



Municipal Broadband



What is Broadband?

Access to the internet via high-speed transfer of data from point to point. To be considered "broadband" the service MUST:

Download speeds of at least:

25 mbps

Upload speeds of at least:

3 mbps



How is broadband currently deployed in the community

1

- Only 1 major player providing true “broadband” service
- Infrastructure largely built utilizing coaxial cabling
- Residents and businesses frustrated with lack of options and competition

ESSENTIAL INTERNET

100 Mbps
DOWNLOAD

Power 5-7 devices at one time with this essential speed. This will give you a great internet experience without delays and buffering.

\$40⁰⁰
Per Mo.

Reg. Rate: \$69.99/mo.

ORDER

[Package Details](#)



What is Municipal Fiber Broadband Network?

Internet as a utility

- Similar in operations to Huron Public Power and Huron Water
- Fiber-optic citywide network
- Cost competitive option for all existing residents and businesses
- Affordable and technologically advanced access to extremely high-speed internet – 10X faster than “broadband” minimums



Fiber Optic Network

400%

Faster Download Speeds

*Assumes highest available package

19,990%

Faster Upload Speeds

*Assumes highest available package



- Improved reliability and less latency
- Maintains speed at long distances
- Data travels both ways at same speed
- Lines are more durable than coax



Advantages of Municipal Broadband

- Economic Development
- Community Development
- Revenue Diversification for City
- Improve Safety Services Operations
- Regional Collaboration
- WiFi Access at various Points of Interest
- Reduce costs for residents/businesses
- Futureproof community
- Reduce impacts of net neutrality



Challenges to Consider

- Costly endeavor
- Construction Logistics
- Legal battles
- Large time commitment
- Political implications
- Does not solve TV issue, however makes streaming much easier



Fairlawn Gig

70%

70% of community Subscribed
in first 2 years

Top 10

Fastest Internet Service
Provider in US

99.99%

Network
is always on!



Next Steps

RFP for Feasibility Study

- Anticipated cost: \$80-100k
- Timeline:
 - Committee discussion (1-2 months)
 - Council Discussion (1-2 months)
 - Public Outreach
 - RFP (1-2 months)
 - Study: 2-4 months



Next Steps

Consideration of Establishing Utilities Subcommittee

- Review and oversee water, electric, and potentially broadband services

ORDINANCE NO. 2002-27

**AN ORDINANCE AUTHORIZING AND DIRECTING THE CITY
MANAGER TO ENTER INTO A FRANCHISE AGREEMENT
WITH THE CABLESYSTEM, INC. FOR CABLE TELEVISION
SERVICE FOR THE CITY OF HURON**

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF HURON, OHIO:

SECTION 1. In consideration of the faithful performance and observance of the conditions and reservations contained in the Franchise Agreement attached hereto and made a part hereof as "Exhibit A", the City of Huron hereby grants to The CableSystem, Inc., an Ohio corporation, the non-exclusive right to erect, maintain and operate television transmission and distribution facilities and additions thereof, in, under, over, along, across and upon the streets, lanes, avenues, sidewalks, alleys, bridges and other public places in the City of Huron, Erie County, Ohio and subsequent additions thereto, for the purpose of transmission and distribution of audio and visual impulses and television energy in accordance with the laws and regulations of the United States of America and the State of Ohio and the Ordinances and regulations of the City of Huron, Erie County, Ohio, for a period of twenty (20) years.

SECTION 2. This Council finds and determines that all formal actions of this Council concerning and relating to the passage of this Ordinance were taken in an open meeting of this Council and that all deliberations of this Council and any of its committees that resulted in those formal actions were in meetings open to the public in accordance with the laws of the State of Ohio, including Ohio Revised Code, Section 121.22.

SECTION 3. That this Ordinance shall become effective at the earliest date allowed by law; provided, however, that this Ordinance shall have no force or effect whatsoever unless written acceptance of this Ordinance is filed by the Grantee with the City Manager of the City of Huron, Ohio, prior to the expiration of thirty (30) days from the date this Ordinance is passed.



Edward Asher, Mayor

ATTEST: 
Clerk of Council

ADOPTED: NOV 12 2002, 2002

ERIE COUNTY CABLEVISION CABLE TELEVISION FRANCHISE RENEWAL**AGREEMENT****TABLE OF CONTENTS**

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FRANCHISE RENEWAL AGREEMENT

This Agreement, is made this 12th day of December, 2002, by and between the City of Huron, Ohio hereinafter referred to as the "City", and Erie County Cablevision, Inc., hereinafter referred to as the "Grantee" a corporation having its principal offices located at 409 East Market Street, Sandusky, Ohio 44870.

WITNESSETH:

WHEREAS, grantee has applied to the City to renew its non-exclusive franchise to construct, operate, and maintain a cable television system in the City; and

WHEREAS, the City has afforded the public adequate notice and opportunity for comment hereon; and

WHEREAS, the City and the grantee now wish to enter into a franchise renewal agreement ("Agreement") as hereinafter set forth.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged by both parties, it is mutually agreed as follows:

Section 1. Title. This Agreement shall be known and may be cited as the Erie County Cablevision "Cable Television Franchise Renewal Agreement."

Section 2. Definitions. For the purposes of this agreement, the following terms, phrases, words, and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory.

(a) “Basic service” means a service tier which at a minimum shall include the retransmission of (i) local commercial television signals, (ii) non-commercial educational television signals, (iii) public, educational, governmental access programming, and (iv) all other signals carried to fulfill the requirements of the cable act or included by grantee in this service tier.

(b) “Business day” means Monday through Friday excepting all federal holidays.

(c) “Cable act” means collectively the Cable Communications Policy Act of 1984, Pub. L. No. 98-549, 98 Stat. 2779 (1984), as amended by the Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, 106 Stat. 1460 (1992), and as further amended by the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 114 (1996), and as such acts might be additionally amended.

(d) “Cable service” means (1) the one way transmission to subscribers of video programming or other programming service, and (2) subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

(e) “Cable system” or “system” means a facility consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service which includes video programming (including Internet access and broadband services, unless and until a court of competent jurisdiction determines that such access or broadband services are not cable services as to which a franchise fee may be imposed under 47 USC §542) and which is provided to multiple subscribers within the City. Such term does not include:

1. A facility that serves only to retransmit the television signals of one (1) or more television broadcast stations;

2. A facility that serves only subscribers in one (1) or more multiple unit dwellings under common ownership, control, or management, unless such facility or facilities or part thereof is located in or uses any public right-of-way;
3. A facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Communications Act of 1934, except that such facility shall be considered a cable system to the extent such facility is used in the transmission of video programming directly to subscribers, unless the event of such use is solely to provide interactive on-demand services; or
4. Any facilities of any electric utility used solely for operating its electric utility systems.

(e) "City" means the City of Huron, Ohio and the geographic area encompassed by that political subdivision, as the same now or in the future may exist.

(f) "Council" is the City Council of Huron, Ohio.

(g) "Facilities" means the utility poles, wires, cables, lines, guys, anchors, manholes, vaults, pipes, conduits, ducts, pedestals, antennae, transformers, crossbars, repeaters, hubs, routers, and other equipment and related appurtenances owned, controlled or used by grantee in conjunction with the operation of a cable system within the City.

(h) "FCC" means the Federal Communications Commission and any legally appointed, designed or elected agent or successor.

(i) "Force majeure" means a 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 of Ohio or any of their departments, agencies, political subdivisions; riots, epidemics, landslides; lightning, earthquakes, fires, tornadoes, storms, floods, washouts, droughts; civil disturbances, explosions, partial or entire failure of utilities or any other cause or event not reasonably within the control of the disabled party.

(j) "Franchise" means a right to operate a cable system within the City in accordance with and subject to the terms of this agreement.

(k) "Franchise agreement" or "Agreement" means this agreement and any amendments or renewals hereof.

(l) "Grantee" means Erie County Cablevision, Inc. (including its affiliates, agents, employees, lawful successors, transferees or assignees).

(m) "Gross revenues" means all revenues, as determined in accordance with generally accepted accounting principles, derived from the operation of the cable system to provide cable services. Such revenues include, but are not limited to, all consideration without deduction of any kind, except for bad debts from and refunds to subscribers, derived or arising from the following: monthly fees charged to subscribers for basic cable service; monthly fees charged to subscribers for any optional cable service; monthly fees charged to subscribers for any tier cable service other than basic service; pay television fees; installation, disconnection, reconnection and late payment fees; leased channel fees; or other consideration received from programmers (excluding reimbursements for marketing support); converter and descrambler rentals or sales; fees or other payments or amounts from the sale, exchange, or cablecast of any programming developed on or for community service channels or institutional users; additional outlet installation and relocation fees; remote control rental or sales amounts; downgrade fees; equipment repair charges, as well as interest on subscriber deposits, unless returned to the subscriber.

(n) "Other programming service" means information that a cable operator makes available to all subscribers generally.

(o) “Person” means an individual, firm, corporation, partnership, proprietorship, association, or legal entity or organization of any.

(p) “Public, Educational or Governmental Facilities” means (a) channel capacity designated for public, educational, or governmental use and (b) facilities and equipment for use of such channel capacity.

(q) “Public property” means any real property, other than a street, owned by any governmental unit.

(r) “Right-of-way” means the surface, the air space above the surface, and the area below the surface, including the entire width, of any public streets, highway, roadways, avenues, lanes, alleys, courts, places, curbs, sidewalks, rights-of-way, or other public ways in the City which have been or may hereafter be dedicated to or otherwise acquired by the City.

(s) “Right-of-way permit” means a permit issued pursuant to Chapter 919 of the Codified Ordinances of the City.

(t) “Service tier” means a category of cable service or other services provided by a cable operator and for which a separate rate is charged by the cable operator.

(u) “Subscriber” means a person who lawfully receives programming distributed on the system.

(v) “Video programming” means programming provided by, or generally considered comparable to programming provided by, a television broadcast station.

Section 3. Grant of Franchise.

(a) In consideration of the payment of the franchise fees provided for herein, Grantee is hereby granted for itself, its successors, and assigns, subject to the terms and conditions of this agreement, the authority, right and privilege on and after the effective date of

this agreement to provide cable service within the City and to construct, operate, own and maintain a cable system, along, within, and under the streets, and public ways and public places within the City, as the same now or in the future may exist. Among other things, grantee may construct, install, place, retain, repair, maintain, replace, overlash, and relocate in, on, over, under, upon, across and along the rights-of-way and easements within the City such facilities as are necessary and pertinent to the proper operation of the cable system; provided grantee shall first obtain all necessary right-of-way, construction, street opening and other permits from the City which would otherwise be required to perform such activities.

(b) Franchises are non-exclusive and the City specifically reserves the right to grant, at any time, one or more additional franchises for operation of cable systems within the City.

(c) Grantee is obligated to comply fully with all applicable federal, state, and local laws, rules, and regulations, including, without limitation, the cable act and the regulations of the FCC contained in Title 47 of the Code of Federal Regulations ("CFR"). The cable act and the FCC regulations establish a minimum -- not a maximum -- level of service and performance to be provided and maintained by grantee in its exercise and use of the franchise granted to it under this agreement.

Section 4. Effective Date, Duration, Renewal and Acceptance.

(a) This franchise agreement shall be effective on the date it is approved by the Council.

(b) The term of a franchise shall be ten (10) years, which term shall be extended ten (10) years beyond the initial ten (10) year term, provided grantee has complied with all material provisions of the franchise agreement, and has maintained the system so as to keep it

in a condition consistent with the current cable television technology in existence at the time of renewal.

(c) Prior to any extension, a public hearing will be scheduled upon thirty (30) days public notification, and upon compliance with any other notice or hearing requirements specified by law or applicable regulation, at which time the City will hear comment from the public on grantee's performance under this franchise. Absent a material violation of the franchise that grantee has been advised of in writing and been given a reasonable opportunity to remedy but has failed to remedy, the ten (10) year extension will take effect thirty (30) days following the public hearing; provided however, in the event that a material violation becomes apparent at hearing, then in such event, the extension shall take effect on the date on which the City determines that grantee has remedied the violation. In the event that the City determines that the grantee has failed to remedy or failed to commence corrective action to remedy the violation within fifteen (15) business days of the date of the hearing, then in such event, the City may initiate revocation procedures set forth in Section 35. Any documented waiver by the City of such a violation, or a failure of the City to object to such violation after grantee's written notice of failure or inability to cure, shall not provide a basis for denial of such ten (10) year extension.

(d) Grantee by executing this agreement accepts the franchise granted herein and agrees to comply with all of the terms and conditions of this agreement. By accepting the franchise, grantee warrants that it has not been induced to enter this agreement by any promise or representation except for those contained herein and that this agreement represents the entire agreement between it and the City.

Section 5. Operation and Maintenance of System.

(a) Grantee shall operate the system in accordance with the cable act and all other applicable laws and regulations. It shall render safe, efficient service, perform installations and make repairs promptly, and interrupt service only for good cause and for the shortest time possible. Such interruptions, insofar as possible, shall be preceded by notice and shall occur during the period of minimum use of the system. Grantee shall promptly notify the City of any significant service interruption in the operation of its cable television system. Such notice shall be provided to the City Manager by telephonic, facsimile or other similar means of communication. For purposes of this subsection, a significant service interruption shall mean any outage to at least twenty percent (20%) of its subscribers within the City of a duration of at least four (4) hours between the hours of 6:00 a.m. to 10:00 p.m. and eight (8) continuous hours between the hours of 10:00 p.m. and 6:00 a.m.

(b) Grantee shall maintain at least one office in the Erie County, which shall have a listed telephone number and be adequately staffed and equipped to:

1. accept subscriber payments;
2. exchange or accept return of grantee provided equipment;
3. schedule and conduct technician calls; and
4. answer subscriber inquiries.

The office shall be open and grantee shall provide sufficient trained personnel at said office to receive and process telephone and in-person calls concerning service problems in a timely manner during normal business hours (8:00 a.m. to 6:00 p.m. Monday through Friday).

(c) Grantee shall provide subscribers with a toll-free or local telephone number for installation, service and complaint calls. On weekdays, during normal business hours, grantee must have telephone lines and adequate staff sufficient to accept and respond to subscribers as provided in subsection (b) above and to respond to and correct or resolve in a

timely manner installation, service, and complaint calls. On Saturdays, grantee's office must be open, sufficiently staffed, equipped, and available to subscribers for such number of hours (but not less than four hours) as are necessary to reasonably meet subscriber requirements in order to:

1. accept subscriber payments;
2. exchange or accept return of grantee provided equipment;
3. schedule and conduct technician calls; and
4. answer subscriber inquiries.

Grantee must provide an answering service or answering machine to receive telephone calls concerning service problems at all times when personnel are unavailable to handle calls on a live basis.

(d) Where economically feasible, grantee shall offer service in the City of no less quality and features as it offers to its subscribers in other Ohio cities; and if and when the capacity, technical capabilities, or service availability is expanded in any such other City, grantee shall similarly expand the channel capacity, technical capabilities, or service availability in the City within a reasonably prompt period of time.

(e) Technicians employed or retained by grantee shall be capable of performing service-related emergency repairs and maintenance and shall be available twenty-four (24) hours a day, including weekends and holidays. Except in the case of a force majeure, grantee will respond promptly to reports of service trouble, including service interruptions or other service complaints, and except for reports or complaints received on weekends or holidays, will respond and complete required repair activities within twenty-four (24) hours after receipt of the report or complaint unless the affected subscriber requests a later appointment. Except in the case of a force majeure, for trouble reports or service complaints received on weekends or

holidays grantee shall respond and complete required repair activities on the next business day following the date of the report unless the affected subscriber requests a later appointment.

(f) Grantee shall construct, operate and maintain its system so that it at all times meets the standards established by the FCC as to technical operation, signal quality, and radio frequency interference.

(g) The system shall be designed and rated for twenty-four (24) hour a day continuous operation.

(h) Grantee shall at all times employ a proper standard of care and shall install, maintain and use approved methods and devices for preventing failures or accidents that are likely to cause damages, injuries or nuisances to the public.

(i) If grantee receives complaints relating to radio frequency interference or signal leakage resulting from its operation of the system, grantee agrees to mutually attempt to resolve the conflict with the complainant.

(j) Grantee shall provide, by sale or lease, devices by which subscribers can prevent viewing of particular cable services during periods selected by that subscriber.

(k) As subscribers are connected or reconnected to the system, grantee shall, by appropriate means, such as a card or brochure, furnish information concerning the procedures for making inquiries or complaints, including the address and local telephone number such inquiries or complaints are to be addressed.

Section 6. Carriage of Signals. Grantee shall receive and distribute all local commercial television stations delivered to it and may originate or otherwise furnish such additional programming as it sees fit, all in accordance with applicable provisions of this agreement and federal law. Grantee shall also provide signal carriage, channel capacity, and

services required by the cable act and FCC regulations including, but not limited to, carriage of signals of qualified low power television stations, and qualified local noncommercial educational television stations requesting carriage. All signals of local commercial television stations carried on the system shall be carried without material degradation and each such signal shall be carried on the system channel number required by law and FCC regulation. Grantee shall carry in its entirety the program schedule of such local commercial stations. Signals of such local commercial and required stations shall be provided to every subscriber. Grantee shall provide thirty (30) days advance written notice of any change in channel assignment or video programming service provided over such a channel. All present and future rules of the FCC shall be complied with.

Section 7. Technical Standards. Grantee's system shall be designed, installed, and operated in a manner that fully complies with the requirements of the FCC as set forth in Title 47 of the United States Code of Federal Regulations, Chapter I, Subchapter C, Part 76, Subpart K (47 CFR §§ 76.601-630) as those requirements are now in effect or may hereafter be amended. Consistent with those requirements, grantee shall:

(a) deliver signals that produce a picture, whether in black or white or in color, that is undistorted, free from ghost images, and accompanied with proper sound on typical standard production TV sets that are properly installed and in good repair;

(b) transmit signals of adequate strength to produce good pictures with good sound at all outlets without interfering with other electrical or electronic systems;

(c) limit failures to a minimum by locating and correcting malfunctions promptly, and to the extent possible, within a maximum period of twenty-four (24) hours after notice; and

(d) demonstrate by instruments and otherwise to subscribers that a signal of adequate strength and quality is being delivered.

Section 8. Emergency System. Grantee shall install and thereafter maintain an emergency override system which, at a minimum, shall meet all federal Emergency Alert System (EAS) and state requirements. The emergency system shall be capable of use by the City in local emergencies, to the extent not in conflict with FCC requirements. The emergency system must be capable of being triggered by the Erie County Sheriff, the Emergency Management Agency, the National Weather Service and public safety officials designated by the City. The emergency system shall have the capacity for instantaneous and direct override of all channels on the system from a location or locations designated by the City and shall serve all subscribers. The emergency system shall be capable of being interconnected with any other cable system servicing the City residents. Grantee shall, at the City's request, use its best efforts to obtain agreements with other cable systems for such interconnection in order to make the emergency system available to all residents of the City. In the case of emergency, the emergency system will be available upon request of the city manager.

Section 9. Required Services.

(a) Grantee shall provide not less than fifty-six (56) programmed channel service including those signals required to be provided as part of the basic service.

(b) Grantee shall provide one channel for full-time use for Public, Educational, and Governmental ("PEG") access programming. PEG channel capacity may be provided on a county-wide basis, however, additional channels shall be opened and provided to the City for PEG access programming when the locally generated PEG access programming carried on the existing PEG access channel or channels reach a sustained operating level of

seventy five percent of programming capacity. PEG channels will appear on and be part of the basic service, and will be accessible to all subscribers.

(c) The City shall authorize the use of its PEG access channel(s) (or portion thereof) for governmental, educational, or individual expression purposes. The City may designate the PEG channel(s) for use by public, educational or governmental access users or organizations based on its own procedures. The City will give grantee reasonable advance notice of the intended use of the PEG channel(s) including any changes in the intended use of that channel. Grantee shall place no restrictions or editorial control on the use of the PEG channel(s) for a public purpose. Grantee shall cooperate with and assist the city manager in developing rules and procedures for scheduling of said channels, including grantee's use of such channel capacity for the provision of other services if such channel capacity is not being used for PEG purposes. Any citizens or entities using the PEG channel(s) will be solely liable for any obscenity, defamation of character, invasion of privacy, or any similar claim resulting from the broadcast of such programming.

(d) Grantee shall acquire no rights to PEG channel programming by virtue of its cablecasting or distribution of such programming over its cable system except the right to transmit such programming to subscribers receiving a signal from the cable system.

(e) The City and grantee shall negotiate in good faith an agreement setting forth the technical arrangements for transmission of the PEG programming from the point of origin to grantee's headend. Such agreement shall contain the standard terms and conditions regarding transportation, receipt and distribution.

(f) Grantee shall make no charge for channel capacity provided for PEG access programming and shall provide consulting assistance without charge to facilitate live

programming of any PEG access programming. Grantee shall also establish a point of presence allowing direct transmission of signals and data from the city council chamber to the grantee's head-end.

(g) With consent of the City, such PEG channel(s) may be shared with leased channel programming but PEG programming shall have first priority on usage.

(h) Grantee shall furnish, upon request and without installation charge and without monthly fees, basic service and one (1) cable connection to each public and parochial school and up to six (6) primary city building designated by the city manager located within the City. Upon request of the City, grantee shall install additional connections to other city owned or leased buildings or locations without installation charges; provided however, as to such additional connections, the City shall pay to the grantee its customary monthly service charge.

(i) Grantee shall deliver to subscriber terminals, in a format that can be recovered and displayed, closed captioning data provided to it from origination sources.

(j) Grantee shall make available channel capacity for commercial use by persons unaffiliated with Grantee as required by and in accordance with the cable act and associated regulations of the FCC.

Section 10. Service Availability. Grantee shall offer to provide cable service to residents in all areas of the City upon payment of the standard installation charge and applicable monthly fees. Installations requiring underground drops or aerial drops in excess of one hundred fifty (150) feet shall be considered a non-standard installation and shall be priced at grantee's actual cost of installation.

Section 11. Evaluation and Review.

(a) As one non-exclusive means to assist in the administration of this franchise, when requested by the City (or its designated official or representative) the City and grantee shall hold joint evaluation conferences in order to address matters relating to the enforcement and administration of this franchise. Such conferences may, at the City's discretion, focus on franchise administration business matters including, but not limited to: 1) maintenance inspections; 2) public, educational, and governmental access support; 3) the franchise fee rate provided for in section 25 of this agreement; 4) response times, billing practices and other subscriber service items; 5) construction-related concerns; 6) new legislation; 7) judicial or agency rulings; and 8) resolving or addressing concerns, questions or disputes with respect to multiple operators serving or attempting to serve the same subscriber or geographic area (including cutting of cable and/or damage to other facilities and equipment). Such conferences shall be held semi-annually unless the City and grantee agree to schedule and hold conferences more or less frequently. Such conferences may relate to the findings of the audits provided for in section 25 hereof but shall not require the disclosure of confidential financial information made available to the City during such audit process.

(b) During such evaluation conferences, grantee shall fully cooperate with the City and shall provide without cost such information and documents as the City may reasonably request to perform the evaluation; provided however, the City will not require the disclosure of confidential financial information made available to the City during financial audits provided for under section 25 of this agreement. The City or its designated agents shall not require the production of any documents which contain trade secrets, proprietary information or confidential financial information unless such information is related to determining compliance with the

grantee's franchise, franchise agreement, or this agreement. In such instance, the City and the grantee shall take reasonable steps to protect the confidentiality of such information.

(c) If during its evaluation, the City determines that reasonable evidence exists of inadequate cable system performance, the City may require grantee to perform tests and analyses directed toward such suspected inadequacies at grantee's expense. Grantee shall fully cooperate with the City in performing such testing and resolving such suspected inadequacies and shall prepare a report for the City which shall include, without limitation:

1. a description of the problem in the cable system performance which precipitated the tests;
2. a description of the cable system components tested;
3. a description of the equipment used and procedures employed in testing;
4. a description of the test results and findings and the method, if any, by which the cable system performance problem was resolved; and
5. any other information pertinent to said tests, analyses, and results which may be required by the City.

The City may require that testing be monitored by a professional engineer selected by the City at the City's expense.

(d) If after receiving grantee's report, the City determines that reasonable evidence still exists of inadequate cable system performance, the City may enlist an independent engineer, at grantee's expense, to perform tests and analyses directed toward such suspected inadequacies.

(e) If as a result of such testing or evaluation, the City or grantee determine that a change in the terms of the franchise agreement is required and if the desired change is consistent with the terms of this agreement and the needs of the City and grantee, grantee and the

city manager will, in good faith, review the terms of the change and arrive at an amendment to the franchise agreement. For any change or amendment to the franchise agreement to become effective, it must be approved by the Council.

Section 12. System Tests. In addition to any testing conducted as a result of a joint evaluation conference, the City may, upon no less than two business days advance notice to grantee, test or cause to be tested all or any part of the system at any time as necessary to determine compliance with the technical standards of the FCC. The City will attempt to arrange such tests so as to minimize hardship or inconvenience to grantee and subscribers. The costs of such tests shall be borne by the City unless the tests reveal items of material noncompliance with applicable technical standards, in which case grantee shall reimburse the City for the reasonable costs of testing.

Section 13. Rights of Individuals Protected.

(a) Grantee shall not deny cable service, deny access, or otherwise discriminate against subscribers or general citizens on the basis of income, race, color, religion, creed, national origin, sex, sexual orientation, disability or age. Grantee shall comply at all times with all other applicable federal, state and City laws, and all federal and state executive and administrative orders relating to nondiscrimination. This subsection (a) does not prohibit grantee from offering reasonable discounts to senior citizens or other economically disadvantaged groups nor does it prohibit grantee from terminating cable service to any subscriber for non-payment of amounts owed to grantee.

(b) Except as is necessary to assure proper operation of the system, grantee shall not, nor shall it permit any person, agency, or entity to tap, or to arrange for the tapping, of any cable, line, signal input device, or subscriber outlet or receiver for any purpose, nor may

grantee transmit a signal, or cause a signal to be transmitted, from a subscriber terminal for purposes of monitoring individual viewing patterns or practices without the express written permission of the subscriber or valid court order authorizing such tapping or transmission. The request for such subscriber permission shall be contained in a separate document with a prominent statement that the subscriber is authorizing the permission in full knowledge of its provisions. Such written permission shall be for a limited period of time not to exceed one (1) year which shall be renewed at the option of the subscriber. No penalty shall be invoked for a subscriber's failure to provide or renew such authorization. The authorization shall be revocable at any time by the subscriber without penalty of any kind whatsoever.

(c) In the conduct of providing its cable service or pursuit of any collateral commercial enterprise resulting therefrom, grantee shall take any and all necessary action to prevent an invasion of a subscriber's or citizen's right to privacy or other personal rights as such rights are defined by applicable law. Grantee shall not without lawful court order utilize the cable system's interactive two-way equipment or capability for unauthorized personal surveillance of any subscriber or citizen or any unauthorized interception of any subscriber or citizen information.

(d) Grantee shall not sell or otherwise make available to unaffiliated third parties (including the City), lists of the names and addresses of subscribers which identify, by name, the extent of subscriber viewing, or personalized data pertaining to a subscriber's use of any of grantee's services without a valid court order requiring such disclosure, or the express written consent of the subscriber to which the personalized data pertain. For the purposes of this Subsection, "personalized data" shall mean the name and address of an individual subscriber directly associated with data obtained on his or her use of specific services provided by or

through grantee. Nothing in this agreement shall be construed to prevent, as a normal incident of commercial enterprise, the sale or availability of “non-personalized” or “aggregated data” which is not personalized data as defined in this franchise.

(e) Grantee is not required to obtain written permission from the subscriber when conducting system-wide or individually-addressed electronic sweeps for the purpose of verifying the cable system’s operation, functioning and integrity, or for service monitoring for the purpose of billing or for any other purpose related to the operation and functioning of the system. Confidentiality of such information shall be subject to the provision set forth in subsection (d) above.

Section 14. Removal of Facilities Upon Request. Upon termination of cable service to any subscriber and upon the former subscriber’s request, grantee shall promptly remove or abandon all its facilities from the premises of such subscriber.

Section 15. Notice of Rate Increases and Rate Regulation. Grantee shall provide thirty (30) days advance written notice to the City of any increase proposed in the price to be charged for basic service. The City reserves the right to certify itself as a basic rate regulator and may, upon the effectiveness of such certification, regulate the rates charged by grantee for the provision of basic service.

Section 16. Compliance with State and Federal Laws. All work undertaken in connection with the construction, reconstruction, maintenance, or repair of grantee’s system shall be subject to and governed by all laws, rules and regulations of the City, the State of Ohio, and the United States of America, including the rules and regulations of the FCC and any other federal agency having jurisdiction. Grantee’s rights are subject to the police powers of the City to adopt and enforce ordinances of general applicability relating to the health, safety and welfare

of the public and to such reasonable regulation as the City shall hereafter provide. Grantee shall comply with all applicable laws and ordinances enacted by the City pursuant to those powers.

Section 17. Erection, Removal, and Common Use of Poles.

(a) Where utility poles, underground conduit or ducts, or other wire-holding structures already exist and are reasonably available for use by grantee, grantee shall use such poles, conduit or ducts to install its cable, wires, and equipment. Where such poles or structures are not reasonably available, subject to the City's approval, grantee shall have the right to construct, install, erect and maintain its own conduits, ducts or poles at locations as it may find necessary for the proper construction and maintenance of its facilities. City approval shall be procured by the grantee from the city manager. Grantee shall comply with such conditions as the city manager may impose in granting any final authorization to so construct, install, locate and erect the conduits, ducts, poles or other structures.

(b) Grantee shall make available upon reasonable terms and conditions to other attaching parties any usable space on its poles, underground conduit or ducts or other wire holding structures. In determining the reasonableness of any term or condition, the terms and conditions on which other attaching parties make space available on their poles, underground conduit or ducts, or other wire holding structures shall be presumed reasonable; provided however, the price or charge imposed by grantee for such space shall consist of a proportional amount (based on space occupied) of both the cost of the structure and the expense incurred by grantee in maintaining it. Where the City or a public utility serving the city desires to make use of the conduit, ducts, poles or other wire-holding structures of the grantee, but agreement therefore cannot be reached, if the Council determines that the use would enhance the public

safety or convenience and would not unduly interfere with the grantee's operations, the Council may require the grantee to permit such use on the terms and conditions set forth above.

Section 18. Safety Requirements.

(a) Grantee shall at all times employ ordinary care and shall install and maintain its facilities using commonly-accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries, or nuisances to the public.

(b) Grantee shall construct, install and maintain its facilities in such manner that they will not interfere with any installations of the City, other grantees, or utility service providers and in accordance with good engineering practices and, where applicable, the requirements of the National Electrical Safety Code, and the rules and regulations of the Public Utilities Commission of Ohio, and the FCC, and all applicable ordinances and regulations of the City affecting electrical and structural installations which may currently be in effect or changed by future ordinances, and all other applicable state or federal construction and safety requirements.

(c) All facilities in, over, under, and upon the streets, sidewalks, alleys, and public ways or places of the City, wherever situated or located, shall at all times be kept and maintained in a safe, suitable, substantial condition, and in good order and repair.

(d) Grantee shall at all times maintain a force of available employees or agents sufficient to provide safe, adequate, and prompt maintenance and repair of its facilities. Such employees or agents shall perform all work, construction, maintenance or removal of structures and facilities within the right-of-way, including tree trimming, in accordance with good engineering, construction and safety practices, including any applicable safety codes.

(e) Grantee shall register, or cause to be registered, its facilities with the Ohio Utility Protection Service or any successor thereto.

(f) Grantee shall cooperate with the City in any emergencies involving the rights-of-way.

(g) Grantee shall field identify, using distinct identification, its facilities constructed, installed, placed or located in the right-of-way. Such identification shall be consistent with industry standards for such identification.

(h) Grantee shall designate a single point of contact for reporting of emergencies and conditions affecting the safety of the public.

Section 19. Location of Facilities.

(a) Grantee shall construct, place and install its facilities so as to not interfere with travel and proper use of streets, alleys, and other public ways and places by the public and to not interfere with the rights and reasonable convenience of property owners who adjoin any of the said streets, alleys or other public ways and places.

(b) In all sections of the City where the cables, wires, or other like facilities of public utilities are placed underground, grantee shall place its cables, wires or other like facilities underground.

(c) Grantee shall maintain, construct, place and install its facilities so that cables, wires, poles and other facilities shall conform to the pattern of the existing public utility cables, wires, poles and other facilities and to minimize any damage, destruction or disturbance of the right-of-way (including trees, shrubbery and improvements located therein).

Section 20. Restoration of Right-of-Way. In case of damage, destruction or disturbance of any portion of the right-of-way (including trees, shrubbery, and

improvements thereon) by grantee or its contractors, grantee shall, without delay and at its own cost and expense and in a manner approved by the city manager, replace and restore such portion of the right-of-way (including trees, shrubbery, and improvements thereon) to its former state of usefulness, repair and condition. Such damaged, destroyed or disturbed areas shall be paved, seeded, mulched, replanted, or sodded in a manner and with the same type, quality, and condition of materials that will match those damaged, destroyed or disturbed and those of the adjacent property so that the disturbed areas are in as good a condition as before the work involving such disturbance was done. In the event grantee, after ten (10) days advance notice, fails or refuses to commence, pursue and complete such replacement and restoration work, the City shall have the authority, but not the obligation, to complete such restoration and to require grantee to pay to the City the cost of such restoration. In the event that the restoration of the disturbed area, or the area adjacent thereto, deteriorates at a faster rate than that which would have occurred had grantee not damaged, destroyed or disturbed the area, then in that event, grantee shall repair, replace, or restore such areas to their original condition prior to the disturbance. Any such deterioration occurring within the five (5) year period following the disturbance will be presumed to result from grantee's actions and disturbance of the area. Any trees in the disturbed area or the area adjacent thereto that die within said five (5) year period will be presumed to have died as a result of grantee's actions and disturbance of the area.

Section 21. Relocation of Facilities. If the City shall elect to alter or change the grade of any street, sidewalk, alley or other public way, or to change the location of, or engage in the construction, reconstruction, maintenance or repair of any public property, structure or facility, or to engage in any public improvement, and if as a result thereof it shall be deemed necessary by the City for grantee to move, relocate, change, alter or modify any of its

facilities or structures in order to assure the public's unencumbered continued use of the right-of-way, then in such event and upon reasonable written notice of not less than sixty (60) days, grantee at its sole cost shall promptly move, relocate, change, alter or modify its facilities. In the event grantee, after such notice, fails or refuses to commence, pursue and complete such relocation work within a reasonable time, the City shall have the authority, but not the obligation, to move, remove, relocate, change, alter, modify or abate such structures or facilities and to require grantee to pay to the City the cost of such relocation, alteration, or modification. In the event an emergency which threatens the health or safety of the public requires the relocation, alteration, or removal of the facilities, the City will attempt to notify promptly the grantee and the City shall have the right to move, alter, or remove the facilities from the right-of-way.

Section 22. Temporary Movement of Facilities. Grantee shall, on the request of any person holding a building moving permit issued by the City, temporarily raise or lower its wires to permit the moving of buildings. The expense of such temporary removal or raising or lowering of wires shall be paid by the person requesting the same, and grantee shall have the authority to require such payment in advance. Grantee shall be given not less than ten (10) business days advance notice to arrange for such temporary wire changes.

Section 23. Tree Trimming. Subject to the requirements and restrictions of Chapter 907 of the codified ordinances of the City, grantee may trim trees that are upon or overhang the right-of-way so as to prevent the branches of such trees from coming in contact with the wires, cables and equipment of grantee, except that at the option of the City, such trimming may be done by it or under its supervision and direction at the expense of grantee. In carrying out its trimming operations, grantee shall employ those methods which will endanger or affect that particular tree to the least extent.

Section 24. Maps. Upon request of the City, grantee shall provide and maintain with the City a true and accurate map or set of maps showing the location of all system facilities installed and in place in the right-of-way and other public places.

Section 25. Fees and Costs.

(a) Grantee shall pay to the City a franchise fee of five percent (5%) of its annual gross revenues. Such fee shall be paid on a quarterly basis. Quarterly payments shall be made forty-five (45) days after the end of each calendar quarter. In the event that franchise fees in excess of five percent of annual gross revenues shall be permitted under applicable federal or state law or FCC regulation, grantee, upon written request of the City, shall pay such increased amount to the City. Such increased fee shall become effective on the first day of the month beginning sixty (60) days following the date of the City's written request. Prior to making such a request, the City shall notify the grantee of its intent to request an increase in the franchise fee and shall provide the grantee an opportunity to meet with the Council in order to discuss the implications of the increase. The payment of the franchise fee hereunder shall be in addition to any tax or other amounts owed to the City by grantee. In the event that this provision for payment of a franchise fee shall be in excess of that permitted or allowed by a federal or state law or the regulations of the FCC, the said annual payment shall be deemed to be reduced to the maximum amount permitted or allowed thereby.

(b) Grantee shall file annually with the city clerk not later than ninety (90) days after the end of grantee's fiscal year, a complete and accurate verified statement of the annual gross revenues taken in and received by it during the year. Such annual amount shall be broken down by calendar quarter. The City may audit grantee (or any entity affiliated with grantee that receives amounts which would be gross revenues under this agreement if received by grantee) to verify the accuracy of franchise fees paid to the City. Such audit shall take place within thirty-six (36) months following the twelve (12) month period for which such verified statement shall have been made. The audit shall be conducted by city employees or contractors who agree to be bound by the provisions of this agreement. The City may, at the City's option,

have such audit conducted by a certified public accountant of the City's choice. All records reasonably necessary for such audit will be made available by grantee at a location in or near the City. Unless prohibited by law from doing so, the City shall treat on a confidential basis all information disclosed by grantee to it under this section. In so according confidential treatment, disclosure of grantee's records by the City shall be limited to only those of its employees, officials and legal representatives and agents who have a need to know. The parties shall confer in good faith about any concerns either may have regarding disclosure and confidentiality of grantee's information. In carrying out the audit, neither the City nor its accountants or agents will require the production of any documents which contain trade secrets, proprietary information or confidential financial information unless such information is necessary to determining compliance with the grantee's obligation to pay franchise fees under this agreement. In such instance, such documents shall be made available for inspection and review only at the above mentioned location. Such documents shall not be copied or removed therefrom and the City, and its employees, contractors and agents, shall take all reasonable steps to protect the confidentiality of the information contained in the documents. Any disclosure of confidential information by the City, its employees or agents that is necessary in order to comply with access to public records laws or an order of a court of competent jurisdiction shall not constitute a breach of this agreement. If as a result of such audit it is determined, as to any fiscal year of the grantee, that additional franchise fees are due to the City, and if the amount of such additional franchise fees are greater than five percent of the amount paid to the City in respect to such fiscal year, then in that event grantee shall pay City's reasonable cost of such audit. Any additional amount due to the City (plus an amount equal to fifteen percent (15%) of any such additional amount) shall be paid within thirty (30) days of the City submitting an invoice for such sum.

(c) Grantee shall pay to the City an amount equal to the reasonable costs and expenses which the City incurs for the services of third parties (including, but not limited to, accountants, engineers, attorneys, and other consultants) in connection with any request for a franchise, negotiation or renewal of a franchise agreement, or the renegotiation, transfer, amendment, modification, or renewal of a franchise requested by grantee. Payments of such costs and expenses shall not be deemed to be "franchise fees" within the meaning of Section 622 of the cable act (47 U.S.C. § 542). Payments of such costs and expenses shall not exceed Five Thousand Dollars (\$5,000.00) for each renegotiation, transfer, amendment or modification of a franchise.

Section 26. Records and Reports.

(a) Grantee shall keep complete and accurate financial and operating records and books of accounts reflecting the results of its operations under the franchise. Such records and books shall be maintained in a manner consistent with generally accepted accounting principles. Such records and books shall be retained in a form and at a location that permits them to be reasonably available for inspection for a period of at least three (3) years following the year in which they are created. The City or its designee may, on reasonable notice, examine and audit such records and books for purposes of enforcing this agreement. All such examinations or audits shall be carried out in a manner consistent with and subject to the requirements of section 25(b) of this agreement.

(b) Grantee shall provide the City with a current listing of all its cable services, charges and fees. Grantee shall also provide a copy of its disconnection, installation, reconnection, repair and service policies. Grantee shall maintain records of repair and installation intervals and subscriber complaints. Such records shall be retained in a form and at

a location that permits them to be reasonably available for inspection for a period of at least three (3) years following the year in which they were created. The City or its designee may, on reasonable notice, examine and audit such records for purposes of enforcing this agreement. All such examinations or audits shall be carried out in a manner consistent with and subject to the requirements of section 25(b) of this agreement. Grantee shall provide an annual report to the City setting out the number of subscriber complaints received in each month during the prior twelve month period, and the average repair and installation intervals in each of those months.

Section 27. City Rights in Franchise.

(a) The right is hereby reserved to the City to adopt, in addition to the provisions contained herein and in existing applicable ordinances, such ordinances and regulations of general applicability as it shall find necessary in the exercise of its police and governmental powers, and the franchise shall be subject to such ordinances and regulations; provided however, the City shall not adopt ordinances specific to grantee alone that are in conflict with the rights herein granted or that materially alter the underlying economics of or make it economically impractical for grantee to construct, operate or maintain its cable system.

(b) The City shall have the right, during the life of the franchise, to install and maintain free of charge upon or within the poles and structures of grantee any wire and pole fixtures necessary for police or fire alarm systems, on the condition that such wire and pole fixtures do not interfere with the operations of grantee.

(c) The City shall have the right to supervise all construction or installation work performed under the franchise and to make such inspections as it shall find necessary to insure compliance with the terms of this agreement or any other pertinent provisions of law.

(d) At the expiration, termination or cancellation of the franchise agreement, as provided for herein, the City shall have the right to require grantee to remove at grantee's expense all portions of the system from all rights-of-way and public areas within the City.

Section 28. Indemnification.

(a) Grantee shall, at its sole cost and expense, fully defend, indemnify and hold harmless the City, its officers, boards, commissions, agents and employees, against and from any and all claims, demands, causes of action, suits, proceedings, damages, liabilities, penalties and judgments of every kind arising out of or pertaining to the City's granting a franchise to grantee and grantee's construction, maintenance or operation of the system, including but not limited to damages for injury or death, or damages to property, real or personal, and against all liabilities to others and against all loss, cost and expense, resulting or arising out of any of the same. Such indemnification is not intended and shall not extend to liability arising out of the governmental process whereby the City grants or refuses to grant franchises to other cable operators.

(b) Grantee shall pay and, by its execution of this franchise agreement, specifically agrees that it will pay all expenses incurred by the City with regard to the defense of the claims, demands, causes of action, suits, proceedings, damages, liabilities, penalties and judgments mentioned in subsection (a) above. These expenses shall include but are not limited to all out-of-pocket expenses, such as attorneys fees, and shall also include the reasonable value of any services rendered by the city attorney or his assistants or any employees of the City.

(c) If the City receives notice of any claim or commencement of any action or proceeding as to which the City believes it has a right to be defended, indemnified and/or held harmless hereunder, the City will notify promptly the grantee, in writing, of such claim or action.

The City shall permit the grantee to assume the defense of any such claim or action, provided that counsel for the grantee who shall conduct the defense of the claim or action shall be approved by the City. The failure by the City to give the required notice hereunder shall not relieve the grantee of its obligations to defend, indemnify or hold harmless the City unless the failure to provide the notice is materially prejudicial to the grantee's ability to defend the claim or action. The City may, at its own expense, participate in the defense of the claim or action. Notwithstanding the foregoing, if the City reasonably determines that there may be a conflict between the positions of the grantee and the City in connection with the defense of the claim or action, or that there may be legal defenses available to the City different from or in addition to those available to the grantee, then counsel for the City shall be entitled to conduct the defense to the extent it reasonably determines necessary to protect the interest of the City, and in such event, grantee shall pay the City the fees of its counsel and associated expenses incurred in conducting such defense. Neither City nor grantee shall, except with the consent of the other, consent to entry of any judgment or enter into any settlement that does not include as an unconditional term the giving by the claimant or plaintiff to the City of a release from all liability in respect to the claim or action and/or the matters asserted therein.

Section 29. Liability Insurance and Bonds.

(a) Grantee shall maintain, throughout the term of the franchise and franchise agreement, liability insurance insuring the City and grantee with regard to all claims, demands, causes of action, suits, proceedings, damages, liabilities, penalties, judgments, and expenses mentioned in Section 28 above, or otherwise, in the following minimum amounts (which

insurance or the limits of same, however, shall not serve to limit grantee's obligations or duties to indemnify and save the City harmless as provided herein, particularly in Section 28 hereof):

1. Three Million Dollars (\$3,000,000.00) for bodily injury or death to any one person;
2. Five Million Dollars (\$5,000,000.00) for bodily injury or death resulting from any one accident or occurrence;
3. Five Hundred Thousand Dollars (\$500,000.00) for property damage to any single property; and
4. Three Million Dollars (\$3,000,000.00) for excess liability or umbrella coverage.

(b) Grantee shall furnish to the City certificates of insurance evidencing grantee's compliance with this Section. All insurance required by this agreement shall be and remain in full force and effect for the entire term of the franchise. Such insurance, if canceled for any reason, shall immediately be put back in force subject to the terms and requirements specified herein.

(c) Any insurance policy obtained by grantee to comply with this section must be approved by the law director, which approval shall not be unreasonably withheld. A certificate of insurance, or other evidence of insurance coverage acceptable to the City, and written evidence of payment of required premiums, shall be filed and maintained with the City clerk during the term of the franchise. Such insurance may be changed from time to time to reflect changing liability limits as may be reasonably requested by the City, but not below the minimum established herein. Grantee shall immediately notify the City in writing of any litigation that may develop that would affect the insurance required herein.

(d) Within thirty (30) days of execution of this franchise agreement, grantee shall deposit with the City a surety bond in the amount of Fifty Thousand Dollars (\$50,000.00) in a form reasonably acceptable to the city's law director; provided, however, that the city manager,

in his sole discretion, may waive or reduce the amount of the bond. The performance bond shall be available to insure the faithful performance by grantee of all provisions of this franchise, including, but not limited to, the obligation to remove the cable system upon revocation or termination of the franchise. The performance bond shall be maintained at Fifty Thousand Dollars (\$50,000.00) during the entire term of this franchise, regardless of withdrawals which may be made under this Section. The performance bond shall be conditioned upon and insure the faithful performance of grantee of all terms and conditions of the franchise agreement and the payment by grantee of any claim, liens, costs, expenses and taxes due the City which arise by reason of the operation or maintenance of the cable system. The rights reserved to the City with respect to the performance bond are in addition to all other rights the City may have under this franchise or any law. The company providing such bond must be licensed to do business in the State of Ohio. In the event of a default by grantee in any of its obligations under this agreement or the franchise, other than completion of construction, which default is not cured within fifteen (15) days after notice by the City to grantee of such default (or such longer time as it is necessary to cure, so long as grantee commences to cure within fifteen (15) days and diligently pursues cure), the City may levy on the performance bond upon notifying grantee of the amount of such charge. Grantee shall have the right to contest in good faith any dispute with respect to any levy by the City on the performance bond. The rights reserved to the City with respect to the performance bond are in addition to all other rights of the City, at law or in equity. The performance bond required hereunder shall contain the following endorsement:

“It is hereby understood and agreed that this bond may not be canceled without thirty (30) days advance written notice to the City of Huron, Ohio.”

(e) Upon demonstration by grantee that it maintains a net book value in excess of Fifty Million Dollars (\$50,000,000.00) and approval of the city manager, grantees who

may self-insure in lieu of maintaining and providing the policies of insurance and bonds described above. Such grantees shall provide to the city manager such certificates or other documents attesting to such book value, insurance and bonding as the city manager may reasonably request.

Section 30. Written Notice. Except as otherwise provided in this agreement, all notices or demands required to be given under this agreement shall be deemed to be given when delivered personally or upon the date actually received as evidenced by certified mail, return receipt requested. All notices to the City shall be addressed as follows:

City Manager of Huron
417 Main Street
Huron, Ohio 44839

All notices to the grantee may be made and shall be effective upon delivery to grantee's principal office at:

General Manager
Erie County Cablevision, Inc.
409 East Market Street
Sandusky, Ohio 44870

Addresses may be changed by either party upon notice to the other party given as provided in this Section.

Section 31. Liquidated Damages.

(a) Because of the difficulty in measuring the damages to the City as a result of grantee's breaches, if any, of certain obligations of this agreement, grantee, in addition to any other measurable damage amount due to the City, agrees to pay to the City the following liquidated damage amounts in respect to the following breaches of this agreement by grantee that

are not cured within the time periods set out in division (b) and (c) of this Section 31. Such amounts are in addition to any other remedies provided herein or which are otherwise available at law or equity to the City and such amounts shall be due and payable to the City upon the City's determination that the grantee has breached and failed to cure said breaches within those time periods.

1. For failure to complete any construction, modifications or upgrade in accordance with this franchise unless the City approves the delay, an amount of Five Hundred Dollars (\$500.00) per day for each day, or part thereof, such failure occurs or continues.
2. For failure to meet the obligations of Section 5 or Section 7 hereof, an amount of Five Hundred Dollars (\$500) per day.
3. For failure to provide data, documents, reports or any other information required under this franchise to the City, an amount of One Hundred Dollars (\$100.00) per day.
4. For failure to test, analyze and report on the performance of the cable system following a request by the City, an amount of One Hundred Dollars (\$100.00) per day.
5. For failure to comply with all conditions of the City permits to disturb streets, fix streets, or other terms or conditions of the City, an amount of One Hundred Dollars (\$100.00) per day.

(b) Whenever the City finds that grantee has allegedly violated or breached one or more terms, conditions or provisions of this agreement, a written notice of such shall be given to grantee. The written notice shall describe in reasonable detail the alleged violation or breach so as to afford grantee an opportunity to remedy the violation or breach. Grantee shall have fifteen (15) business days subsequent to receipt of the notice in which to remedy the violation or breach before the City may resort to the performance bond or demand payment directly from grantee (whichever is applicable).

(c) The time for grantee to so remedy may be extended by the City if more than fifteen (15) business days is required to correct the alleged violation or breach; provided, however, grantee must commence the corrective action within fifteen (15) business days of receipt of the notice and thereafter must use reasonable diligence, as determined by the City, to correct the violation.

(d) The rights reserved to the City with respect to the performance bond are in addition to all other rights of the City whether reserved by this agreement or authorized by law, and no action, proceeding or exercise of a right with respect to the performance bond shall affect any other right the City may have hereunder.

(e) The City shall stay or waive the imposition of any amount set forth above upon a finding that any failure or delay is a result of force majeure or other reason outside of grantee's control and acceptable to the city manager.

Section 32. Transfer or Assignment of Franchise. The franchise granted hereunder shall not be sold, transferred or assigned directly or indirectly by grantee without the prior approval of the City. Any request for approval of the transfer of the franchise shall be by written notice to the city manager notifying the City of the intended transfer. Grantee shall provide such information as city manager may reasonably request, and the City shall not unreasonably withhold its approval. In determining whether to approve the transfer, the City may consider the financial, managerial and technical capacity of the transferee's management and employees to fully and faithfully carry out the terms of this agreement. If the City fails to render a final decision on a request to approve the transfer or assignment of the franchise within one hundred-twenty (120) days of grantee's written request, then the request shall be deemed granted. Notwithstanding anything to the contrary, no City approval shall be required of a

transfer or assignment of the franchise to an entity controlling, controlled by, or under the same common control as grantee.

Section 33. Foreclosure, Receivership.

(a) Upon the foreclosure or other judicial sale of some or all of the cable system, grantee shall promptly notify the City of such fact and such notification shall be treated as a notification under Section 32 of this agreement and that section shall apply without regard to how such transfer occurred.

(b) The City may cancel and revoke the franchise and this franchise agreement, subject to any applicable provisions of federal and state law, including the Bankruptcy Code, one hundred twenty (120) days after the appointment of a receiver or trustee to take over and conduct the business of grantee, whether in receivership, reorganization, bankruptcy or other action or proceeding, unless such receivership or trusteeship shall have been vacated prior to the expiration of said one hundred twenty (120) days, or unless:

1. Within one hundred twenty (120) days after his election or appointment, such receiver or trustee shall have fully complied with all the provisions of the franchise and franchise agreement and remedied all defaults thereunder; and
2. Such receiver or trustee, within said one hundred twenty (120) days, shall have executed an agreement, duly approved by the court having jurisdiction in the premises, whereby such receiver or trustee assumes and agrees to be bound by each and every provision of the franchise and franchise agreement.

Section 34. City's Right to Revoke. In addition to all other rights which the City has pursuant to law or equity, the City may revoke, terminate, or cancel the franchise and this franchise agreement and all rights and privileges pertaining thereto in the event that:

(a) Grantee breaches any material provision of the franchise agreement and fails to remedy such breach after notice and an opportunity to cure as set forth in Section 31(b) and (c); or

(b) Grantee attempts to evade any of the provisions of the franchise or franchise agreement or practices any fraud upon the City or a subscriber; or

(c) Subject to the provisions of Section 31 above, grantee becomes insolvent, unable or unwilling to pay its debts, or is adjudicated a bankrupt.

Section 35. Dispute Resolution and Revocation Procedures.

Any disputes not settled between the parties arising under this Franchise Agreement, including the renewal thereof and whether the Grantee has “maintained the system so as to keep it in a condition consistent with the current cable television technology,” shall be handled in the following manner:

(a) The City shall notify grantee in writing of its intention to revoke, terminate or cancel the franchise and franchise agreement. The written notice shall describe in reasonable detail the specific violation so as to afford grantee an opportunity to remedy the violation.

(b) Grantee shall have ninety (90) days subsequent to receipt of the notice in which to correct the violation before the City may revoke, terminate or cancel the franchise and this franchise agreement. Grantee may, within thirty (30) days of receipt of the notice, notify the City that there is a dispute as to whether a violation has, in fact, occurred. Such notice by grantee to the City shall stay the ninety (90) day period described above.

- (c) The Council shall hear grantee's dispute and shall determine whether a default, violation or other event giving rise to revocation by grantee has occurred.
- (d) If after hearing the dispute, grantee is found to be in default, grantee shall then have ninety (90) days from such a determination to remedy the violation or failure.
- (e) If, after City has determined that Grantee is in default, Grantee still disputes that it is in default, it may notify the City, within fourteen (14) days of the City's determination that it is in default, that it wants to submit the disagreement to non-binding arbitration. Such notice by Grantee to the City shall stay the ninety (90) day period described above.
- (f) Each party shall select an arbitrator, and the two so selected shall select a third arbitrator who shall serve as chairman of the panel. The arbitrators shall be knowledgeable in the field of cable television and telecommunications. The arbitration shall generally follow the Ohio Rules of Civil Procedure, including those rules relating to discovery, and the Ohio Rules of Evidence; provided, however, the arbitrators shall be entitled to admit any evidence they may deem relevant even if such admission would constitute a technical violation of the Rules of Evidence. The parties must make a good faith effort to exchange all relevant information and documents. The arbitration shall be held at a mutually agreeable site within Erie County, Ohio, and the cost of the arbitrators, the facilities for the arbitration and any other costs related to the arbitration itself shall be borne equally by the parties. Each party shall be

responsible for its own attorneys fees, expert witness fees and other costs related to the presentation of its case.

- (g) Within 14 days of the decision of the arbitrator, both parties shall notify, in writing, the other party of its decision to accept or reject the arbitrators' decision.
- (h) If the parties can not agree with the decision of the non-binding arbitration, the City will have 14 days after receiving written notice to proceed with the revocation procedures outlined below or forfeit its revocation rights under this agreement as to the issue, or issues, arbitrated.
- (i) At any time after that ninety (90) day period, the City may, by formal action at a public hearing affording reasonable notice and opportunity for grantee to be heard, revoke, terminate or cancel the franchise and this franchise agreement. Nothing in this agreement may be deemed to diminish Grantee's legal rights with respect to renewal under Federal or state laws or regulations.
- (j) Upon expiration or the termination of the franchise and franchise agreement, the City may require grantee to continue to operate the cable system for an extended period of time until the City grants grantee a renewal franchise, or in the case of termination, until another cable operator can be found to serve the City. If upon such expiration or termination another cable operator shall have been granted a franchise hereunder, and if such operator shall have built out its system so as to permit it to offer its cable services throughout the entire City, then in that event, grantee's obligation to continue operations shall be limited to a 90-day period following its provision of a notice of termination to

all its subscribers in the City. The notice shall clearly set forth and describe the availability of the other operator's cable services and shall provide a telephone number which subscribers may call to subscribe to the other operator's services. During any period of continued operation under this section, grantee shall operate the cable system pursuant to and in accordance with the terms and conditions of this agreement.

Section 36. Effect of Revocation. Upon revocation or nonrenewal of the franchise, the City may, in lawful manner and upon the payment of an equitable price, lawfully obtain, purchase, condemn, acquire, take over and hold the cable system.

Section 37. Force Majeure. If by reason of a force majeure grantee is unable in whole or in part to carry out its obligations hereunder, grantee shall not be deemed to be in breach, violation or default during the continuance of such inability.

Section 38. Severability. If any term, condition or section of this agreement or the application thereof to any person or circumstance shall, to any extent, be held to be invalid or unenforceable, the remainder hereof and the application of such term, condition or section to persons or circumstances other than those as to whom it shall be held invalid or unenforceable shall not be affected thereby, and this agreement and all the terms, conditions and sections hereof shall, in all other respects, continue to be effective and to be complied with.

Section 39. Security Interest.

City hereby acknowledges and consents to the collateral assignment, mortgage, pledge or other encumbrance of this Agreement, Grantee's system, and/or all assets relating thereto by Grantee to one or more lenders or providers of other credit arrangements (or agents for such

lenders or providers) as collateral for one or more loans or other financing arrangements provided to Grantee or any affiliate or parent of Grantee.

Section 40. Non-Enforcement and Waivers by City. Grantee shall not be relieved of its obligation to comply with any of the provisions of this agreement by reason of any failure of the City to enforce or require prompt compliance.

Section 41. Captions. The captions and headings in this agreement are for convenience and reference purposes only and shall not affect in any way the meaning or interpretation of this agreement.

Section 42. Modifications to Franchise Agreement. If at any time during the term of this agreement, grantee demonstrates to the City that it is commercially impracticable for grantee to comply with a requirement of this agreement, and presents to the City a request to modify the agreement and a proposed alternative requirement, the City shall consider the request and approve or reject the proposal within one hundred twenty (120) days of grantee's request.

Section 43. Choice of Law. This agreement shall be governed by and construed in accordance with the laws of the state of Ohio.

Section 44. Counterparts. This agreement may be executed in one or more counterparts all of which shall be considered one and the same agreement and shall be effective on the effective date provided for herein. All parties need not sign the same counterpart.

Section 45. Entire Agreement. This agreement represents the entire agreement between the parties as to the matters addressed herein and it supersedes all prior agreements, contracts, proposals, understandings, presentations, statements or negotiations as to such matters whether oral or in writing.

IN WITNESS WHEREOF, the parties have caused this agreement to be executed by their fully authorized representatives.

ERIE COUNTY CABLEVISION, INC.

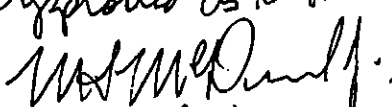
By: 

Date: December 30, 2002

CITY OF HURON

By: 

Date: DECEMBER 10, 2002

Approved as to Form:

Law Director