

**DAVIDSON, NORTH CAROLINA
PRESTIGE CABLE TV OF N.C., INC.**

CABLE TELEVISION FRANCHISE AGREEMENT

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**STATE OF NORTH CAROLINA
TOWN OF DAVIDSON**

CABLE TELEVISION FRANCHISE AGREEMENT

THIS CABLE TELEVISION FRANCHISE AGREEMENT is made and entered into this ____ day of _____, 2000, by and between the Town of Davidson (hereinafter referred to as the "Town") and Prestige Cable TV of North Carolina, Inc., a Georgia corporation duly qualified to do business in the State of North Carolina, (hereinafter referred to as the "Franchisee").

WHEREAS, Article 16 of Chapter 160A of the North Carolina General Statutes empowers the Town of Davidson to grant upon reasonable terms a Franchise to contract for the operation of a cable television system to furnish services to the Town and its citizens; and

WHEREAS, North Carolina General Statutes §160A-76 requires the Town of Davidson to grant any such Franchise by an ordinance adopted at two (2) regularly scheduled meetings of the Town Board; and

WHEREAS, Article V of the Code of the Town of Davidson, entitled "Cable Communications Regulations," provides that in the event the Town shall grant a Franchise, such Franchise shall be granted under the terms and conditions contained therein;

WHEREAS, the Town has determined to award said nonexclusive Franchise subject to the provisions of the Cable Ordinance and to the execution by the Town and Franchisee of this Franchise Agreement; and

WHEREAS, the Town: is requiring the Franchisee to provide funds for facilities and equipment for the development of public, educational and government access; has considered the needs of the community for access and/or institutional network; and acknowledges that, pursuant to Federal regulation, the Franchisee may pass this cost on to the subscriber; is requiring an Institutional network for public safety applications and other governmental purposes; and that the Town believes this will meet some of the future community needs in this area.

NOW, THEREFORE, BE IT ORDAINED by the Town Board of Davidson as follows:

DEFINITIONS

All terms used in this Agreement shall have the meanings attributed to them by the Davidson Cable Communications Regulations Ordinance, specifically Section 1-3., entitled "Definitions," which section is incorporated herein by reference. Additionally, the following definitions shall apply to terms as used in this Agreement:

- A. "AFFILIATED PERSON" shall be defined as a person that directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or control with another person.
- B. "ADMINISTRATOR" shall be defined as that person designated by the Town as the Town's Cable Communications Administrator or otherwise assigned the duties and responsibilities of the administration and enforcement of the Cable Communications Regulations Ordinance.
- C. "COUNTY" shall be defined as Mecklenburg County, North Carolina.
- D. "EFFECTIVE DATE" shall be defined as the date on which this Agreement was executed by the Town, which date first appears at the top of the first page of this Agreement.
- E. "TOWN" shall be defined as the Town of Davidson, North Carolina.
- F. "ORDINANCE" shall be defined as the Town of Davidson Cable Communications Regulations Ordinance, et. seq. of the Code of the Town of Davidson.

SECTION 1. GRANT OF FRANCHISE

- 1.1. Subject to the terms and conditions of the Ordinance of the Town of Davidson, which is incorporated herein fully by reference; the Letter of Application, dated July 22, 1996 and the "Proposal for Franchise Renewal", dated October 14, 1996, et.al. of Prestige Cable TV of N.C., Inc., which are incorporated herein fully by reference and made a part of this Agreement, except

to the extent they conflict with the provisions of this Agreement, and are subject to the terms and conditions of this Agreement, Prestige Cable TV of N.C., Inc., is hereby granted, from and after the acceptance hereof, the right, privilege and Franchise to construct or cause to be constructed, to operate, and to maintain a cable television system within the corporate limits of the Town of Davidson for the purpose of providing cable television service to the residents of the Town of Davidson, and for that purpose, to erect, install, construct, repair, replace, reconstruct, and to maintain on, across, beneath, and along any street or road all cable and other equipment and facilities as may be necessary or appurtenant to the cable television system.

- 1.2. Absent Franchisee's express agreement, any changes and changes to the cable communications ordinance or the enactment of any new ordinances which are applicable specifically to cable television systems and which, individually or collectively, significantly and adversely affect the Franchisee's rights as granted in this Franchise, shall not apply to Franchisee during the term of this Franchise.

SECTION 2. REGULATION OF FEES AND CHARGES

- 2.1. Subject to Franchisee's rights under applicable local, state, and federal law including the Cable Act to be free of such regulation, the Town reserves the right to regulate the rates, fees, charges, deposits and associated terms and conditions for any service provided pursuant to this Agreement to the fullest extent permitted by applicable law, and the Town may establish rules and regulations in connection therewith from time to time. In connection with such regulation, the Town shall comply with FCC rules.

SECTION 3. TERM OF FRANCHISE

- 3.1. The term of the Franchise shall commence upon the Effective Date, and shall expire ten (10) years from said date, unless sooner terminated as provided in the Ordinance, at which time it shall expire and be of no further force and effect.
- 3.2. The Franchisee may request the renewal of the Franchise pursuant to Section 2-5. of the Town's Ordinance.

SECTION 4. NON-EXCLUSIVE FRANCHISE

- 4.1. The Franchise herein granted shall be non-exclusive and the Town of Davidson reserves the right to grant to any other person or entity, at any time, the right to use or occupy the streets or roads of the Town for the construction and operation of any other cable television system within the Town or for whatever purposes deemed appropriate by the Town.
- 4.2. Subject to applicable law, any additional cable television system franchises granted by the Town shall contain, when taken as a whole, equivalent terms and conditions regarding the number of access channels, the funds for public, educational and government access, customer service standards, franchise fees and the definition of gross revenues, as this franchise. Franchisee agrees to indemnify the Town and to hold the Town harmless from all claims against it by third parties arising out of its compliance with this provision to the extent that such claims are not barred by Section 635A of the Cable Television Consumer Protection and Competition Act of 1992 (Limitation of Franchise Authority Liability), or by any other provision of law.
- 4.3. In the event that in another cable television franchise, granted by the Town, the material terms and conditions regarding the number of access channels, the funds for public, educational and government access channels, customer service standards, franchise fees and the definition of gross revenues, when taken as a whole, are not equivalent to this Franchise, then, at the request of the Franchisee, the Town shall consent to amend this Franchise to ensure equivalency between the Franchises on such terms.

SECTION 5. COMPLIANCE/CONFLICT WITH LAWS, ORDINANCES AND REGULATIONS

- 5.1. The Franchisee shall comply with all federal, state and local laws, ordinances and regulations, including but not limited to those related to the use of public facilities, construction, maintenance and operation of cable television systems, and to land use.
- 5.2. Any conflict between this Agreement and any laws, ordinances, and regulations shall be resolved in favor of the latter.

SECTION 6. TRANSFER OR RENEWAL OF FRANCHISE

- 6.1. The Franchise herein granted shall be subject to transfer and renewal pursuant to the provisions of the Ordinance and applicable state and federal laws.

SECTION 7. TERMINATION OF FRANCHISE

- 7.1. The Franchise granted herein shall be revoked or terminated only as authorized by the Ordinance, and upon written notice, given one hundred twenty (120) days in advance, delivered to either party by the other.

SECTION 8. MINIMUM ACTIVATED SYSTEM

- 8.1. Franchisee hereby agrees to provide to all subscribers a minimum of sixty-nine (69) activated, downstream channels. The cable system will be comprised in part of state-of-the-art, headend and broadband transmission facilities owned by Franchisee or leased by Franchisee from its affiliates.
- 8.2. These facilities are described as a Hybrid Fiber Coax Architecture, comprised of optical trunks and feeders with coaxial feeders and distribution. Associated signal generation, regeneration, reception and control equipment are included to provide the delivery of cable services to subscribing members of the public who pay for such service. The parties agree that Franchisee shall have the right to alter and employ any and all transmission technologies which meet the requirements of Sections 8.3 and 30.1.
- 8.3. The architecture is two-way capable and designed with the capability of supporting the transport of at least seventy (70) analog channels. The system is designed and constructed to allow the activation of analog and/or digital capacity up to the capable capacity of 750 MHz as market and economic conditions warrant. The system shall be installed, maintained, and operated at all times in full compliance with the technical standards of the FCC and this Agreement.
- 8.4. Equipment used for the distribution system, headend and reception facilities shall be of good and durable quality and be serviced and repaired on a regular basis and shall at all times be of equal or better quality than the equipment used in the build/construction.

SECTION 9. PROGRAMMING LINE-UPS, MIX, LEVEL, QUALITY AND QUANTITY

- 9.1. The Franchisee shall offer to all subscribers a diversity of video programming services. The Franchisee shall provide to the Town a list of programming services thirty (30) days prior to the provision of services to subscribers.
- 9.2. Should the Franchisee decide to change the selection of programs or services offered on any of its tiers, it shall maintain the mix, quality and level of services provided based on availability and financial impact.
- 9.3. Franchisee shall, at all times, keep the Town and Town subscribers informed of its programming lineups. The Town shall have the opportunity to review and comment on any information provided prior to any changes being implemented, except when circumstances beyond the Franchisee's

control do not allow. Any proposed changes in the programming lineup by the Franchisee shall be reported to the Town at least thirty (30) days prior to the proposed implementation where Franchisee has been provided at least thirty (30) days notice.

- 9.4. The Franchisee shall use its best efforts to ensure diversity of programming.
- 9.5. Franchisee shall pass through all closed-captioning signals received by the system for the hearing impaired to the extent required by FCC rules and regulations.

SECTION 10. DISCRIMINATION PROHIBITED

- 10.1. To the extent required by federal law and FCC regulations, the Franchisee or any Affiliated Persons shall not discriminate or permit discrimination between or among any persons in the availability of services.
- 10.2. Further, the Franchisee and each Affiliated Person shall ensure that access to any service is not denied to any group of potential subscribers because of the income of the residents of the area in which the group resides.
- 10.3. It shall be the right of all persons to receive continuously all available services insofar as financial and other obligations to the Franchisee are satisfied.

SECTION 11. FEES AND CHARGES

- 11.1. All rates, fees, charges, deposits and associated terms and conditions to be imposed by the Franchisee for any cable service shall be filed with the Town thirty (30) days prior to the provision of services to initial subscribers.
- 11.2. Thirty (30) days prior to implementing any new or modified rate, fee, charge, deposit or associated term or condition, the Franchisee will submit to the Town a revised list of all changes reflected in the modification.
- 11.3. Franchisee will submit, at a minimum, with each annual report to the Town, a rate card reflecting all rates, fees, charges, deposits and associated terms and conditions as they pertain to the provision of cable television service regulated by this franchise.
- 11.4. Notwithstanding any other provision of this franchise, Franchisee shall not be required to provide prior notice of any rate change that is the result of a regulatory fee, franchise fee or any other fee, tax, assessment, or charge of any kind imposed by any Federal agency, State, County or the Town on the transaction between the Franchisee and the subscriber.

SECTION 12. DISCRIMINATION IN FEES AND CHARGES PROHIBITED

- 12.1. To the extent required by federal law and FCC regulations, Franchisee shall not discriminate or permit discrimination between or among any persons in the rates, terms and conditions for any cable service.
- 12.2. The foregoing requirements shall not prevent the use of different charges for residential subscribers than for nonresidential subscribers; short-term sales promotions and other short-term discounts or reduced charges; reasonable discounts or reduced charges to senior citizens or other economically disadvantaged groups; or bulk rate arrangements, commercial rates, or in the management of delinquent accounts.

SECTION 13. EMERGENCY ACCESS OVERRIDE

- 13.1. To the extent required by and consistent with applicable federal statutes and FCC regulations, the Franchisee agrees to satisfy its Emergency Access Override Obligation throughout the County, and shall designate the Government Access Channel for emergency broadcast of both audio and video signals.
- 13.2. The Town shall train its personnel in proper use of the channel; shall limit access to its override functions to such trained individuals, and shall indemnify, hold harmless, and defend the Franchisee against any and all claims, causes of action, proceedings, and judgments for damages arising out of the Town's use of the emergency channel.

SECTION 14. PUBLIC, EDUCATIONAL AND GOVERNMENTAL (“PEG”) ACCESS CHANNELS

- 14.1. The Franchisee shall make all public, educational and government access channels available for viewing on the lowest tier of service offered to subscribers.
- 14.2. Franchisee shall reserve five (5) channels for PEG Access to be allocated in the following manner unless otherwise specified by the Town:
 - 14.2.1. Government Access (Charlotte-Mecklenburg) 1 channel
 - 14.2.2. Public Access 1 channel
 - 14.2.3. Educational Access (Charlotte Mecklenburg Schools) 1 channel
 - 14.2.4. Educational Access (Central Piedmont Community College) 1 channel
 - 14.2.5. Educational Access (UNC – Charlotte) 1 channel
 - 14.2.6. Three (3) of these channels shall be located on Franchisee's lowest tier of service, the fourth channel may, at Franchisee's discretion, be located on the CPST tier or its equivalent.
 - 14.2.7. Within one year after Franchisee has activated a digital subscriber tier in the 550-750 MHZ spectrum, Franchisee shall make available a fifth access channel, which may at Franchisee's discretion, be located on Franchisee's digital tier.
- 14.3. The Government access channel provided County-wide may be preempted by the Towns of Cornelius, Davidson, Huntersville, Mooresville, and Troutman for the cablecasting of local governmental programming.
 - 14.3.1. Within six (6) months of the effective date of this Franchise, the Franchisee shall provide the equipment necessary and technical ability at the headend and nodes to allow narrowcasting to the nodes serving the municipalities listed above.
 - 14.3.2. The municipalities are aware that the nodes may serve more than their municipality.
 - 14.3.3. The Franchisee shall allow for the narrowcasting to specific municipalities at the times specified in writing by the municipality and using the node configuration per municipality as specified below. The Towns of Cornelius, Davidson, Huntersville, Mooresville, and Troutman agree to purchase the modulators and demodulators necessary for such programming and the Franchisee shall install the modulators and demodulators.
 - 14.3.4. **NARROWCASTING OF THE GOVERNMENT ACCESS CHANNEL**
 Prestige Cable shall reconfigure its laser array in its headend so that each municipality may narrowcast programming to its residents on the Government Access Channel. The following municipality's programming will be directed to the corresponding nodes listed below.

<u>TOWN:</u>	<u>NODES:</u>
HUNTERSVILLE	HUNT 1, HUNT 2, HUNT 3, HUNT 4, HUNT 5, HUNT 5, HUNT 6, HUNT 7, HUNT 8, CORN 3, CORN 4, CORN 5, AND CORN 10.
CORNELIUS	CORN 1, CORN 2, CORN 6, CORN 7, CORN 8, CORN 9, CORN 11, CORN 12, A AND CORN 13
DAVIDSON	DAVE 1, DAVE 2, DAVE 3, DAVE 4, DAVE 5

MOORESVILLE	MORE 5, MORE 11, EAST 1, EAST 2, EAST 3, EAST 4, EAST 5, SHER 1, SHER 3, SHER 4, WEST 1, WEST 2, WEST 4, AND BRAL 1
TROUTMAN	TROT 1

14.3.4.1. Under this configuration the majority of the subscribers in each node will see the programming for their municipality, in a small number of cases subscribers will see programming originating in an adjacent municipality. A significant number of subscribers who live in unincorporated areas will see programming originating from a nearby municipality.

14.3.4.2. The Franchisee shall ensure that the narrowcast government access signals are of the same quality as the rest of the system.

14.4. Franchisee shall install and maintain, at no charge, one (1) service drop to each public building within the Franchise area for which the demarcation point (common entry point for utilities) is located 300 feet or closer to the closest useable point on the Franchisee's cable system.

14.4.1. On request from the appropriate official, and if the Town or the respective entity is willing to pay the incremental costs, Franchisee will run feeder rather than drop cable to a public building which does or plans to amplify the signal for internal distribution.

14.4.2. Franchisee shall provide full basic service and the CPST tier or its equivalent and one (1) non-addressable converter to such building free of charge. Any additional converters will be provided on request at Franchisee's standard lease rate.

14.4.3. Upon request from an appropriate official, at free drop locations, Franchisee will provide inside wiring for a reasonable number of outlets, and the requesting entity shall reimburse Franchisee's full cost of labor and materials for such internal wiring.

14.4.4. Franchisee shall also extend cable to public buildings located further than 300 feet from Franchisee's distribution plant where the Town or the respective entity is willing to reimburse Franchisee's full cost for materials and labor beyond the first 300 feet.

14.5. Franchisee shall assure that the access channel delivery systems from the origination points specified herein meet the same technical standards as the remainder of the system as set forth herein.

14.6. Franchisee will negotiate with the public school districts to provide an Ethernet-speed data functionality at competitive prices. Should the negotiations not result in a mutually agreeable contract, then at such time as Internet service is offered on the cable system, Franchisee shall provide one (1) free modem and free unlimited Internet account for each public school passed by Franchisee.

SECTION 15. EXTENSION OF SERVICE

15.1. Franchisee shall extend its cable service to all new residential dwelling units and commercial subscribers pursuant to the provisions of the Town's Ordinance. Any newly annexed areas meeting the criteria of Section 5 of the Ordinance shall be constructed within six (6) months.

15.2. In areas not meeting the minimum standards established under Section 5, the Franchisee shall, upon the Town's request or request of five (5) or more subscribers, complete an engineering survey, cost estimate and subscriber notification within ten (10) business days and forward a copy of same to the Administrator.

- 15.3. Notwithstanding the above, Franchisee shall not be required to build cable plant in any area already served by another cable operator.

SECTION 16. FRANCHISE FEE

- 16.1. Franchisee shall pay to the Town an annual Franchise fee, payable quarterly, in the amount of five percent (5%) of gross revenues, as determined in accordance with generally accepted accounting principles, derived from the operation of the cable system.
- 16.1.1. Excepted revenues shall be verified with certified revenue statements to be given to the Town, and the Franchisee shall make available to the Town, at the Town's request, additional information and records to allow the Town to review and justify the revenue and expense statements related to the enforcement of this Franchise.
- 16.2. Franchisee shall ensure that the additional monies due to the Town as a result of Town Board-approved annexations are incorporated into Franchise fee payments in the first quarter such annexations take effect. The Town shall notify Franchisee of all pertinent annexations within thirty (30) days of said annexation. Franchisee shall be responsible for contacting the Planning Engineer in the Planning Department of the Town of Davidson to secure copies of official annexation maps.
- 16.3. Franchisee shall submit to the Town a Franchise Fee Report, in a mutually agreed upon format, not later than thirty (30) days after the last day of each March, June, September, and December throughout the term of this Agreement.
- 16.4. Franchisee agrees to provide to the Town such independently audited annual financial statements for Franchisee's parent company as may be prepared for other purposes, and a detail of the gross revenues associated with the System serving the Town certified by the Chief Financial Officer of the Franchisee.

SECTION 17. PAYMENT AUDITS; UNDERPAYMENT REMEDY

- 17.1. No acceptance of any Franchise fee payment by the Town shall be construed as an accord and satisfaction that the amount paid is in fact the correct amount or a release of any claim that the Town may have for further or additional sums payable under this Agreement, and all amounts paid shall be subject to audit as specified in the Ordinance.
- 17.2. If, as a result of such audit or other review, the Town determines that the Franchisee has underpaid its fees in any twelve (12) month period by ten percent (10%) or more, then, in addition to making full payment of the relevant obligation, the Franchisee shall reimburse the Town for all of the reasonable costs associated with the audit or review, including all reasonable out-of-pocket costs for attorneys, accountants, and other consultants.

SECTION 18. PAYMENTS NOT TAXES

- 18.1. The parties agree that the compensation and other payments to be made pursuant to Section 17 of this Agreement, and any other provisions of this Agreement, are not a tax and are not in the nature of a tax and are in addition to any and all taxes of general applicability which the Franchisee shall be required to pay to the Town.

SECTION 19. INTEREST ON LATE PAYMENTS

- 19.1. If any payment required by this Agreement is not actually received by the Town on or before the applicable date fixed in this Agreement or by the Town, the Franchisee shall pay interest thereon, from the due date to the date said payment is actually received by the Town at a rate of one percent (1%) per month, compounded daily, for the period of delinquency.

SECTION 20. CONTINUING OBLIGATION

20.1. In the event the Franchisee continues to operate all or any part of the system as a cable system providing cable service after the term of this Agreement, then the Franchisee shall continue to comply with all applicable provisions of this Agreement, including without limitation, all compensation and other payment provisions of this Agreement, throughout the period of such continued operation, provided that any such continued operation shall in no way be construed as a renewal of or other extension of this Agreement or the Franchise.

SECTION 21. CONSUMER SERVICE GOALS

Franchisee agrees to the following consumer service goals or any other goals or requirements established by federal or state governmental authorities, whichever are higher:

- 21.1. The Franchisee shall respond to consumer complaints within seven (7) working days.
- 21.2. The Franchisee shall resolve all complaints within fifteen (15) days, and shall notify the Town of those not resolved within fifteen (15) days.
- 21.3. The Franchisee shall provide all prospective subscribers with complete, clear and concise information concerning all services and rates provided by the Franchisee. Such information shall include but not be limited to the following:
 - 21.3.1. all services and rates;
 - 21.3.2. deposits, if applicable;
 - 21.3.3. installation costs;
 - 21.3.4. additional set charges;
 - 21.3.5. service upgrade and downgrade charges; and
 - 21.3.6. stolen or lost converter charges.
- 21.4. Subscriber information shall be provided to each subscriber upon installation and annually thereafter. This information should include but not be limited to the following:
 - 21.4.1. on the utilization of video cassette recorders;
 - 21.4.2. regarding complaint, billing, and collection procedures;
 - 21.4.3. methods of ordering changes, termination of services, refund policies;
 - 21.4.4. the telephone number/address of appropriate Town department to whom problems with complaint procedures can be addressed;
 - 21.4.5. installation and service maintenance policies;
 - 21.4.6. instructions on how to use the cable service;
 - 21.4.7. channel positions of programming carried on the system;
 - 21.4.8. concerning parental lock-out devices;
 - 21.4.9. about use of the Franchisee's converters;
 - 21.4.10. explaining the bill;
 - 21.4.11. describing community programming;
 - 21.4.12. regarding office hours and customer-related telephone numbers; and
 - 21.4.13. regarding addresses for the Franchisee's offices.
- 21.5. The Franchisee's office shall be open weekdays from 9:00 AM to 6:00 PM and on Saturdays from 9:00 AM to 1:00 PM.
- 21.6. The Franchisee shall respond to repair calls, either by telephone contact with the subscriber for an appointment, by a visit to the premises, or by a doorknob hanger if no one is at home, within 24 hours ninety-five percent (95%) of the time.
- 21.7. The Franchisee shall notify subscribers of routine maintenance activities through methods such as notes in the monthly guide, bill inserts, and video or electronic messages.

- 21.7.1. Whenever possible, routine maintenance should be done by the Franchisee in the early morning so that the subscribers are inconvenienced the least amount possible.
- 21.8. Excluding conditions beyond the control of the Franchisee, the Franchisee will begin working on the loss of picture or sound on one or more channels promptly and in no event later than 24 hours after the interruption becomes known. The Franchisee must begin actions to correct other service problems the next business day after notification of the service problem.
- 21.9. The Franchisee shall install cable television service to new subscribers and perform service changes to existing subscribers within seven (7) business days of initial requests under standard operating conditions ninety-five percent (95%) of the time on a quarterly basis.
- 21.10. Appointment window alternatives for installations, service calls and other installation activities will be either for a specific time or no more than a four (4) hour block of time during the business day.
- 21.10.1. Appointments cannot be canceled after the close of business the day before an appointment is scheduled.
- 21.10.2. Customers must be contacted and offered another time at their convenience if the company representative is running late and cannot keep the scheduled appointment.
- 21.10.3. The above standards must be met no less than ninety-five percent (95%) of the time, as measured on a quarterly basis.
- 21.11. For consumer telephone calls Monday thru Saturday, 8:00 AM to 5:00 PM, the Franchisee should answer ninety (90) percent of all calls handled (i.e. all calls which held more than sixty (60) seconds) within sixty (60) seconds.
- 21.11.1. No more than fifteen (15) percent of the total calls received and held for over sixty (60) seconds should be lost.
- 21.11.2. Busy signals cannot be received more than three percent (3%) of the time, under normal operating conditions.
- 21.11.3. The Franchisee shall provide information to the Town annually or upon special request by the Town, upon reasonable notice, regarding the number of active telephone lines, the time period in which telephone calls are answered, and the percent of calls lost.
- 21.11.4. Upon Town's request, such back-up information as deemed necessary by the Town which can be provided by the Franchisee's telephone management information system should be provided by the Franchisee, but no more than once quarterly.
- 21.12. A trained company representative will answer consumer calls during normal business hours. Calls made after normal business hours are to be answered by trained company representatives on the next business day.
- 21.13. The Franchisee shall provide ongoing consumer education programs regarding billing, which shall include at a minimum annual subscriber notification of the billing process and cycles and thirty (30) days prior notification of changes to this process or the cycles.
- 21.14. The Franchisee, on an ongoing basis, shall research customer needs.
- 21.15. The Franchisee shall provide information deemed necessary to the Town for triennial performance reviews of the Franchisee's performance and to evaluate consumer service performance.
- 21.16. The Franchisee, at a maximum, shall bill subscribers monthly, but this shall not preclude other payment arrangements expressly agreed upon by the Franchisee and the subscriber.
- 21.16.1. All bills must be clear, concise and understandable.
- 21.16.2. Bills must be itemized, including itemization for basic and premium service charges, and equipment charges.
- 21.16.3. All activities during the billing period must be shown, including optional charges, rebates, and credits.

- 21.17. The Franchisee must respond to written complaints from subscribers regarding billing disputes within thirty (30) days. Refund checks must be issued promptly, but not later than:
- 21.17.1. The customer's next billing cycle following resolution of the customer's request, or thirty (30) days, whichever is earlier; or
 - 21.17.2. Upon return of equipment supplied by Franchisee if service is terminated.
 - 21.17.3. Credit is to be issued no later than the customer's next billing cycle following determination that credit is warranted.
- 21.18. Customers must be notified of any changes in rates, programming services or channel positions in writing and by announcements on the cable system.
- 21.18.1. If the change is within the Franchisee's control, notice must be provided at least thirty (30) days in advance, unless otherwise provided by Federal law.
- 21.19. The Franchisee shall provide a 24-hour answering service or automated response system for repair calls.
- 21.19.1. The Franchisee shall use its best efforts to resolve all cable service repair calls within twenty-four (24) hours under normal operating conditions.
- 21.20. The Franchisee shall secure formal approval from the Administrator prior to any and all changes to all the aforementioned items of this section, Section 21, which approval shall not unreasonably be withheld.
- 21.20.1. Franchisee shall use its best efforts to provide the Town with one week's advance copy of new subscriber notices.
- 21.21. Franchisee shall comply with the FCC's Customer Service guidelines within ninety (90) days of the effective date of this Agreement, except as provided for in Section 21.
- 21.22. In addition to the above, the Franchisee shall comply with all service related procedures contained in the Ordinance.
- 21.23. ADMINISTRATOR AS MEDIATOR:
The Franchisee agrees that the Administrator may act in the capacity of a mediator with respect to all consumer disputes contained in this Section of this Agreement.

SECTION 22. CREDITS

- 22.1. As a result of Franchisee's failure to comply with customer service standards, Franchisee shall provide each affected subscriber or potential subscriber, as applicable, the following credits:
- 22.1.1. For a failure of the Franchisee's crew to arrive at the subscriber's premises within the promised period for any installation service, and upon the request of the subscriber, a credit shall be provided, equal to free installation or comparable fee or services as determined by the Franchisee;
 - 22.1.2. For a service interruption involving the loss of picture or sound on one or more cable channels, or for any other service problem that remains unrepaired for more than forty-eight (48) hours after either the Franchisee receives from the subscriber a request for repair service (provided that, to the extent access to the subscriber's premises is required to effect such repair, the subscriber has provided the Franchisee such access) or the Franchisee learns of such problem, upon subscriber request a minimum credit in such amount equal to one-thirtieth (1/30) times the total bill for cable services of such subscriber for the preceding billing period, for each forty-eight (48) hour period during which such reception problem persists for at least twenty-four (24) hours;
 - 22.1.3. For failure of the Franchisee's crew to arrive to correct any outage or make any repair during the stated time period (except where such failure is excused or except where such

crew is no longer required due to a repair effected in a nearby portion of the system, in which case the subscriber shall be notified by telephone that a visit to such subscriber's residence is no longer necessary), a credit in an amount equal to the total number of days such subscriber does not have service; and

- 22.1.4. For the improper termination of service to a subscriber, free reconnection and a credit in an amount equal to all charges billed to such subscriber for the period such subscriber does not have service.

SECTION 23. PARENTAL CONTROL DEVICES

- 23.1. Franchisee shall, upon a subscriber's written request, provide to each subscriber, one of the following devices by which the subscriber can block completely the video and audio signals of a particular cable service during periods selected by that subscriber:
- 23.1.1. a parental control device; or
 - 23.1.2. a converter with a parental control feature, or
 - 23.1.3. within a reasonable time after the request, a filter, trap, or other method or device.

SECTION 24. PRIVACY PROTECTION

- 24.1. Franchisee shall protect all persons against invasions of privacy and shall comply with the Ordinance and applicable law, including, without limitation, Section 631 of the Cable Act and regulations adopted pursuant thereto.
- 24.1.1. The Franchisee shall cooperate with the Town to ensure the Town's ability to enforce the terms and conditions of this Agreement to the maximum extent permitted by applicable law.

SECTION 25. CONSTRUCTION STAFFING

- 25.1. During the Franchise term, the Franchisee shall have sufficient full-time supervisors on staff solely to supervise construction plans for initial, upgrade and rebuild construction, and the construction practices of subcontractors.
- 25.2. As a minimum standard, Franchisee shall provide at least one (1) full-time supervisor on staff for each four (4) crews engaged in construction within the Town.
- 25.3. The Franchisee shall have sufficient crews and supervisors to construct the system according to the construction reports submitted to the Administrator.
- 25.4. If the Franchisee does not meet its construction schedules, the Franchisee shall place a sufficient number of crews and supervisors on construction within the Town to satisfy the Town's Cable Administrator that construction will proceed at a pace necessary to meet the construction schedules.
- 25.5. A qualified, registered professional engineer or an engineer with substantially equivalent training and experience shall be available for on-site review and oversight of the Town system from the Franchisee's regional office.

SECTION 26. GENERAL REQUIREMENTS FOR WORK ON THE SYSTEM

- 26.1. **ORDINANCE PREVAILS** - The Franchisee shall comply with the terms set forth in the Ordinance in connection with all work involved in the construction, operation, maintenance, repair, upgrade, and removal of the system, in addition to any other requirements or procedures reasonably specified by the Town.
- 26.2. **SAFE ENVIRONMENT** - All work involved in the construction, operation, maintenance, repair, upgrade, and removal of the system shall be performed in a safe, thorough and reliable manner using materials of good and durable quality.

- 26.2.1. In the event that Franchisee refuses or neglects to protect, alter, or relocate all or part of the system, the Town shall have the right to break through, remove, alter, or relocate all or any part of the system without any liability to the Franchisee and the Franchisee shall pay the Town the costs incurred in connection with such breaking through, removal, alteration, or relocation.
- 26.3. REPAIR AND RESTORATION - Franchisee agrees that it shall be liable, at its own cost and expense, to replace or repair and restore to serviceable condition, in a mutually agreed upon manner, any street or any public structure involved in the construction, operation, maintenance, repair, upgrade or removal of the system that may become disturbed or damaged as a result of any work thereon by or on behalf of the Franchisee.
- 26.4. EMERGENCY SITUATIONS - The Town may, at any time, in case of fire, disaster, or other emergency, as determined by the Town, in its sole discretion, cut or move any of the wires, cables, amplifiers, appliances or other parts of the system, in which event the Town shall not incur any liability to the Franchisee. Except in emergency situations, the Franchisee shall be consulted prior to any such cutting or movement of its wires and be given the opportunity to perform such work itself. All costs to repair or replace such wires, cables, amplifiers, appliances or other parts of the system shall be borne by the Franchisee.
- 26.5. CONSTRUCTION MANUAL - Franchisee shall construct and extend the system in accordance with Franchisee's construction manual, a current copy of which shall be maintained on file with the Administrator.
- 26.6. EMPLOYEE IDENTIFICATION - Franchisee shall provide a standard identification document to all employees, including employees of subcontractors, who will be in contact with the public. Such documents shall include a telephone number that can be used to verify identification. In addition, Franchisee shall clearly identify all field personnel, vehicles, and other major equipment that are operating under the authority of Franchisee.

SECTION 27. NO LIABILITY TO FRANCHISEE

- 27.1. Except for acts of willful misconduct or gross negligence, neither the Town nor its officers, employees, agents, attorneys, consultants or independent contractors shall have any liability to the Franchisee for any liability as a result of or in connection with the protection, breaking through, movement, removal, alteration or relocation of any part of the cable system by or on behalf of the Franchisee or Town in connection with any emergency, public work, public improvement, alteration of any municipal structure, any change in the grade or line of any street, or the elimination, discontinuation, and closing of any street, as provided in this Agreement.

SECTION 28. SUPPORT FOR ACCESS

- 28.1. Franchisee shall provide support for access, including access equipment, maintenance, replacement, new equipment and other access services in the form of the following:
- 28.1.1. An annual grant equivalent to \$1.90 per subscriber times the number of the Franchisee's subscribers within the corporate limits of the Town on the effective date of this franchise agreement.
- 28.1.2. The Town shall use such funds for cable related purposes.
- 28.1.3. The grant shall be forwarded to the Town one (1) year from the effective date of this Agreement and on the same day of each subsequent year thereafter, to be held in a reserve account whose proceeds and interest shall be used solely to provide access, including equipment, equipment maintenance, equipment replacement, and other access commitments.
- 28.2. Such funds for access equipment and services are in addition to the franchise fee payment and may be passed through to Franchisee's subscribers.

SECTION 29. INSTITUTIONAL NETWORK

29.1. NETWORK DESIGN

29.1.1. Within one (1) year after Franchisee activates upstream capacity on either of the two spare fibers serving the node located closest to the locations identified below, hereinafter referred to as "Institutional Network Sites":

<u>COMMUNITY</u>	<u>SITE</u>	<u>ADDRESS</u>	<u>ESTIMATE</u>
CORNELIUS	TOWN HALL	24410 CATAWBA AVENUE	\$ 9,000.00
	FIRE STATION	19729 OLD STATESVILLE ROAD	\$ 9,000.00
DAVIDSON	TOWN HALL	216 SOUTH MAIN STREET	\$ 6,600.00
	FIRE STATION	216 SOUTH MAIN STREET	\$ 6,600.00
HUNTERSVILLE	TOWN HALL	13001 OLD STATESVILLE ROAD	\$ 1,500.00
	FIRE STATION	110 SOUTH STATESVILLE ROAD	\$ 3,000.00
MECKLENBURG CNTY	(2) SITES	TO BE SELECTED	
MOORESVILLE	TOWN HALL	413 NORTH MAIN STREET	\$ 6,000.00
	FIRE STATION	ADJACENT TO TOWN HALL	\$ 6,000.00
TROUTMAN	TOWN HALL	400 NORTH EASTERN DRIVE	\$ 7,500.00
	FIRE STATION	125 NORTH MAIN STREET	\$ 4,500.00

29.1.2. Franchisee shall notify the County and the Towns of Cornelius, Davidson, Huntersville, Mooresville, and Troutman that such upstream capacity is activated and, upon the request of the County or the Town's of Cornelius, Davidson, Huntersville, Mooresville, and Troutman, allow such requesting municipalities to use these fibers free of charge, to transmit and receive digitized 10 M-bits high-speed data, video, and voice digital transmissions continuously from each site and to use an additional 50 M-bits of capacity per site during the hours of 10 PM to 6:00 AM.

29.1.3. Franchisee shall, upon the request of the County or the Town's of Cornelius, Davidson, Huntersville, Mooresville, and Troutman and at the respective municipalities expense, construct a connection from requested sites listed in Section 29.1, to the nearest node.

29.1.4. Section 29.1 contains the estimated distance from the sites to the nearest nodes and estimated costs for such connections.

29.1.4.1. Upon request by each community listed above, Franchisee shall use its best efforts to construct such connections for the estimated costs, and the costs shall be borne by the requesting municipality.

29.1.4.2. The respective municipality shall own and maintain such fiber optic connections.

29.1.5. The use of the cable systems fiber, any connections to the sites listed in Section 29.1, and the interconnect to the Charlotte-Mecklenburg Time Warner Cable system shall be referred to herein as the Institutional Network or I-NET.

29.1.6. If the Franchisee constructs additional fibers from or to the nodes specified in Section 29.1, or other nodes within two (2) miles of each municipalities administration building or the County's I-NET sites, then the Franchisee shall allow the County and municipalities of Cornelius, Davidson, Huntersville, Mooresville, and Troutman to have fiber optics for the I-NET included in the Franchisee's fiber bundle(s).

29.1.6.1. The municipalities requesting fiber shall pay only the incremental cost of fiber itself.

29.1.6.2. The Franchisee shall notify the County and the Towns of Cornelius, Davidson, Huntersville, Mooresville, and Troutman in a timely manner of its intention to construct such fiber and inquire as to whether one or more of the municipalities

would like to include fiber in the bundles and how many fiber strands would be purchased.

- 29.1.6.3. The Franchisee shall indicate what the incremental cost for the additional fiber will be for the municipalities requesting fiber.
- 29.1.6.4. The County and the Towns of, Davidson, and Troutman shall notify the Franchisee in a timely manner of their interest in having such fiber included in the Franchisee's construction.
- 29.1.6.5. The Franchisee shall add the requested fiber in the Franchisee's fiber bundle(s) and the municipalities requesting fiber shall reimburse the Franchisee for the incremental cost of the fiber.
- 29.1.6.6. I-NET fiber in the Franchisee's fiber bundle shall be owned and maintained by the Franchisee, and such fiber shall be dedicated for the use of the municipalities which had the fiber constructed.

29.2. USAGE CONDITIONS

- 29.2.1. The County or Town's of Cornelius, Davidson, Huntersville, Mooresville, and Troutman, shall be permitted to have any network or service connected to the I-NET from their premises.
- 29.2.2. The County or Town's of Cornelius, Davidson, Huntersville, Mooresville, and Troutman, or as otherwise specified herein shall not use the capacity on the Franchisee's system as described in Section 29 for any purposes other than non-commercial governmental and educational purposes.

29.3. CONSTRUCTION

- 29.3.1. Before construction of the connections to the nodes described above, the Franchisee shall engage in cooperative planning with the County or Town's of Cornelius, Davidson, Huntersville, Mooresville, and Troutman, including the number, routing, scheduling, and placement of additional fibers for use in the I-NET.
- 29.3.2. The Franchisee shall provide to the County or Town's of Cornelius, Davidson, Huntersville, Mooresville, and Troutman, its best estimates of I-NET costs, and the design maps related to the I-NET as they are completed.
- 29.3.3. At least ninety (90) days prior to construction of connections to the nodes, the Franchisee shall provided to the County or Town's of Cornelius, Davidson, Huntersville, Mooresville, and Troutman, for its review and approval, the design, a quotation of costs, and schedules for construction and installation.
- 29.3.4. All expenditures for construction, installation, and activation of I-NET connections, beyond the Franchisee's planned cable plant, may be charged to the respective municipalities at the Franchisee's direct costs for labor and materials.
- 29.3.5. The Franchisee shall provide to the County or Town's of Cornelius, Davidson, Huntersville, Mooresville, and Troutman an itemized accounting of new charges.

29.4. FUTURE SITES

- 29.4.1. The Franchisee agrees to move the I-NET sites, upon the request of the County or Town's of Cornelius, Davidson, Huntersville, Mooresville, and Troutman, if the buildings originally connected to the I-NET are moved.
- 29.4.2. The expense of moving I-NET sites to the respective municipality shall not exceed the Franchisee's actual cost of construction from the connection point to the nearest point on the I-NET. If the community relocates I-NET sites during the franchise term, Franchisee shall, on request, relocate the connection with all costs borne by the Community.

- 29.5. END USER EQUIPMENT
29.5.1. The participating entities shall purchase all necessary end user equipment for I-NET applications, with the exception of any equipment specified in this Agreement.
- 29.6. I-NET DESIGN SPECIFICATIONS
29.6.1. The Franchisee shall ensure that the I-NET and each I-NET location connection specified by the County or Town's of Cornelius, Davidson, Huntersville, Mooresville, and Troutman, shall be designed according to the specifications necessary to provide high speed data, video and voice transmissions between each site and any other site on the I-NET.
29.6.2. The County and the Town's of Cornelius, Davidson, Huntersville, Mooresville, and Troutman, shall select the location in all facilities for terminating the fiber optics and the Franchisee will install SC connectors.
- 29.7. CONNECTION TO SUBSCRIBER NETWORK
29.7.1. The Franchisee shall use its best efforts to provide available space within, or in close proximity to, its headend, OTN, hubs and other cable facilities to allow the County or Town's of Cornelius, Davidson, Huntersville, Mooresville, and Troutman, to locate its I-NET electronics as required for the operation of the I-NET.
29.7.2. The Franchisee shall provide the optical and electrical patching, switching, and modulating means necessary to effect the interconnection of incoming institutional baseband video and audio signals from County or Town's of Cornelius, Davidson, Huntersville, Mooresville, and Troutman-authorized educational and governmental entities to the Subscriber Network, so that switching can be accomplished remotely by telephone or by data link by the participating locations/entities.
- 29.8. I-NET CONSTRUCTION TIMETABLE
29.8.1. The Franchisee shall complete I-NET connections and extensions requested after the construction within six (6) months following a request for connection or extension by the County or Town's of Cornelius, Davidson, Huntersville, Mooresville, and Troutman.
- 29.9. RESPONSE TIME
29.9.1. Under normal operating conditions, the Franchisee shall respond to technical problems on the portion of the I-NET owned by the Franchisee within four (4) hours.
- 29.10. INTERNET
29.10.1. If the County or Town's of Cornelius, Davidson, Huntersville, Mooresville, and Troutman, do not elect to have a connection constructed as a part of the I-NET described above, such municipality may exercise the following option.
29.10.2. When the Franchisee makes on-line service for personal computers commercially available on the system, the Franchisee will, upon request, provide one (1) free connection to the Franchisee's on-line Internet service at the I-NET locations indicated in Section 29.1.
29.10.3. Such on-line service will provide access to the Internet. Upon request, each connected location may connect up to two (2) cable modems with free access provided by Franchisee. The Town may obtain up to two (2) modems from Franchisee at no cost to the Town or subscribers.

SECTION 30. SYSTEM AND CAPACITY

30.1. SYSTEM

- 30.1.1. The parties understand and agree that the Franchisee shall maintain and operate a cable system which delivers cable television signals processed at 750 MHZ (100 channels) utilizing a fiber to the feeder design.
- 30.1.2. The system shall be designed to support sixty-nine (69) analog channels plus 200 MHZ which may be used for digital transmission.
- 30.2. DROP GROUNDING
 - 30.2.1. Franchisee shall check existing drops for compliance with electrical code grounding in the course of service calls made in ordinary course of business.
- 30.3. EMERGENCY ALERT
 - 30.3.1. The Franchisee shall provide an all-channel audio-only emergency alert system for use by the Town. Emergency messages shall be able to be initiated by any designated Town official from any touch-tone phone with an access code.
 - 30.3.1.1. The Franchisee agrees to upgrade the emergency alert system throughout the term of the franchise in accord with FCC requirements.
 - 30.3.1.2. The Franchisee shall periodically test the emergency alert system as the Town may reasonably require.
 - 30.3.1.3. The Franchisee shall periodically test the emergency alert system as required by Federal law.
- 30.4. STANDBY POWER
 - 30.4.1. The Franchisee shall maintain equipment capable of providing standby power for a minimum of four (4) hours for the headend and two (2) hours for transportation and at all fiber optic nodes.
- 30.5. STEREO
 - 30.5.1. The System shall add eight (8) Broadcast Television Systems Committee (BTSC) stereo signals annually, until such time as all channels received by Franchisee are provided to subscribers in stereo.
- 30.6. UNDERGROUND DROPS
 - 30.6.1. The cost for replacing aerial drops with underground placement will be determined by the location of the utility drops.
 - 30.6.2. If the subscriber is served underground by electric and telephone utilities, there will be no charge for the replacement.
 - 30.6.3. There will be a time and material charge assessed only if underground replacement is requested though the utilities and are served aerially.
 - 30.6.4. Drops served underground shall be buried within one (1) month or less of providing service to a subscriber, weather permitting, or later at customer request. Temporary drops will be buried within one (1) month of installation weather permitting, or later at customer request.
- 30.7. STATE-OF-THE-ART
 - 30.7.1. In the event that technology or service (not including a specific programming service) is deployed in a majority of cable systems, which are of comparable size and have comparable demographics, owned by the Franchisee or its parent company to a level of service(s) or technology exceeding that offered in the Franchisee's system serving the County and the Towns of Cornelius, Davidson, Huntersville, Mooresville and Troutman (the "Consortium") then the Town may, through formal action of the Board of Commissioners of the Town of Davidson, require that the Franchisee make available similar services or technology to the residents of Town, if the Town Commissioners find a reasonable need exists for such service or technology.
 - 30.7.1.1. Upon such action by the Town Commissioners, the Franchisee shall undertake such improvements in the Franchisee's cable system serving the Consortium to

provide service(s) or technology equal to or better than those offered in its systems of comparable size and demographics.

- 30.7.1.2. The Franchisee agrees that all of the systems owned by the Franchisee on the effective date of this Franchise are comparable in size and demographics and shall be considered comparable for the system serving the Consortium throughout the term of this Franchise.
- 30.7.1.3. Notwithstanding the forgoing, in the event that technology or service(s) (not including a specific programming service) is deployed in a majority of cable systems of comparable size and with comparable demographics in the States of North Carolina, Virginia, South Carolina, and Georgia, to a level of service(s) or technology exceeding that offered in the Franchisee's system serving the Consortium, then the Town may, through formal action of Town Commissioners, require that Franchisee make available similar service(s) or technology to the residents of Town, if the Town Commissioners find a reasonable need exists for such service or technology.
- 30.7.1.4. Upon such action by the Town Commissioners, the Franchisee shall undertake such improvements in its cable system serving the Consortium to provide a level of service(s) or technology equal to or better than those offered in the majority of systems of a comparable size and demographics in the States of North Carolina, Virginia, South Carolina, and Georgia.
- 30.7.1.5. Except that the Franchisee shall not have to deploy new service(s) or technology if the Consortium communities find that there is no reasonable expectation that the Franchisee will be available to receive, during the remaining term of the Franchise, a rate of return on the specific technology or service(s) comparable to industry expectations for such specific service or technology.
- 30.7.1.6. The enhanced services or technology required by the Town Commissioners shall be made available to all Franchise areas of the cable system serving the Consortium within such time period as is mutually agreed upon by the parties, but no longer than four (4) years. Provided that the Town Commissioners shall not issue an Order prior to the fourth (4th) anniversary of this Franchise Agreement.
- 30.7.1.7. The requirements of this section are exclusive of experimental and/or market tests.

30.8. TREE TRIMMING

- 30.8.1. Franchisee shall comply with local tree trimming ordinances, regulations, and rules.

SECTION 31. INTERCONNECTION

- 31.1. The Franchisee shall interconnect the access channels and the institutional network of its system using fiber optic technology to the closest, technically feasible point of the Time Warner Communications system upon the request of the Town for the use of the Town. Such interconnect shall be completed within six months of a request by the Town to interconnect.
- 31.2. Franchisee shall share such construction cost with Time Warner on a proportionate basis based upon the number of subscribers of each Franchisee and Franchisees respective share of the maintenance of the interconnect.
- 31.3. The Franchisee shall cooperate with all efforts by the Town to initiate and complete the interconnection by way of trunk, microwave or satellite transmission or receive facilities with regional, state and national, public and private cable communications systems.
- 31.4. Upon the request of the Town, the Franchisee shall interconnect all of the access channels and the training channel with the other cable systems serving the Town within 120 days of receiving regulatory approval from the appropriate governmental agencies and such interconnection shall

be constructed in the most economical manner and the cost shall be divided equitably based upon subscribership.

SECTION 32. CONSUMER ELECTRONIC COMPATIBILITY

32.1. The Franchisee shall pass through all signals using, at a minimum, BTSC stereo format to all subscribers. Franchisee also shall use its best commercially reasonable efforts to enhance its compatibility with cable-ready TVs and VCRs, but Franchisee shall not be required to compromise signal security.

SECTION 33. BOOKS AND RECORDS

- 33.1. The Franchisee shall maintain a local office and a local telephone number within the System.
- 33.2. Throughout the term of this Agreement, Franchisee shall make available to the Town complete and accurate books of account and record regarding the Franchisee's ownership and operation of the system and the provision of services over the system, in a manner reasonably acceptable to the Town when necessary for the Town to reasonably determine Franchisee's compliance with the terms and conditions of the Ordinance and this Franchise Agreement.
- 33.3. The Town shall have the right to inspect upon five (5) days written notice via the US mail, other mail carriers, or electronic mail, at any time during normal business hours, books, records, maps, plans, service complaint logs, performance test results and other like materials of the Franchisee which relate to the operation of the system and when necessary for the Town to reasonably determine Franchisee's compliance with the terms and conditions of the Ordinance and this Franchise Agreement.
- 33.4. Franchisee will also maintain a file for public inspection as specified pursuant to the FCC's rules and regulations.

SECTION 34. REPORTS

- 34.1. The Franchisee, so long as it is a small cable system, as defined under the Ordinance, shall only be required to provide the following reports to the County as required below and to the Towns of Cornelius, Davidson, Huntersville, Mooresville and Troutman only upon request:
- 34.1.1. Annual financial statement, certified by an officer, five (5) months after the close of the Franchisee's fiscal year;
 - 34.1.2. Copies of the audited financials of the parent company;
 - 34.1.3. Copies of annual notice to subscribers;
 - 34.1.4. Copies of service area maps annually;
 - 34.1.5. Copies of the system's proof of performance;
 - 34.1.6. Copies of the system's EEO and rate filings;
 - 34.1.7. A schedule of other FCC filings regarding the Franchisee's Mecklenburg system annually;
 - 34.1.8. Copies of any FCC filings regarding the Franchisee's Mecklenburg system;
 - 34.1.9. As built maps in Franchisee's standard electronic format;
 - 34.1.10. Standard billing inserts regarding changes in rates and services;
 - 34.1.11. An annual report of channels and plant added to the system in unincorporated County.

SECTION 35. PERFORMANCE EVALUATION

- 35.1. The Town and the Franchisee shall hold a performance evaluation as specified in the Ordinance.
- 35.2. Should the Town determine that, based on the presentation and expressed community concerns, unsatisfactory or deficient quality or quantity of cable service or customer service is being provided, then Franchisee and the Town shall enter into good faith negotiations to consider and determine a course of action to correct and improve service.

- 35.3. Franchisee will be given a reasonable amount of time to cure any deficiencies noted during the performance evaluation.

SECTION 36. FRANCHISE MODIFICATION AND TRANSFER

- 36.1. The Franchisee may submit to the Town applications for a modification to this Franchise pursuant to the Cable Act.
- 36.1.1. The Town shall review the application within sixty (60) calendar days, or earliest meeting of the Town Board, whichever is later, and shall act on a request within one hundred and twenty (120) days.
- 36.2. Franchisee shall receive consent for transfers of ownership and control as specified in the Ordinance. Except that so long as John Oscher controls the Franchisee and owns sixty percent (60%) of the Franchisee, that no consent shall be required for any sale, transfer, or assignment of ownership to the immediate family of John Oscher or employees of John Oscher.

SECTION 37. CONFIDENTIAL INFORMATION

- 37.1. If Franchisee considers any of the reports provided to the Town to be proprietary information, these reports will be clearly labeled "Confidential Information."
- 37.1.1. The term "Confidential Information" shall mean any information, not generally known in the relevant trade or industry, obtained in connection with this Agreement from the Town or the Franchisee or any of their respective vendors or licensors which falls within any of the following general categories:
- 37.1.2. Information relating to trade secrets of the Town or the Franchisee or any of their respective vendors or licensors, including but not limited to the Franchisee's questionnaires and any information the Town learns about the Franchisee's business methods;
- 37.1.3. Information relating to existing or contemplated products, services, technology, designs, processes, formulae, computer systems, computer software, algorithms and research or developments of the Town or the Franchisee or any of their respective vendors or licensors;
- 37.1.4. Information relating to the business of the Town or the Franchisee or that of any of their respective vendors or licensors, including but not limited to, business forms, handbooks, policies, documents, business plans, business processes and procedures, sales or marketing methods, methods of doing business, customer lists, customer usages and/or requirements, and supplier information of the Town or the Franchisee or any of their respective vendors or licensors;
- 37.1.5. Information relating to the Town's employees; or
- 37.1.6. Information marked "Confidential" or "Proprietary."
- 37.2. Except as otherwise provided in this Agreement, for the term of this Agreement and for three (3) years following termination thereof, each party agrees to keep the Confidential Information in the strictest confidence, in the manner set forth below:
- 37.2.1. Neither party shall copy, modify, enhance, compile or assemble (or reverse compile or disassemble), or reverse engineer Confidential Information;
- 37.2.2. Neither party shall, directly or indirectly, disclose, divulge, reveal, report or transfer] Confidential Information of the other to any third party or to any individual employed by the Franchisee or the Town, other than an employee or agent of the Franchisee, the Town or an Affiliate having a need to know such Confidential Information and who has executed a confidentiality agreement incorporating substantially the form of this Section of the Agreement;
- 37.2.3. Neither party shall use any Confidential Information of the other or the ideas or concepts therein for its own benefit or for the benefit of a third party except to the extent such use is

- authorized by this Agreement or the License Agreement or is for the purpose for which such Confidential Information is being disclosed.
- 37.2.4. Neither party shall remove any proprietary legends or notices, including copyright notices, appearing on or in the Confidential Information of the other.
- 37.2.5. Each party shall use its reasonable efforts to enforce the proprietary rights of the other party and the other party's vendors, licensors and suppliers (including but not limited to seeking injunctive relief where reasonably necessary) against any person who has possession of or discloses Confidential Information in a manner not permitted by this Agreement.
- 37.2.6. Any materials which constitute or reveal Confidential Information, shall be kept confidential to the extent disclosure would reveal Confidential Information, and, unless otherwise agreed to herein, all such materials shall be returned to the disclosing party or destroyed upon satisfaction of the purpose of the disclosure of such information.
- 37.2.7. In the event that any demand is made in litigation, arbitration or any other proceeding for disclosure of Confidential Information, the party upon which the demand is made shall assert this Agreement as a ground for refusing the demand and, if necessary, shall seek a protective order or other appropriate relief to prevent or restrict and protect any disclosure of Confidential Information.
- 37.3. The disclosing party to this Agreement agrees that the receiving party ("Recipient") shall have no obligation with respect to any information which the Recipient can establish:
- 37.3.1. Was already known to Recipient;
- 37.3.2. Was or becomes publicly known through no wrongful act of Recipient;
- 37.3.3. Was rightfully obtained by Recipient from a third party without similar restriction and without breach hereof;
- 37.3.4. Was used or disclosed by Recipient with the prior written authorization of the other party;
- 37.3.5. Was disclosed pursuant to the requirement or request of a governmental agency, which disclosure cannot be made in confidence, provided that, in such instance, Recipient shall first give to the other party notice of such requirement or request;
- 37.3.6. Was disclosed pursuant to the order of a court of competent jurisdiction or a lawfully issued subpoena, provided that the Recipient shall take reasonable steps to obtain an agreement or protective order that, to the greatest possible extent possible, this Agreement will be applicable to all disclosures under the court order or subpoena; or.
- 37.3.7. Was independently developed by Recipient without the use of discloser's confidential information.
- 37.4. Notwithstanding anything contained herein in the contrary, in the event that a party is unintentionally exposed to any Confidential Information of the other party, the unintended recipient agrees that it shall not, directly or indirectly, disclose, divulge, reveal, report or transfer such Confidential Information to any person or entity or use such Confidential Information for any purpose whatsoever.
- 37.5. Notwithstanding anything contained herein to the contrary, the parties recognize and acknowledge that the Town is a subdivision of the State of North Carolina and is, therefore, subject to the North Carolina Public Records Act (the "Act") at N.C. GEN. STAT. 132-1 et seq.
- 37.5.1. The parties further acknowledge that any Confidential Information that is a public record under North Carolina law may be released and disclosed by the Town pursuant to the Act, and that any such release or disclosure shall not in any way constitute a breach of this Agreement, nor shall the Town be liable to the Franchisee for such release or disclosure.
- 37.5.2. In the event the Town receives a request for disclosure of Confidential Information which the Franchisee has specifically marked "Confidential" or "Proprietary", the Town shall give the Franchisee written notice of such request (the "Notice of Request for Disclosure").
- 37.5.3. In the event the Franchisee has a reasonable basis for contending that the disclosure of such Confidential Information is not required by the Act, the Franchisee shall, within ten (10) days after receipt of the Notice of Request for Disclosure, notify the Town in writing of its objection to disclosure and the basis therefor.

- 37.5.4. The Franchisee shall indemnify, defend and hold harmless the Town from or against all losses, damages, liabilities, costs, obligations and expenses (including reasonable attorneys' fees) incurred by the Town in connection with any refusal by the Town to disclose Confidential Information after receiving an objection to disclosure from the Franchisee.
- 37.5.5. If the Town receives no written objection from the Franchisee within ten days after receipt of a Notice of Request for Disclosure, the Town shall disclose the Confidential Information referenced in the Notice of Request for Disclosure.
- 37.6. Nothing in this section shall be read to require a Franchisee to violate the Cable Act, 47 U.S.C. § 551.

SECTION 38. FRANCHISE NOT A JOINT VENTURE

- 38.1. Nothing herein shall be deemed to create a joint venture or principal-agent relationship between the parties, and neither party is authorized to, nor shall either party act toward third persons or the public in any manner which would indicate any such relationship with the other.

SECTION 39. NOTICES

- 39.1. All notices, reports, or demands required to be given to or served on the Town and/or Franchisee shall be in writing and shall be deemed to have been given when delivered personally to the persons designated below, or when seventy-two (72) hours have elapsed after being deposited in the United States mail in a sealed envelope, with registered or certified mail postage prepaid thereon, or on the next business day if sent by express mail or overnight air courier addressed to the party to which notice is being given.
- 39.2. Notices shall be directed as follows:

FOR THE TOWN:
TOWN MANAGER
TOWN OF DAVIDSON
PO BOX 579
DAVIDSON, NC 28036
TEL: 704-875-6541
FAX: 704-875-6546

FOR THE FRANCHISEE:
ATTN: GENERAL MANAGER
PRESTIGE CABLE TV OF N.C., INC.
420 SOUTH ACADEMY STREET
MOORESVILLE, NORTH CAROLINA 28115
TEL: 704-663-3896
FAX: 704-663-6905

SECTION 40. ENTIRE AGREEMENT

- 40.1. This Agreement and all attachments hereto, and the Ordinance, as incorporated herein, represent the entire understanding and Agreement between the parties hereto with respect to the subject matter hereof, and can be amended, supplemented, modified, or changed only as provided in said Agreement.

SECTION 41. BOND

- 41.1. The Franchisee shall furnish to the Town a bond or letter of credit in the amount of Fifteen Thousand Dollars (\$15,000.00) during the life of the Franchise Agreement, to guarantee the faithful performance of the Franchisee of all its obligations under this Agreement and the Cable Ordinance. A bond shall meet the conditions of Section 4-1 of the Town's Ordinance. A letter of credit shall be irrevocable, drawn on a local bank and shall be approved by the Town Attorney's Office.

SECTION 42. COOPERATION

- 42.1. The parties recognize that it is within their mutual best interests for the cable television system to be operated as efficiently as possible in accordance with the requirements set forth in this Agreement and the Ordinance.
 - 42.1.1. To achieve this, the parties agree to cooperate with each other in accordance with the terms and provisions of this Agreement and the Ordinance.
 - 42.1.2. Should either party believe that the other is not acting timely or reasonably within the confines of applicable regulations and procedures in responding to a request for action, that party shall notify the agents designated for that purpose by the other.
 - 42.1.3. The agent will use its best efforts to facilitate the particular action requested.
- 42.2. The Town will fully and actively support Franchisee’s anti-theft efforts by encouraging local prosecution, cooperating in anti-theft campaigns, and through other reasonable means.

SECTION 43. LIQUIDATED DAMAGES

- 43.1. The willful violation of any provision contained in this Agreement or the Ordinance of the Town shall subject the Franchisee to liquidated damages as set forth in Section 7- 5 of the Town of Davidson Code.
- 43.2. In addition, the following violations shall subject the Franchisee to the following agreed upon liquidated damages:

<u>ISSUE</u>	<u>LIQUIDATED DAMAGES</u>
FAILURE TO RESOLVE MULTIPLE SIMILAR UNRESOLVED SERVICE ORIENTED COMPLAINTS	\$50 PER DAY UP TO \$1,000 PER MONTH IN THE AGGREGATE, BEGINNING ONE WEEK FROM RECEIPT OF NOTICE FROM THE TOWN
FAILURE TO PROVIDE ENGINEERING SURVEYS AND LINE EXTENSION COSTS TO SUBSCRIBERS ON A TIMELY BASIS	\$50 PER DAY FROM TIME DUE UNTIL INFORMATION IS PROVIDED TO SUBSCRIBERS
FAILURE TO COMPLY WITH MATERIAL TERMS OF THIS FRANCHISE OR THE ORDINANCE	\$100 PER DAY FROM NOTICE OF VIOLATION UNTIL COMPLIANCE
FAILURE TO COMPLY WITH THE TIME PERIODS CONTAINED IN SECTION 15 IN THIS AGREEMENT FOR THE EXTENSION OF SERVICE	\$50 PER DAY UP TO \$1,000 PER MONTH IN THE AGGREGATE UNTIL COMPLIANCE

- 43.3. The notice provisions contained in Section 3-5 of the Ordinance shall apply when liquidated damages are assessed against the Franchisee pursuant to the provisions of this part.
- 43.4. Upon notification in writing to the Franchisee of the violation, the Franchisee shall be allowed thirty (30) days or such other greater amount of time as the Town may specify, to correct such violation.

SECTION 44. FORCE MAJEURE

- 44.1. The Franchisee shall be not liable for any failure or delay in the performance of its obligations pursuant to this Agreement and such failure or delay shall not be deemed a default of this Agreement or grounds for termination hereunder if any of the following conditions are satisfied:
- 44.2. If such failure or delay:
 - 44.2.1. Could not have been prevented by reasonable precaution, and
 - 44.2.2. Cannot reasonably be circumvented by the Franchisee through the use of alternate sources, work-around plans, or other means; or
- 44.3. If and to the extent such failure or delay is caused, directly or indirectly, by fire, flood, earthquake, hurricane, elements of nature or acts of God, acts of war, terrorism, riots, civil disorders, rebellions or revolutions, or court order.
- 44.4. Upon the occurrence of an event which satisfies any of the conditions set forth above (a "Force Majeure Event") the Franchisee shall be excused from any further performance of those of its obligations pursuant to this Agreement affected by the Force Majeure Event for as long as
 - 44.4.1. Such Force Majeure Event continues and
 - 44.4.2. The Franchisee continues to use commercially reasonable efforts to recommence performance whenever and to whatever extent possible without delay.
- 44.5. Upon the occurrence of a Force Majeure Event, the Franchisee shall immediately notify the Town by telephone, to be confirmed by written notice, of the occurrence of a Force Majeure Event and shall describe in reasonable detail the nature of the Force Majeure Event.

SECTION 45. FRANCHISE AS CONTRACT

- 45.1. Upon its execution by the Town and the Franchisee, this Agreement shall be deemed to constitute a contract by and between the Franchisee and the Town.

SECTION 46. MODIFICATION

- 46.1. This Agreement, including all documents specifically incorporated herein, cannot be changed orally, but only by an agreement in writing properly executed by the parties.

SECTION 47. SMALL SYSTEM EXCLUSIONS

- 47.1. The Franchisee shall be considered to meet the requirements of operating a small system, and entitled to the appropriate exclusions provided under the law, including Town's Ordinance Section 7-5, so long as fewer than 50,000 subscribers are being served within the combined total of the Consortium Communities of unincorporated Mecklenburg County and the towns of Cornelius, Davidson, Huntersville, Mooresville and Troutman.

IN WITNESS WHEREOF, and in acknowledgment that the parties hereto have read and understood each and every provision hereof, the parties have caused this Agreement to be executed on the date first written above.

ATTEST:

Title: _____

(SEAL)

PRESTIGE CABLE TV OF N.C., INC.

By: _____

Title: _____

ATTEST:

Town Clerk

(SEAL)

TOWN OF DAVIDSON

By: _____

Title: _____

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