, which has been implemented by Franchisee on any Cable System operating in Lee County. Nothing herein shall be construed to require Franchisee to employ any specific transmission technology.~~

~~SECTION 3:~~ ~~Grant of Franchise~~

- ~~A. Comcast accepts all terms and conditions of the Ordinance as of the Effective Date of this Franchise Agreement unless expressly provided otherwise herein. In the event of a discrepancy between this Franchise Agreement and the Ordinance, the express provision of this Franchise Agreement shall control. The parties expressly acknowledge that the Franchisee's obligations under this Franchise Agreement may not be unilaterally altered, whether by resolution, proclamation, or amendment of the Ordinance unless otherwise stated herein or by applicable Federal or State law.~~
- ~~B. Subject to the terms of this Franchise Agreement, the City hereby grants Comcast a Franchise for the right and privilege to own, construct, install, maintain and operate a Cable Television System within the Franchise Area.~~
- ~~C. The Cable System herein franchised shall be used and operated only for the purpose of providing Cable Services, except that nothing in this Franchise Agreement shall be construed to prohibit Comcast from offering any service over its Cable Television System that is not prohibited by Federal or State law, provided all lawful requirements for City authorization or registration requirements are satisfied, nor shall anything in this Franchise Agreement be construed as a limitation on the City's right to exercise its lawful authority with respect to providers of cable, telecommunications and information services.~~
- ~~D. The first sentence of Ordinance Section III.C.4 shall not apply to the Franchisee, nor in any way alter the respective rights of the parties, nor modify the obligations, evidentiary burdens, or applicable standards in any court or administrative proceeding involving the parties hereto.~~

**SECTION 4: Term of Franchise**

~~\_\_\_\_\_ This Franchise shall be for a period of twelve (12) years unless otherwise sooner terminated or otherwise extended in accordance with the terms of this Franchise Agreement. The Franchise shall commence upon the date of the Council resolution approving the grant of the Franchise, provided the City is in receipt of the written acceptance required pursuant to Section III, all payments due as of the effective date and evidence of all insurance and bonds as required pursuant to Section X and XI.~~

**SECTION 5: Non-Exclusive Franchise**

~~\_\_\_\_\_ The Franchisee's right to use and occupy the Streets shall be non-exclusive, and the City, in accordance with applicable law, reserves the right to grant a Franchise or other use of said Streets, or any portions thereof, to any person, including the City, at any time during the term of this Franchise Agreement.~~

**SECTION 6: Subject to Federal Law, State Law and Local Law**

~~This Franchise Agreement is subject to and shall be governed by all terms, conditions and provisions of the Communications Act, any amendments thereto, and any other applicable provisions of Federal, State or local law.~~

**SECTION 7: Franchisee Subject to Other Laws, Police Power**

- ~~A. The Franchisee is subject to and agrees to comply with all applicable local, City, State and Federal laws, Ordinances, rules, regulations, and orders.~~
- ~~B. The Franchisee shall at all times be subject to the lawful exercise of the police power of the City. Nothing in this Franchise Agreement shall be construed as a limitation of the City's authority to exercise such power in any lawful manner.~~

**SECTION 8: Reservation of Rights**

~~The City reserves the right to acquire, purchase, own and/or operate a Cable System to the extent permitted by Federal, State and local law.~~

**SECTION 9: Insurance**

- ~~A. The Franchisee shall obtain and maintain insurance of the types and minimum amounts required in Section X of the Ordinance in such a manner as to comply with each and every requirement of said Section.~~
- ~~B. The Franchisee shall provide proof to the City Manager of compliance with this Section 9 as of the date of the Council resolution approving the grant of the Franchise.~~

**SECTION 10: Indemnification of the City**

~~Pursuant to Section IX B. of the Ordinance, Franchisee agrees to indemnify, defend and hold harmless the City, its officers, Councils, Commissioners, agents and employees from any and all actions, claims, suits, penalties and judgments for damages at law or equity of any nature whatsoever arising out of or through, Franchisee's enjoyment or exercise of the Franchise granted hereunder, regardless of whether the act or omission complained of is authorized, allowed or prohibited by the Ordinance or the Franchise Agreement; provided, however, that Franchisee's obligation hereunder shall not extend to any claims caused by the misconduct or negligence of the City, its officials, Councils, Council, agents, Commissioners or employees or any claim caused by or arising out of the operation or programming of any Access Channel(s), including copyright, which is outside of Franchisee's control. This provision includes, but is not limited to, any claim arising out of copyright infringements or a failure by the Franchisee to secure consent from the owners, authorized distributors, or providers of programs to be delivered by the Cable System, claims arising out of Section 638 of the Communications Act, 47 U.S.C. § 558, and claims against the Franchisee for invasion of the right of privacy, defamation of any person, firm or corporation, or the violation or infringement of any copyright, trademark, trade name, service mark or patent, or of any other right of any person, firm or corporation or any suit, claim or demand for violation of any law that arises from Franchisee's operation of the~~

~~System in the City including, but not limited to, the provision or failure to provide channels, facilities and services to handicapped persons. Franchisee shall obtain the approval of the City Attorney, of any counsel to be retained to represent the City's interest pursuant to this Section, which approval shall not be unreasonably withheld. The City agrees to notify Franchisee, in writing, within ten (10) days of the City receiving notice, of any issue it determines may require indemnification. Nothing in this section shall prohibit the City from participating in the defense of any litigation by its own counsel at its own cost.~~

**SECTION 11: Construction Bond**

~~\_\_\_\_\_ Prior to any Cable System construction, upgrade, rebuild or other work in the Streets excluding work connected with normal operation and maintenance of the System, Franchisee shall furnish a construction bond in favor of the City, in an amount equal to the lesser of the projected cost of construction or One Hundred Thousand (\$100,000.00) Dollars. If such construction bond is not furnished to the City ten (10) days prior to the start of any such construction, construction shall be delayed until such time as the construction bond is provided in a form reasonably acceptable to the City Manager. The construction bond must be in a form approved by the City Manager or his/her designee, which approval shall not be unreasonably withheld. The construction bond shall be maintained until said construction work is completed and the System fully activated and for a period of twelve (12) months thereafter. Franchisee shall notify the City Manager in writing when it believes the construction has been completed and activated in the entire franchise area and the date on which it believes the bond may be eliminated pursuant to this Section 11.~~

**SECTION 12: Use of Streets**

- ~~\_\_\_\_\_ A. Franchisee agrees at all times to comply with and abide by all generally applicable and lawful provisions of the Code of the City.~~
- ~~\_\_\_\_\_ B. Franchisee's Cable System distribution facilities shall be installed and maintained underground where other telecommunications, cable, communications, information, power, electric and any utility facilities are also located underground.~~
- ~~\_\_\_\_\_ C. Franchisee shall utilize, with the owner's permission, existing conduits, poles, or other facilities whenever economically and technically feasible in Franchisee's reasonable business judgment. The Franchisee has the duty and the responsibility to obtain or establish the existence of an easement, license, or dedication for an applicable use.~~
- ~~\_\_\_\_\_ D. All of Franchisee's transmission lines, equipment, structures and other facilities shall be installed, located and maintained so as to cause minimum interference with the rights and convenience of property owners.~~
- ~~\_\_\_\_\_ E. All safety practices required by applicable Federal, State or local law or accepted industry practices and standards shall be used during construction, maintenance and repair of the Cable System.~~
- ~~\_\_\_\_\_ F. As required by the City, and upon receipt of written notice from the City, Franchisee shall remove, relocate, replace or modify, at its own expense (except as otherwise required by law) its facilities~~

within any public street as set forth in the Ordinance; provided, however, should the City require such removal, relocation, replacement, or modification in order to construct and install its own competitive Cable TV System, then the City shall pay said expense.

~~G. Before commencing any construction on or otherwise disturbing any private property or public Streets as a result of its construction or operations, Franchisee shall obtain any required permits and pay any required fees in accordance with applicable law. Franchisee shall, at its own expense, restore such property pursuant to the requirement of the Ordinance and the conditions of the permit. If such restoration is not performed in a reasonable and satisfactory manner within thirty (30) days or such time as specified in the permit, the City may, after prior written notice to Franchisee, cause the repairs to be made at Franchisee's expense.~~

~~H. In the event of an emergency situation within the rights-of-way or on public roads where Franchisee's facilities are located and the City needs to move or remove Franchisee's facilities, the City shall make a good faith effort to provide notice to Franchisee of the need to perform such emergency work in the event Franchisee may be able to undertake such work. However, if the City is required to perform emergency Street work requiring relocation of Franchisee's facilities in the Streets, then Franchisee shall reimburse the City for its reasonable costs associated with such relocation.~~

~~I. Franchisee shall not place facilities, equipment or fixtures where they will unreasonably interfere with the facilities or equipment of any other companies lawfully using the public rights-of-way serving the residents of the City. All such facilities, equipment or fixtures placed in any public street or public right-of-way shall, to the best of Franchisee's ability, be placed in a manner so as not to interfere with use of the public street.~~

~~J. The Construction Bond required pursuant to this Franchise Agreement shall not reduce Franchisee's obligation to pay any and all applicable permit fees generally required by the City of other entities accessing or using the public rights of way unless otherwise expressly provided by applicable law.~~

**SECTION 13: Minimum System Facilities and Services.**

~~Set forth below are the terms and conditions that the parties agree to abide by for "Minimum System Facilities and Services" during the term of this Franchise Agreement:~~

~~A. Franchisee agrees that it will meet with City staff within the sixty (60) day period prior to the fifth and eighth anniversary of the issuance of this Franchise Agreement, upon the City's written request, in order to review and discuss the status of the Cable System in relation to State-of-the-Art. Franchisee may agree to make such technically and commercially feasible improvements to its System as may be requested by the City. If Franchisee believes that a particular improvement requested by the City is not commercially available or is financially infeasible for any reason, it will, upon written request, provide information to the City supporting its position. If the City and Franchisee disagree as to the commercial availability or financial feasibility of a particular improvement, the City may provide notice stating that it believes that such an improvement is appropriate and may consider Franchisee's response during renewal. Should the Franchisee upgrade its Cable System consistent with the City's~~

request, the parties may agree that the Term of this renewal Franchise Agreement may be extended by the City for an additional period.

~~B. As of the effective date hereof, Franchisee's Cable System shall be able to pass frequencies of at least 750 MHz; have a minimum channel capacity of seventy-eight (78) analog video channels or the equivalent thereto; and have video channel capability in the amount necessary to satisfy the access channel requirements set forth in Section 17 hereof. Additionally, any extension of the System required pursuant to Section 20 hereof, Franchisee shall provide the same capacity as set forth above so that the same level of service and products are available to all of Franchisee's Subscribers in the City.~~

~~C. City Government Facilities.~~

~~1. Franchisee agrees to provide, at minimum, one (1) cable drop per location listed in Exhibit A, including installation and Basic Cable Service, the Cable Programming Service Tier ("CPST" or the equivalent comprising the next level of programming service above the most basic tier) and all City and Lee County government and educational channels provided in the City, notwithstanding the tier any such channels as may be assigned, without charge for installation or service to each and every government building in the Franchise Area within 200 feet of Franchisee's Cable System. Service extensions beyond 200 feet shall be at the City's expense based upon Franchisee's actual costs.~~

~~2. If the new City Hall is located within the then existing footprint of Franchisee's Cable System, Franchisee will provide one (1) cable drop and service in accordance with Subsection 13.C.1, above. If the new City Hall is located outside the then existing footprint of Franchisee's Cable System, the City shall reimburse Franchisee for no more than the actual cost of extending its Cable System to the new City Hall. In addition, if the City gives Franchisee written notice prior to construction of its desire to have the new City Hall wired for cable service, Franchisee shall cooperate with the builder to install cable facilities during construction.~~

~~3. Franchisee agrees to provide free cable modem service to one outlet in City buildings, in up to 10 locations, including any locations in the new City Hall. A City building is a building which is used and occupied by the government of Bonita Springs or any other governmental entity of which is using the building by an inter-local agreement with the City of Bonita Springs and not to any private entity for its proprietary use. The City shall be responsible for providing all computers and internal networking equipment and services necessary to utilize the cable modem service. Upon construction of the new City Hall, the City shall be entitled to up to five additional outlets for cable modem service in the new building.~~

~~4. Comcast agrees to provide one free high-speed cable modem and high-speed cable Internet service to each of ten (10) City Government facilities chosen by the City, provided that any such facility is within Comcast's high-speed cable service area and can be served by a standard installation~~



~~D. School Commitments.~~

~~Where Franchisee's plant is: (a) the closest franchised cable operator to any K-12 public, charter or Non-Public School, excluding "home schools," and (b) the school is within 200 feet of Franchisee's coaxial distribution plant, Franchisee hereby agrees to provide one free cable drop and installation and free Basic and Cable Programming Service Tier ("CPST" or the equivalent comprising the next level of programming service above the most basic tier) and all City and Lee County government and educational channels at no charge to those schools. Franchisee also agrees to offer 1 free cable modem and high speed Internet service to each such school, provided that the school shall be responsible for whatever computer equipment may be necessary to use the service and to connect to the modem. Any K-12 public, charter and/or Non-Public Schools constructed after the Effective Date hereof, that is not within 200 feet of Franchisee's plant shall, upon written request, be provided with installation at no more than the Franchisee's direct cost. However, where Franchisee receives reasonable prior written notice of the construction of a new school, Franchisee shall cooperate with the builder to install all cable related facilities during construction so as to allow for activation of Cable Services simultaneous with occupancy of the school. If any internal wiring installation is requested to serve additional outlets in any school, it will be provided at no more than Franchisee's actual cost. Internal wiring will be provided without charge if Franchisee is provided sufficient notice to coordinate with other comparable electrical wiring installation in cases of new construction or substantial rehabilitation of existing schools in the City.~~

~~E. Franchisee agrees not to seek to recover the cost for the connections provided pursuant to subsections B. and C. above as external or other costs nor shall such costs be considered fees or taxes.~~

~~F. All video signals received for transmission that contain closed circuit captioning information for the hearing impaired and non-English translations shall in turn contain such information in the form received when transmitted by Franchisee to its Subscribers of the System under applicable Federal and State law.~~

~~G. Franchisee shall comply fully with all applicable laws concerning handicapped or disabled persons.~~

~~H. Standard installation shall consist of a drop, not exceeding 125 feet from the cable plant to the nearest part of a Subscriber's residence or, if a commercial Subscriber, the nearest part of the Subscriber's place of business.~~

~~I. A Franchisee shall make cable service available to every dwelling within the Franchise Area as defined in this Franchise Agreement unless prohibited by a private property owner from doing so; provided that such dwelling is in an area of density of at least twenty-five (25) dwelling units per cable mile and within 125 feet of Franchisee's existing Cable System. Density per cable mile shall be computed by dividing the number of dwelling units in the area by the length, in miles or fractions thereof, of the total amount of aerial or underground cable necessary to make service available to the~~

~~dwelling units in such area in accordance with the Franchisee's reasonable System design parameters.~~

**SECTION 14: Technical Standards**

~~Franchisee shall maintain and operate its Cable System, at a minimum, in full compliance with the standards and regulations of the FCC or other applicable Federal or State standards. Franchisee shall further comply with each of the following requirements:~~

~~A. All antennae, supporting structures, and outside plants used in operating and maintaining Franchisee's Cable System within the Franchise Area shall comply with all generally accepted industry standards and all applicable Federal, State, and local laws, Ordinance, rules, regulations and any applicable lease agreements executed by and between Franchisee and the City relating to tower structures and outside plants.~~

~~B. All construction, installation and maintenance of Franchisee's Cable System shall comply with the National Electrical Safety Code, the National Electrical Code, the Florida Building Code and all applicable State and local laws, regulations, and accepted industry practices.~~

**SECTION 15: Proof of Performance Tests**

~~Franchisee shall perform, at its own expense, the proof of performance tests as required by FCC rules and Section XV C. of the Ordinance to demonstrate compliance with the requirements of that Section of the Ordinance, this Franchise Agreement and FCC standards. Pursuant to Section XV C. of the Ordinance, Franchisee will provide proof of performance test results to the City Manager within thirty (30) days of receipt of a written request for such results.~~

**SECTION 16: Access Channels and Facilities, INET and Government Capital Support**

~~Set forth below are the terms and conditions that the parties agree to abide by for "Access Channels and Facilities, INET and Government Capital Support" during the term of this Franchise Agreement:~~

~~A. Access Channel Capacity.~~

~~Use of channel capacity for educational and governmental ("EG") access shall be provided on the most basic tier of service offered by Franchisee in accordance with the Cable Act, Section 611, and as further set forth below. Franchisee does not relinquish its ownership of or ultimate right of control over channel capacity by designating it for EG use. An EG access user — whether an individual, educational or governmental user — acquires no property or other interest by virtue of the use of a channel so designated. Franchisee shall not exercise editorial control over any educational or governmental use of channel capacity, except Franchisee may refuse to transmit any access program or portion of an access program that contains obscenity, indecency, or nudity. The City shall be responsible for developing, implementing, interpreting and enforcing rules for EG Access Channel use. Franchisee shall not be liable for any claims or damages whatsoever arising out of the use of EG Access Channels by any person or the City.~~

~~1. As of the Effective Date of this Franchise Agreement, Franchisee shall make available to the City the exclusive use of one (1) Access Channel for Government Access. A "Governmental Access Channel" is a channel designated for noncommercial use by the City. It is the intent~~

of the parties that, said channel shall remain at the same location throughout the Term of this Franchise Agreement. However, in the event that the Franchisee moves the City Access channel to a different channel number, Franchisee shall (a) reimburse the City for actual reasonable costs and expenses incurred by the City in connection with or related to the channel move, such as a change to stationary and other pre-printed materials, in an amount not to exceed \$1,500, and (b) advertise on the original channel the channel move for a period of no less than thirty (30) days prior to the move and thirty (30) days after the move if technically and legally feasible. Franchisee will use its reasonable best efforts to publicize such channel change as part of any ordinary printed or on-air program listings it provides.

~~2. As of the Effective Date of this Franchise Agreement, Franchisee shall make available one educational access channel on the Cable System. The educational access channel shall be used to carry Lee County School Board programming.~~

~~3. If, at any time during the Term of the Franchise, the Government Access Channel is programmed for more than six (6) hours per day, Monday through Friday, between the hours of 8:00 a.m. and 10:00 p.m. with non-character generated, non-repetitive locally-produced programming for six (6) consecutive weeks, the Franchisee shall provide to the City the exclusive use of a second Government Access Channel within ninety (90) days of receipt of a written request from the City, which provides the program logs documenting that the existing channel has met the trigger set forth herein.~~

~~4. No sooner than one (1) year after the second Government Access Channel is provided to the City, if the first Government Access Channel is not programmed as required under Section 16.A.2. above, then the second Government Access Channel may, after notice to the City of not less than ninety (90) days, automatically revert back and be returned to the use of Franchisee. However, under no circumstances shall the City be denied the exclusive use of the first channel.~~

~~5. Within thirty (30) days of a written request of the City, Franchisee shall establish delivery of a signal from the location of the City Council meetings in order to cablecast live on the Government Access Channel the City Council meetings.~~

~~6. During the Term of the Franchise, if Franchisee converts all channels on the Cable System to digital channels and, thus, no longer provides analog channels, Franchisee shall give the City at least thirty (30) days notice before implementing such change. On and after the date of such change, the City shall have the right, upon its written request, to use digital channel capacity on the "basic tier" equivalent to the "spectrum capacity", then currently occupied by the analog Government Access Channel(s) at the time such change is made; provided the City meets the usage triggers set forth above in Section 16.A.3. for each digital channel of Access programming. For purposes of this Section 16.A.6., "Spectrum capacity", shall mean~~

6-MHZ for each analog channel. In addition, Franchisee shall provide to the City any and all equipment necessary for analog to digital conversion, at no cost to the City.

~~7. Franchisee agrees that all Access Channels provided to the City in accordance with this Section 16, will be provided to Franchisee's Subscribers in the City as part of the lowest tier of basic service and that, if programming information is supplied to Franchisee in writing by the City, Franchisee will use its reasonable best efforts to publicize such programming on the Access Channel as a part of any ordinary printed or on-air program listings it provides.~~

~~8. All Government and Educational Access programming will be on the same channel(s) on Franchisee's System throughout the City.~~

~~9. The City may cablecast character generated information on the City's designated Access Channel from the designated location in the City complex at any time of its choosing.~~

~~10. A Franchisee shall make available to all subscribers in the City, all County educational and government programming including, but not limited to County Council meetings. In no event shall the City be entitled to more than two (2) government and one (1) education channel.~~

~~B. Governmental Access Capital Support.~~

~~1. Within sixty (60) days of the Effective Date of this Franchise Agreement, Franchisee agrees to provide to the City the list of equipment set forth on Exhibit B attached hereto and made a part hereof. Such equipment will allow the City to cablecast Council meetings live from the temporary facility located at the utility building and, when completed, from the permanent City Council facility.~~

~~2. In addition to the equipment listed on Exhibit B, upon written request of the City, Franchisee agrees to hold two (2) training sessions per year for City designated employees to learn to operate the equipment.~~

~~3. For the support of Governmental Access equipment, Franchisee shall collect as a Subscriber pass-through an amount equal to five cents (\$.05) per month per Subscriber throughout the Term of this Franchise Agreement. Remittance of such Subscriber pass-through shall be made to the City on a quarterly basis throughout the Term. The Franchising Authority shall allocate such amount to Governmental Access Channel uses exclusively.~~

~~(a) Franchisee may list this amount as a specific line amount on its monthly bills to its Subscribers.~~

~~(b) The City may increase this amount no sooner than the first anniversary of this Franchise Agreement and no more often than every three (3) years thereafter; provided that (i) any such increase will not be more than five cents (\$.05) in any given three (3) year period, and (ii) the total per Subscriber, per month pass-through shall never exceed fifteen cents (\$0.15) during the Term of this Franchise Agreement, and (iii) the City may only increase the monthly Subscriber pass-through amount in an amount no greater than that implemented by Lee County after first~~

holding a public hearing on the matter where both the public and Franchisee shall have the opportunity to be heard on the issue and after providing the Franchisee with forty five (45) days advance notice of the City Council's final approval of such increase.

(c) Franchisee agrees to provide upon request a semiannual report of the number of its Subscribers in the City to verify the monthly "Governmental support" payment or collection to the City.

(d) Within forty five (45) days of the end of the City's fiscal year, upon written request, the City shall provide Franchisee with an annual report documenting the use of the previous year's EG access funding and sharing the budgeted intended use for the current year.

**SECTION 17: Commercial Leased Access**

Franchisee shall provide commercial leased access channels as required by Federal Law.

**SECTION 18: Emergency Use of Facilities**

A. Franchisee shall, at a minimum, comply with all FCC rules and regulations and such other procedures as may be agreed upon with the City, with respect to emergency use of facilities.

B. Franchisee shall install and operate all necessary EAS equipment to receive, decode and encode digital emergency information, and to transmit the required information across all cable channels, as required by Federal law. In case of any emergency or disaster, as determined by the City, Franchisee shall, upon request of the City, make override capacity available to the City without charge for use during emergency or disaster periods in accordance with Federal law.

C. Franchisee shall provide standby power generating capacity at the Cable System headend and be capable of providing at least two (2) hours of emergency power supply.

**SECTION 19: Lock-out Devices**

Franchisee shall make available at a reasonable charge, to any of its residential Subscribers in the Franchise Area, upon the request of such Subscriber, a "parental guidance" or "lock-out" device which shall permit the Subscriber, at his/her option, to eliminate the audio and visual transmissions from any channel reception to the extent technically feasible.

**SECTION 20: Line Extension Policy**

A. In accordance with Section 13(h) of this Agreement and Section XIV B. of the Ordinance, upon request and payment of all applicable charges, and provided that the requesting person gives Franchisee access to his/her premises in order to furnish, maintain and continue to offer Cable Service to that person, Franchisee shall, throughout the Term of this Agreement, promptly furnish, maintain, and continue to provide all Cable Services distributed over the System to any person at his/her place of residence within the City where there are at least twenty five (25) occupied homes per cable mile, as measured from Franchisee's nearest distribution plant, and where such residential location is not able to receive Cable Service by any other franchised cable operator.

~~B. Where service is requested by a party(s) and the location of the requested services does not satisfy the density requirement set forth in subsection A above, and Franchisee's cable plant is the closest plant of any franchised cable operator, Franchisee shall make cable service available provided the requesting party(s) pay the cost of construction between that point one hundred and twenty five (125) feet from the plant and the location to be served.~~

~~C. Notwithstanding the above requirements, Franchisee agrees to extend its cable System to the area generally known as San Carlos Estates.~~

~~**SECTION 21: Cable Home Wiring Commitments**~~

~~At minimum, Franchisee shall comply with FCC rules regarding cable home wiring, and any amendments thereto or hereafter adopted, from time to time.~~

~~**SECTION 22: Franchisee Fee**~~

~~The parties recognize that on the Effective Date of this Franchise Agreement, the Florida Communications Services Tax Act preempts Section III L. of the Ordinance. If, however, the Communications Services Tax Law is amended or repealed so that a local franchising authority is allowed to impose and collect franchise fees, then forty five (45) days after the effective date of any such statutory amendment or repealment, Section III L. of the Ordinance will become effective with respect to this Franchise Agreement or at such other time as stated in said amendment or repealment of the Communications Services Tax Law.~~

~~A. At such time and in consideration of the privilege granted herein to use and occupy the Streets to own, construct, install, maintain and operate its Cable System, Franchisee shall pay to the City a franchise fee in the amount up to the maximum percentage permitted by the Cable Act or applicable Federal Law effective on such date as the Florida Communications Service Tax is repealed or otherwise amended, the City may then begin charging up to the maximum franchise fee allowed by law at that time. Provided after any transfer (other than a pro forma) or renewal of this franchise; however, that such increase is affirmatively imposed by the City after a public hearing where both the public and Franchisee are allowed to comment on the impact of the higher fee. Franchisee will pay to the City such higher amount effective with the next available billing cycle in which the higher charge may be placed on Subscribers' bills.~~

~~B. Upon reasonable prior written notice, during normal business hours, at Franchisee's principal business office, within 3 years of when the franchise fee payment being audited was made, the City shall have the right to inspect the Franchisee's financial records used to calculate the City's franchise fees consistent with any applicable statute of limitations.~~

~~C. Upon the completion of any such audit by the City, it shall provide to the Franchisee a final report setting forth the City's findings in detail, including any substantiating documentation. In the event of an alleged underpayment, the Franchisee shall have thirty (30) days from the receipt of the report to provide the City with a written response agreeing to or refuting the results of the audit, including any substantiating documentation. Based on these reports and responses, the parties shall agree upon a~~

~~"Finally Settled Amount." For purposes of this Section, the term "Finally Settled Amount(s)" shall mean the agreed upon underpayment, if any, to the City by the Franchisee as a result of any such audit. If the parties cannot agree on a "Final Settlement Amount," the parties shall submit the dispute to a mutually agreed upon mediator having expertise in such matters within sixty (60) days of reaching an impasse. In the event an agreement is not reached at mediation, either party may bring an action to have the disputed amount determined by a court of law.~~

~~D. Any "Finally Settled Amount(s)" due to the City as a result of such audit shall be paid to the City by the Franchisee within thirty (30) days from the date the parties agree upon the "Finally Settled Amount." Once the parties agree upon a Finally Settled Amount and such amount is paid by the Franchisee, the City shall have no further rights to audit or challenge the payment for that period except in the event of a change in applicable law. The City shall bear the expense of its audit of the Franchisee's books and records.~~

**SECTION 23: Reports and Records**

~~Upon reasonable prior written request of the City Manager or his/her designee, Franchisee shall furnish the City with the information set forth under Section XXII.A. of the Ordinance excluding any reports required pursuant to Section XX II A.2 (unless otherwise allowed by law under repeal of the Tax Act).~~

**SECTION 24: Right to Inspect Records and Facilities**

~~A. Franchisee shall maintain a complete set of books and records, including plans, engineering, accounting, financial, statistical, and customer service records as may be required by State or Federal law.~~

~~B. The City shall have the right to inspect, at Franchisee's office books and records as may be required by the City to perform its regulatory responsibilities under this Franchise Agreement, the Ordinance or applicable Federal, State or local law (unless applicable law prohibits or limits the City's right to inspect certain Franchisee's books and records). The City agrees to carry out any such inspection during Franchisee's normal business hours and upon reasonable prior written notice and in the presence of a representative of the Franchisee. Access by the City to Franchisee's books and records in order to perform its regulatory responsibilities shall not be denied on grounds that such books and records contain proprietary or confidential information. To the extent some information may be maintained outside of Lee County, Franchisee shall have a reasonable amount of time, not to exceed thirty (30) days, to make such information available locally for review.~~

~~C. The City shall provide all books and records that it inspects under this Section 24, the degree of confidentiality such books and records are entitled to under Federal and State law. Franchisee's books and records shall not constitute public records, except to the extent required by Federal and State law.~~

~~D. Pursuant to the Ordinance, the City shall have the right to inspect Franchisee's facilities so long as any such inspection is conducted (i) during Franchisee's normal business hours and in such a manner so as not to interfere with Franchisee's business operations; (ii) upon prior written notice, and (iii) in the presence of a representative of Franchisee.~~

**SECTION 25: Customer Service Requirements**

- ~~A. City and Franchisee agree that the "Customer Service Requirements" set forth in Section XVII of the Ordinance shall be followed.~~
- ~~B. Liquidated damages for violations of the customer service obligations.
  - ~~1. In recognition of Comcast's good past performance in the customer service area, the parties agree that notwithstanding the schedule of liquidated damages and/or fines set forth within Section XVII of the Ordinance, Franchisee shall pay Fifty Dollars (\$50.00) per day for the first time a violation occurs for each day said violation continues.~~
  - ~~2. Should a second violation of the same kind or related to the same subsection of Section XVII of the Ordinance occur, Franchisee shall pay Seventy Five Dollars (\$75) per day for each day the violation occurs.~~
  - ~~3. Should a third or greater number of violations of the same kind or related to the same subsection of Section XVII of the Ordinance occur, Franchisee shall pay the amount set forth within Section XVII of the Ordinance.~~
  - ~~4. For the purpose of this Section 25.B., a first or second violation shall include all violations of that kind or related to the same subsection of Section XVII of the Ordinance until the Franchisee receives a written notice of the alleged violation from the County and has the opportunity to respond to the merits of the alleged violation within ten (10) days of receipt of the notice. Receipt of said response shall not automatically be deemed agreement by the City, nor shall responses necessarily prohibit imposition of fines for subsequent violations.~~
  - ~~5. For a breach of the customer service requirements measured on a quarterly basis in Ordinance Section XVII.D., for any quarter that performance falls between 85-89%, liquidated damages shall be \$1,500; if between 80-84%, liquidated damages shall be \$3,000; if between 75-79%, liquidated damages shall be \$4,000; and if 74% or less, liquidated damages shall be \$5,000. For each successive quarter the Franchisee continues to be below the 90% performance standard, the liquidated damages set forth herein shall increase by 100%.~~
  - ~~6. For a breach of the customer service requirements measured on a quarterly basis in Ordinance Section XVII.F., for any quarter that performance falls between 85-94%, liquidated damages shall be \$1,500; if between 80-84%, liquidated damages shall be \$3,000; if between 75-79%, liquidated damages shall be \$4,000; and if 74% or less, liquidated damages shall be \$5,000. For each successive quarter the Franchisee continues to be below the 95% performance standard, the liquidated damages set forth herein shall increase by 100%.~~~~
- ~~C. Enforcement of the Section 25 shall be as provided in Sections 33 and 34 herein. Pursuant to Ordinance Section XVII.N.2, the parties agree that Franchisee shall provide written notice~~



~~in or on its monthly billing or in such other written means at it deems appropriate, at the request of the City, of any City meeting regarding requests or applications by the Franchisee for renewal, transfer or modification of its Franchise. The City shall make such a request in writing, with reasonable notice prior to the mailing of any billing by Franchisee, such that Franchisee's regular billing cycle shall not be interrupted if Franchisee elects to provide such notice on or along with its customer bills. Said notices shall be made at Franchisee's expense for the first time only. Compliance with this Section 25 shall be deemed a compliance with Ordinance Section XVII.N.2.~~

**SECTION 26: City Purchase of Cable System**

~~\_\_\_\_\_ The City may, upon the recommendation of the City Manager and the approval of the Council, acquire ownership of and operate Franchisee's Cable System in accordance with Section XXVI E.2. of the Ordinance and applicable Federal law.~~

**SECTION 27: Modification of Franchise**

~~Franchisee shall file a request for any modification of this Franchise Agreement with the City Manager in accordance with the Federal Cable Act.~~

**SECTION 28: Transfer of Franchise**

~~\_\_\_\_\_ A. Franchisee shall not directly or indirectly assign, sell or transfer its Franchise, or any right, title, or interest in same, this Franchise Agreement, or its Cable System, nor shall any ownership interest or any other form of control of Franchisee or any lawful successor be transferred, assigned, directly or indirectly, without prior written notice to and approval of the City. In determining whether to approve a transfer, the City will consider the factors set forth in the Ordinance. However, prior consent of the City will not be required where Franchisee provides reasonable notice to the City of a "pro forma" transfer, as defined in Section II A.36. of the Ordinance.~~

~~\_\_\_\_\_ B. Franchisee shall file an application to transfer its Franchise or to transfer control of Franchisee in full compliance with Section XXV of the Ordinance.~~

**SECTION 29: Procedures for Requesting Approval of Transfer**

~~\_\_\_\_\_ One hundred twenty (120) calendar days prior to the contemplated effective date of a transfer, Franchisee shall submit to the City Manager an application for approval of the transfer. Such application shall include the following to be considered complete:~~

~~\_\_\_\_\_ A. A statement of the reason for the contemplated transfer.~~

~~\_\_\_\_\_ B. The name, address and telephone number of the proposed transferee.~~

~~\_\_\_\_\_ C. A detailed statement of the corporate or other business entity organization of the proposed transferee, including but not limited to the following:~~

~~\_\_\_\_\_ 1. The names, business addresses, state of residence and country of citizenship of all general partners and/or corporate officers and directors of the proposed transferee.~~

~~\_\_\_\_\_ 2. The names, business addresses, state of residence and country of citizenship of all persons and entities having, controlling, or being entitled to have or control five percent (5%) or more~~

of the ownership of the proposed transferee and the respective ownership share of each such person or entity.

- ~~3. The names and addresses of any of the proposed transferee and of any other business entity owning or controlling in whole or in part or owned or controlled in whole or in part by the proposed transferee.~~
- ~~4. Detailed and complete financial statements including reports of the proposed transferee prepared by a certified public accountant or certified by a duly authorized financial officer of the proposed transferee, for the three (3) fiscal years immediately preceding the date of the request for transfer approval, and a letter or other acceptable evidence in writing from a duly authorized officer of the proposed transferee setting forth a clear and accurate description of the amount and sources of funding for the proposed transferee to construct, install, rebuild, maintain and operate the proposed System in the City. If the corporate or business entity organization of the proposed transferee has not been in existence for a full three (3) years, the proposed transferee shall submit a certified financial statement for the period of its existence.~~
- ~~5. A description of all previous experience of the proposed transferee in operating cable television Systems and providing cable television services or related or similar services, including a list of statements identifying, by place and date, any other cable television franchise(s) awarded to the proposed transferee; the status of said franchise(s) with respect to completion of construction thereof; the total estimated cost of completion of such System(s); and a summary of the amount of the proposed transferee's and its parent's or subsidiary's resources committed to the completion of construction thereof.~~
- ~~6. Upon written request from the City Manager, a detailed pro forma financial plan describing for each remaining year of the franchise, the projected number of Subscribers, rates, all revenues, operating expenses, capital expenditures, depreciation schedules, income statements, and statement of sources and uses of funds. Where the transfer is part of a larger transaction and such information is not prepared for the single System in the City, the proposed transferee may provide such information on a consolidated basis including the System in the City, but shall provide information on the size of the City System, in terms of number of Subscribers, relative to the transaction, so that pro rata estimates may be made.~~
- ~~7. A detailed description of the proposed plan of operation of the proposed transferee, which shall include, but not be limited to the following:
  - ~~(a) A detailed map indicating all areas proposed to be served, a proposed time schedule for the installation of all equipment necessary to become operational throughout the new areas to be served, and the projected total cost for new construction of the System.~~~~

~~(b) A statement or schedule setting forth proposed products and services to be made available and classifications of rates and charges to be made against Subscribers including installation charges, service charges, and equipment charges.~~

~~8. However, should the transaction only involve a change of parental control of the Franchisee and the present Franchisee is not changing and will remain as the Franchisee, then the information sought in subsections (a) and (b) directly above may not be required, unless the City determines it to be reasonably required.~~

~~9. Upon request, the proposed purchased price of the Cable System and the terms and conditions of the proposed transfer, subject to Franchisee's right to assert confidentiality of some terms.~~

~~D. The City hereby reserves the right to request such additional information as it may reasonably require to consider the application, however, such requests shall not have the effect of tolling the 120 day automatic approval period provided by federal law.~~

**SECTION 30: Renewal of Franchise**

~~Comcast agrees to Section III.E.2 of the Cable Ordinance, unless at the time of renewal, the imposition of such costs are otherwise prohibited by Federal or State law. In the event of a conflict between the Ordinance and Section 626 of the Communications Act, 47 U.S.C. §546, the federal law will control.~~

**SECTION 31: Rates**

~~A. Nothing in the Ordinance or this Franchise Agreement shall prohibit the City from regulating rates, service, installation, disconnection, and equipment rental to the full extent permitted by and consistent with State and Federal law.~~

~~B. Franchisee further agrees that it shall not increase rates or charges for Basic Cable Service, installation, disconnection, or equipment rental or change the services or channels, except the addition of channels, offered without at least thirty (30) days prior notice to Subscribers and the City.~~

**SECTION 32: Bulk Contracts**

~~The City expressly reserves all of its authority as it now exists or may exist in the future under local, State and Federal law to enforce all applicable provisions of the Ordinance and Franchise Agreement and any and all applicable local, State and Federal laws with respect to individuals and cable Subscribers receiving Cable Service at a bulk rate under any agreement applicable to a multiple dwelling unit or other bulk Subscriber(s). The Franchisee expressly agrees that it will not enforce any bulk rate contracts for properties within the City beyond the termination of the Franchisee's rights to operate a Cable Television System in the City.~~

**SECTION 33: Performance Bond**

- A. Pursuant to Section XI B. of the Ordinance, Franchisee shall provide the City with a performance bond in the amount of Fifty Thousand Dollars (\$50,000.00) as security for the faithful performance of all provisions of the Franchise Agreement, the Ordinance, and all applicable State and Federal law. If such bond is not furnished to the City within forty five (45) business days of the date of the Council resolution approving the grant of the Franchise, then Franchisee shall pay to the City a fine in the amount of One Hundred Dollars (\$100.00) per day, beginning on the 46<sup>th</sup> day. In the event said bond is not received on or by the 60<sup>th</sup> day after the Council resolution approving the grant of the Franchise, Franchisee shall pay to the City a fine in the amount of Five Hundred Dollars (\$500.00) per day. In the event said performance bond is not received by the City on or by the 60<sup>th</sup> day after the Council resolution granting this Franchise, this Agreement and the resolution may be revoked. When the number of Cable Service Subscribers in the City exceeds 30,000 the security bond shall be increased to \$75,000. When the number of cable service subscribers in the City exceeds 50,000, the security bond shall be increased to \$100,000.
- B. If thirty (30) calendar days after written notice Franchisee fails to pay to the City any fees or taxes due and unpaid or any liquidated damages, damages, costs or expenses that the City has incurred by reason of any act, omission or default of Franchisee in connection with this Franchise Agreement the City may immediately withdraw that amount, with interest and any costs, from the performance bond. Upon such withdrawal or claim the City shall notify Franchisee in writing of the amount and date of the withdrawal at least three (3) business days prior to a withdrawal. In the event, there is a dispute, any funds drawn from the bond while the dispute is pending, shall be deposited with the Court Clerk or put into escrow.
- C. Franchisee shall pay to the City the amounts of all claims against said bond within thirty (30) calendar days after notice of such claim, maintaining the bond at its original amount. the amount required prior to the claim. If Franchisee fails to pay to the City the amount of any claim within thirty (30) days after notice to the Franchisee of the claim paid or fails to restore the bond to its original amount, such failure may be considered a material breach of this Franchise Agreement and a violation of the Ordinance, and may constitute grounds for revocation.
- D. Franchisee is entitled to the return of the balance of the performance bond that remains following any other form of expiration of the Franchise, including denial of renewal, provided that there is no outstanding default and less any unpaid amounts owed to the City by Franchisee and any amount that is the subject of a pending dispute between the City and Franchisee.
- E. If the Franchise terminates for reasons other than revocation, any performance bond will be maintained by the Franchisee for six (6) months from the date of termination and the bond will be returned to Franchisee six (6) months from the termination date of this Franchise, provided there is no outstanding default or unpaid amounts owed to the City by Franchisee and there is no amount in dispute.

~~F. The rights reserved to the City under this Section 33 are in addition to all other rights of the City, whether reserved in this Franchise Agreement or in the Ordinance, or authorized by other law, and no action, proceeding or exercise of a right with respect to the performance bond will affect any other right the City may have.~~

**SECTION 34: Enforcement Remedies**

~~A. Because the City may suffer damages from any violation by Franchisee of this Agreement or of the Ordinance, which damages may be difficult to quantify, the City and Franchisee agree to the following schedule of liquidated damages:~~

~~1. For failure to maintain the System as required by this Franchise Agreement pursuant to Section 12 and 13, unless the City specifically approves an exception, Franchisee shall pay to the City Five Hundred Dollars (\$500.00) per day for each day the violation continues.~~

~~2. For material failure to provide data, documents, reports or information in a timely manner as required by this Franchise Agreement or as requested by the City consistent with FCC rules and regulations and all other applicable law, Franchisee shall pay Fifty Dollars (\$50.00) per day for each day the violation continues. A violation will be deemed to have occurred when Franchisee fails to provide information by the date requested by the City in a certified written letter in accordance with this Franchise Agreement.~~

~~B. Before assessing liquidated damages against Franchisee, the City shall give Franchisee written notice of the alleged violation and its intention to assess such damages, which notice shall contain a sufficient description of the alleged violation to allow Franchisee to investigate the alleged violation. Following receipt of such notice, Franchisee shall cure or commence to cure to the reasonable satisfaction of the City Administrator the violation within thirty (30) business days or provide a written statement as to why it is of the reasonable belief that no violation has occurred or that such violation cannot be cured within thirty (30) business days and provide a time frame for such cure of said violation. If the violation is not cured or commenced to be cured to the reasonable satisfaction of the City Manager in that thirty (30) business day period, or such longer period as the City Manager approves, the City may, effective on the 1<sup>st</sup> business day after the end of the cure period, collect liquidated damages owed, through a draw-down of the performance bond as provided in Section 33 of this Franchise Agreement, or through any other means allowed by law. In the case of breaches of requirements measured on a monthly, quarterly or longer period (such as customer service standards), Franchisee's cure period shall be no less than one such period. In the event Franchisee desires to challenge the decision of the City Manager, Franchisee may appeal to the City Council, however such appeal must be filed within thirty (30) business days of the date of the City Manager's decision and any such good faith appeal shall stay the draw-down and the accrual of liquidated damages until the City Council makes its determination.~~

~~C. The Franchise is subject to revocation pursuant to the Ordinance for any of the reasons set forth therein. In the event the City exercises its right to revoke the Franchise, the procedures set forth in~~

the Ordinance shall apply. After exhaustion of all such proceedings, Franchisee shall have the right to appeal the decision of the Council to a court of competent jurisdiction in Florida.

~~D. In electing such remedies as may be available to the City, the City hereby agrees to collect either liquidated damages as set forth herein or actual damages but not both for any given violation. However, nothing hereby shall limit the City to select a remedy in equity including but not limited to specific performance. The City further reserves the right to require performance or cure of the violation(s) at issue as a condition precedent to the approval of a transfer or grant of a renewal of this franchise.~~

### **SECTION 35: Area Wide Interconnection**

~~A. Franchisee hereby agrees to use its reasonable best efforts to work to interconnect its Cable System with any or all other operator(s) of a Franchised Cable System located within the City or adjacent areas and servicing Subscribers within the City for the sole purpose of sharing government and education programming provided that such interconnection is, in Franchisee's reasonable discretion, technically and economically feasible and Franchisee and any such other cable operator agree upon reasonable interconnection arrangements.~~

~~B. Where it does not own the affected System(s), Franchisee shall, in a reasonably timely manner, initiate good faith negotiations with the operator(s) of the other affected System(s) in order that costs for construction and operation of the interconnection link may be shared equitably among the operator(s) of the System(s) with cost allocation on the basis of percentage of Subscribers in the City served by each System. Franchisee shall report to the City the results of such negotiation no later than thirty (30) days after the effective date hereof or in the case of changed circumstances, after receipt of the City's request. Where Franchisee owns the affected System, Franchisee shall report to the City on the timing, method and cost of interconnection within fifteen (15) days of receipt the City's request.~~

~~C. Franchisee shall make all reasonable efforts to cooperate with any designated access organization, interconnection corporation, regional interconnection authority or City, County, State or Federal regulatory agency that may be hereafter established for the purpose of regulation, financing, or otherwise providing for the interconnection of Cable Systems in Lee or Collier Counties.~~

~~D. Franchisee shall make available to all Subscribers in the City all government and education programming provided by the City as set forth herein.~~

### **SECTION 36: Written Notice of Acceptance**

~~As of the date the City Council resolution approving the grant of this Franchise Agreement, Franchisee shall provide to the City Manager written acceptance of all the terms and conditions of this Franchise Agreement. Franchisee's failure to comply with this Section shall render this Franchise Agreement and the~~

Franchise null and void with no further action by the City, unless the City Manager agrees in writing or the City Council takes action to extend such period.

**SECTION 37: No Opposition**

- A. By execution of this Franchise Agreement, unless otherwise expressly waived herein, the Franchisee accepts the validity of the terms and conditions of this Franchise Agreement and the processes and procedures pursuant to which this Franchise Agreement was entered into and the Franchise was granted.
- B. In the event that after the Effective Date of this Franchise Agreement, or Ordinance No. 03-23, and any amendments thereto or hereafter adopted, pursuant to which the Franchise is granted, an official act of any court, agency, commission, legislative body, or other authority of competent jurisdiction (1) renders the Ordinance or this Franchise invalid in whole or in part, or (2) requires the Franchisee or the City either to (a) perform any act which is inconsistent with any provision of the Ordinance or this Franchise Agreement, or (b) cease performing any act required by any provision of the Ordinance or this Franchise Agreement, the Franchisee shall promptly notify the City of such fact.
- C. Nothing herein shall limit the ability of Franchisee to lobby or otherwise exercise its First Amendment right in pursuit of a change in generally applicable Federal, State or local law.

**SECTION 38: Force Majeure**

If by reason of strike, acts of God, acts of public enemies, orders of any kind of a government of the United States of America or of the State or any of their departments, agencies, political subdivisions; riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, tornadoes, volcanic activity, storms, floods, washouts, droughts, civil disturbances, explosions, partial or entire failure of utilities, or failure of utility or other authority to issue permits or perform other work or duties in a timely fashion, or any other cause or event not reasonably within the control of the disabled party, any party is unable in whole or in part to carry out its obligations hereunder, that party shall not be deemed to be in violation or default during the continuance of such inability.

**SECTION 39: Execution in Counterpart**

This Franchise Agreement may be executed in counterpart.

**SECTION 40: No Third Party Beneficiaries**

Nothing in this Franchise Agreement is or was intended to confer third party beneficiary status on any member of the public to enforce the terms of this Franchise Agreement.

**SECTION 41: No Waiver of Rights**

Nothing in this Franchise Agreement shall be construed as a waiver of any rights, substantive or procedural the City or Franchisee may have under Federal or State law unless such waiver is expressly stated herein.

**SECTION 42: Merger Clause**

This Franchise Agreement, including all Exhibits, embodies the entire understanding and agreement of the Franchising Authority and the Franchisee with respect to the subject matter hereof and supersedes all prior understandings, agreements and communications, whether written or oral.

**IN WITNESS OF THE FOREGOING**, the parties have set the hands and seals the day and year first written above.

**DULY PASSED AND ENACTED ON SECOND READING** by the City Council of the City of Bonita Springs, Lee County, Florida this 21<sup>st</sup> day of January, 2004.

**CITY OF BONITA SPRINGS**

**AUTHENTICATION:**

\_\_\_\_\_  
Mayer City Clerk

APPROVED AS TO FORM: \_\_\_\_\_  
City Attorney

**Vote:**

|        |        |          |     |
|--------|--------|----------|-----|
| Arend  | Aye    | Piper    | Aye |
| Edsall | Aye    | Wagner   | Aye |
| Nelson | Aye    | Warfield | Aye |
| Pass   | Absent |          |     |

Date filed with City Clerk: \_\_\_\_\_

**COMCAST CABLEVISION OF THE SOUTH, INC.**

Attest: \_\_\_\_\_ COMCAST CABLEVISION  
OF THE SOUTH, INC.

\_\_\_\_\_  
Secretary By: \_\_\_\_\_  
President