

**AN ORDINANCE BY THE BOARD OF COMMISSIONERS OF THE COUNTY OF DUPLIN  
 CONSENTING TO THE CABLE TELEVISION FRANCHISE  
 AGREEMENT (FRANCHISE ORDINANCE) BETWEEN THE COUNTY OF DUPLIN  
 AND  
 FALCON CABLE MEDIA**

**WHEREAS**, the County of Duplin (County) has entered into a cable television Franchise Agreement with Falcon Cable Media ("Falcon"), which agreement expires on or about June 1997 and

**WHEREAS**, the County deems it appropriate to continue the Cable TV Franchise Agreement with Falcon Cable Media.

**NOW, THEREFORE BE IT RESOLVED BY THE BOARD OF COMMISSIONERS THAT THE CABLE TV FRANCHISE AGREEMENT BETWEEN THE COUNTY AND FALCON CABLE MEDIA IS APPROVED AS FOLLOWS:**

**FRANCHISE AGREEMENT**

**THIS AGREEMENT** is made and entered into as of this the \_\_\_\_ day of 19\_\_, by and between the County of Duplin, North Carolina, hereinafter referred to as "County" and Falcon Cable Media, hereinafter referred to as "Falcon" located at Post Office Box 236, Holly Ridge, North Carolina 28455.

**SECTION 1. GRANT OF FRANCHISE**

- (a) Falcon is hereby granted for itself and its successors and assignees, subject to the terms and conditions of this Franchise Agreement, the right, privilege, and authority to construct, operate, maintain, and reconstruct a cable communications system within the streets, alleys, and public ways of the County for the purpose of providing cable television service as defined by the N.C.G.S. 160A-319(b) and including such other services as Falcon may legally provide on its cable communications system, subject to current and future state, federal, and local laws and other regulations and the payment of any applicable fees, services or other compensation directly or indirectly to the County. Falcon shall provide a state-of-the-art, county-wide cable communications system to the residents and institutions of the County in accordance with this Franchise Agreement.
- (b) Nothing in this Franchise Agreement shall be deemed to waive the various codes and ordinances of the County regarding permits, fees to be paid, or manner of construction.
- (c) For the purpose of operating and maintaining a cable communications system in the County, Falcon may erect, in, over, under, or upon, across, and along the public streets, alleys, and ways within the County such wires, cables, fiber optics, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, pedestals, attachments, and other property and equipment as are necessary and appurtenant to the operation of the cable communications system in the County and in accordance with this franchise agreement and the cable ordinance.

**SECTION 2. RIGHT OF COUNTY TO ISSUE FRANCHISE AGREEMENT**

Falcon acknowledges and accepts the legal right of the County to issue this Franchise Agreement.

**SECTION 3. EFFECTIVE DATE OF FRANCHISE AGREEMENT AND ACCEPTANCE**

The effective date of this Franchise Agreement shall be \_\_\_\_, 199\_\_, subject to acceptance by Falcon which acceptance shall be received by the County not more than thirty (30) days after passage of the ordinance, which shall incorporate this Franchise Agreement.

**SECTION 4. FRANCHISE TERM AND RENEWAL**

This Franchise Agreement shall take effect and be in full force from and after the final passage hereof, subject to acceptance by the Franchisee as herein provided and the same shall continue in full force and effect for a period of ten (10) years. Should the Franchisee want to renew this Agreement, the then federal, state, or local rules for renewal will be followed.

**SECTION 5. FRANCHISE NONEXCLUSIVE**

- (a) **Franchise nonexclusive.** This Franchise Agreement shall not be construed as any limitation upon the right of the County to grant to other persons, rights, privileges, or authorities, similar to the rights, privileges, and authorities herein set forth, in the same or other streets, alleys, or other public ways or public places. The County specifically reserves the right to grant at any time during the term of this Franchise Agreement or renewal thereof, if any, such additional franchises for a cable communications system as it deems appropriate.
- (b) **Conditions.** Any additional cable television franchises granted by the County shall contain equivalent terms and conditions as this Franchise Agreement, including without limitation provisions of public benefit with equivalent cost, taking into account the size and population of the franchised areas.

**SECTION 6. DEFINITIONS**

For purposes of this article, the following terms, phrases, words, and their derivations shall have the meanings 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. The word "shall" is mandatory and "may" is permissive. Words not defined shall be given their common or ordinary meanings.

**Additional services** means CABLE SERVICES for which an additional charge is made beyond the charge for basic subscriber services, including, but not limited to, movies, concerts, variety acts, sporting events, pay-per-view programs and any other service utilizing any facility or equipment of a cable television system operating pursuant to a Franchise Agreement granted under this article.

**Basic subscriber radio service** means such audio services as the re-transmission of broadcast FM radio signals, weather, news, time and other similar audio services, and the transmission of cablecast (non-broadcast) radio signals as permitted by the FCC.

**Basic subscriber television services** means any service tier provided by the Grantee which includes the delivery of broadcast signals, educational and government access channels, and local origination channels, covered by the regular monthly charge paid by all subscribers to a particular service tier.

**Board** means the Board of Commissioners of the County of Duplin.

**Cable communications system or cable television system**, also referred to as "system" means a facility consisting of a set of closed transmission paths and associated signal generation, reception and control equipment that is designated to provide cable service which includes video programming and which is provided to multiple subscribers within a community; but such term does not include.

- (a) A facility that serves only to retransmit the television signals of one (1) or more television broadcast stations;
- (b) A facility that serves subscribers without using any public rights-of-way.

- (c) A facility of a common carrier which is subject, in whole or in part, to the provision of Title II of the Cable Act, 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; or
- (d) Any facilities of any electric utility used solely for operating its electric utility systems.

**Communications Policy Act or Cable Act (the "ACT")** means the Cable Television Consumer & Protection Act of 1992, as amending the Communications Act of 1934 and 1984 and as it may be amended or succeeded.

**Channel** means a six Megahertz (MHz) frequency band which is capable of carrying either one (1) standard video signal, a number of audio, digital or other non-video signals, or some combination of signals.

**Commence operation** means that time and date when operation of the cable communications system is considered to have commenced, which shall be when the system is fully constructed.

**Commercial subscriber** means a subscriber who receives a service in a place of business where the service may be utilized in connection with a business, trade or profession, without financial consideration to the commercial subscriber.

**Community Channel** means a channel designated or dedicated and is made available for local origination for educational and governmental use, without charge on a first-come, first-served basis, nondiscriminatory basis.

**Converter** means an electronic device which converts signals to a frequency not susceptible to interference within the television receiver of a subscriber and any channel selector which permits a subscriber to view all signals delivered at designated converter dial locations at the set or by remote control.

**Discrete channel** shall mean a channel which can only be received by the person and/or institution intended to receive signals on such channel.

**Drop** shall mean a coaxial connection from feeder cable to the subscriber/user television set, radio or other terminal.

**Fair market value** means the price that a willing buyer would pay to a willing seller for a going concern.

**FCC** means the Federal Communications Commission or any legal appointed or elected successor.

**Franchise** means the nonexclusive rights, granted pursuant to this article, to construct, operate or maintain a cable communications system along the public ways within all or a specified area in the County. Any such authorization, in whatever form granted, shall not mean or include any license or permit required for the privilege of transacting and carrying on a business within the County, as required by other ordinances and laws of the County.

**Franchise Agreement** means a contract entered into voluntarily between the County and the Grantee containing the specific provisions of the Franchise Agreement granted including applicable referenced specifications, franchise proposals, applications and other related material.

**Franchise area** means the entire County, or portions thereof, for which a franchise is granted under the authority of this article. If not otherwise stated in the Franchise Agreement, the franchise area shall be the unincorporated limits of the County.

**Franchise fee** means an amount not to exceed 5%, as specified, of the Grantee's gross annual receipts from the operation of the system pursuant to the agreement.

**Grantor** means the County of Duplin as represented by the Board of Commissioners acting within the scope of its jurisdiction.

**Grantee or Franchisee** means Falcon Cable media.

**Gross subscriber revenues** means all receipts received directly or indirectly by Grantee, from the provision of Cable Services in the unincorporated areas of the County of Duplin, North Carolina. The term gross subscriber revenue does not include any franchise fees or regulatory fees.

**House** shall mean any single family dwelling unit (house, apartment, mobile home, trailer, rented room or otherwise), but shall not mean an abandoned dwelling or building otherwise uninhabitable.

**Installation** shall mean the connection of the system from feeder cable to subscribers' terminals.

**Leased access channel or commercial leased channel** means any channel designated or dedicated for use by persons unaffiliated with the Grantee in accordance with the Cable Act.

**Local Origination Cablecasting** means programming (exclusive of broadcast signals) carried on a cable television system over one or more channels and subject to the exclusive control of the cable operator.

**Monitoring** means observing a communications signal, or the absence of a signal, where the observer is not a party to the communications, whether the signal is observed by visual or electronic means, for any purpose whatsoever.

**Person** means an individual, partnership, association, organization, corporation, or any lawful successor, or transferee of said individual, partnership, association, organization or corporation.

**Plant Mile** means a linear mile of strand-bearing cable as measured on the street or easement from pole to pole or pedestal to pedestal.

**Programmer** means any person or entity who or which produces or otherwise provides program material or information for transmission by video, audio, digital or other signals, either live or from recorded traces or other storage media, to users or subscribers by means of the cable communications system.

**Public property** shall mean any real property owned by the County, other than a street.

**Public way or public right-of-way** means the surface, the air space above the surface and the area below the surface of any public street, highway, lane path, alley, sidewalk, boulevard, drive, bridge, tunnel, park, parkways, waterways, utility easements or other public right-of-way hereafter held by the County, which shall entitle the County and the Grantee to the use thereof for the purpose of installing and maintaining a cable television system. No reference herein, or in any franchise, to the "public way" shall be deemed to be a representation or guarantee by the County that its title to any property is sufficient to permit its use for such purpose, and the Grantee shall, by its use of such terms, be deemed to gain only such rights to use property in the County as the County may have the undisputed right and power to give.

**Reasonable notice** shall be written notice addressed to either County or Grantee at its respective principal office within the County or such other office as the County or Grantee has designated to the other as the address to which notice shall be transmitted to it, which notice shall be certified and postmarked not less than thirty (30) days prior to that day in which the party giving such notice shall commence any action which requires the giving of notice.

**Resident** means any person residing in the County, as otherwise defined by applicable law.

**Residential subscriber** means a subscriber who receives a service in an individual dwelling unit where the service is not to be utilized in connection with a business, trade or profession.

**Sale** shall include any sale, exchange, barter or offer for sale.

**School** means any public educational institution, including primary and secondary schools, colleges, and universities.

**Service area** means the same as the Franchise Area.

**State** means the State of North Carolina.

**State-of-the-Art** means that the Franchisee shall construct, install and maintain its system in a manner which will continue to enable it to add new services and associated equipment as they are developed, available and when proved economically feasible and marketable to subscribers to the reasonable satisfaction of the Franchisee.

**Street** shall include each of the following, which have been dedicated to the public or are hereafter dedicated to the public and maintained under public authority or by others and located within the County limits; streets, roadways, highways, avenues, lanes, alleys, sidewalks, easements, rights-of-way and similar public ways and extensions and additions thereto, together with such other public property and area that the County shall permit to be included within the definition of street from time to time.

**Transfer** means the disposal by the Grantee, directly or indirectly, by gift, assignment, voluntary sale, merger, consolidation or otherwise, except publicly traded issue, not in control of the Grantee, of twenty-five (25%) percent or more at one time of the ownership or controlling interest in the system, or twenty-five (25%) percent cumulatively over the term of the Franchise Agreement of such interests to a corporation, partnership, limited partnership, trust or association, or person or group of persons acting in concert. Affiliate transfers excepted.

**Trunk line** means the major distribution cable used in cable communications, which divides into feeder lines which are tapped for service to subscribers.

**Users** means a person or organization utilizing channel or equipment and facilities for the purpose of production and/or transmission of material, as contrasted with receipt thereof in a subscriber capability.

#### **SECTION 7. GRANT OF FRANCHISES; TERRITORY**

- (a) The County herein grants to the Grantee a nonexclusive, revocable-for-cause Franchise Agreement as provided herein, to construct, operate and maintain a cable communication system within the County, said Franchise Agreement shall constitute both a right and an obligation to provide the services of a cable communications system, as regulated by the provisions of this agreement.

- (b) The Franchise Agreement shall be granted under the terms and conditions contained herein, consistent with the County Charter and/or other applicable statutory requirements. In the event of conflict between the terms and conditions of this Franchise Agreement, the Charter and/or statutory requirements shall control.
- (c) Nothing in the Franchise Agreement shall be deemed to waive the requirements of the various codes and ordinances of the County regarding permits, fees to be paid or manner of construction.
- (d) The franchise service area shall be the entire unincorporated area of the County.

#### SECTION 8. USE OF PUBLIC STREETS AND WAYS, AND GRANTEE FACILITIES

- (a) **Public streets and ways.** For the purpose of operating and maintaining a cable communications systems in the County, the Grantee may erect, construct, repair, replace, reconstruct and/or retain in, on, over, under, upon, across, and along the public streets and ways within the County such wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, pedestals, attachments and other property and equipment as are necessary to the operation of the cable communications system; provided however, that the Grantee complies with all design, the Franchise Agreement and other applicable laws, including the County Code of Ordinances, as amended.
- (b) **Grantee facilities.** No poles shall be erected by the Grantee without prior approval of the County with regard to location, height, type and any other pertinent aspect. However, no location of any pole of the Grantee shall be a vested right, and such poles shall be removed or modified by the Grantee at its own expense whenever the County determines the public convenience would be enhanced thereby. The Grantee shall utilize existing poles and conduits, where possible. The County shall have the right, during the life of the Franchise Agreement, to install and maintain upon the poles owned by the Grantee, at fair market value any wire and pole fixture that do not reasonably interfere with the cable system operation of the Grantee.

#### SECTION 9. ACCEPTANCE

- (a) By accepting this Franchise Agreement, the Grantee agrees to be bound by all the terms and conditions in this Franchise Agreement. The Grantee also agrees to provide all services within the franchise area.
- (b) By accepting this Franchise Agreement, the Grantee acknowledges that it does so relying upon its own investigation and understanding of the power and authority of the County in connection with the system and the Franchise Agreement.
- (c) By accepting this Franchise Agreement, the Grantee acknowledges that it has not been induced to enter into this Franchise Agreement by any understanding or promise or other statement not expressed therein, whether oral or written, concerning any term or condition of this Franchise Agreement, regardless of whether such statement was made by or on behalf of the County.
- (d) By accepting this Franchise Agreement, the Grantee acknowledges that it has carefully read the terms and conditions of this Franchise Agreement.

- (e) Severability. If any section, subsection, sentence, clause, phrase or portion of this Franchise Agreement is for any reason held invalid or unconstitutional by any court of competent jurisdiction, or by any federal, state or local statute or franchise, such portion shall be deemed a separate, distinct and independent provision and shall be excised as such; and such holding shall not affect the validity of the remaining portions hereof.

#### SECTION 10. TRANSFER OF OWNERSHIP OR CONTROL

- (a) The Franchise Agreement granted hereunder cannot in any event be sold, transferred, leased, assigned or disposed of, including but not limited to by force or voluntary sale, receivership or other means, without the prior consent of the County, which consent shall not be unreasonably withheld, and then under such reasonable conditions as the County may establish; provided however, any such conditions shall pertain to the qualifications of the transferee.
- (b) The Grantee shall promptly notify the County of any actual or proposed change in, transfer of, or acquisition by any other party of control of the Grantee. The word "control" as used herein is not limited to major stockholders, but includes actual working control in whatever manner exercised. A rebuttable presumption that a transfer of control has occurred shall arise upon the disposal by the Grantee, directly or indirectly, by gift, assignment, voluntary sale, merger, consolidation or otherwise, of twenty-five (25%) percent or more at one time of the ownership or controlling interest in the system, or twenty-five (25%) percent cumulatively over the term of the Franchise Agreement, of such interests to a corporation, partnership, limited partnership, trust or association, or person or group of persons acting in concert.
- (c) Every change, transfer or acquisition of control, as defined above, of the Grantee shall make the Franchise agreement subject to cancellation unless and until the County shall have consented thereto, which consent will not be unreasonably withheld. For the purpose of determining whether it shall consent to such change, transfer or acquisition of control, the County may inquire into the legal, financial, character, technical and other public interest qualifications of the prospective controlling party. Failure to provide all information reasonably requested by the County as part of said inquiry may be grounds for denial of the proposed change, transfer or acquisition of control.
- (d) The County agrees that any financial institution having a pledge of the Franchise Agreement or its assets for the advancement of money for the construction and/or operation of the Franchise Agreement shall have the right to notify the County that it, or its designees satisfactory to the County, will take control and operate the cable television system. Further, said financial institution shall also submit a plan for such operation that will ensure continued service and compliance with all Franchise Agreement obligations during the term the financial institution exercises control over the system. The financial institution shall not exercise control over the system for a period exceeding one (1) year, unless extended by the County at its discretion, and during said period of time it shall have the right to petition for transfer of the Franchise Agreement to another Grantee. If the County finds that such transfer, after considering the legal, financial, character, technical and other public interest qualifications of the applicant, is satisfactory, the County will transfer and assign the rights and obligations of such franchises as are in the public interest. The consent of the County to such transfer shall not be unreasonably withheld.

- (e) The consent or approval of the County to any transfer of the Grantee shall not constitute a waiver or release of the rights of the County in and to the streets and any transfer shall, by its terms, be expressly subordinate to the terms and conditions of this Franchise Agreement.
- (f) In the absence of extraordinary circumstances, the County will not approve any transfer or assignment of an initial franchise prior to completion of construction of the proposed system, excluding annexation.
- (g) Any approval by the County of transfer of ownership or control shall be contingent upon the prospective controlling party becoming a signatory to this Franchise Agreement.
- (h) Notwithstanding anything to the contrary, no such consent shall be required for any transfer or assignment to any person controlling, controlled by or under the same common control as the Grantee.

#### SECTION 11. POLICE POWERS

- (a) In accepting this Franchise Agreement, the Grantee acknowledges that its rights hereunder are subject to the powers of the County to adopt and enforce reasonable general ordinances necessary to the safety and welfare of the public; and it agrees to comply with all applicable general laws and ordinances enacted by the County pursuant to such power.
- (b) Any conflict between the provisions of this Franchise Agreement and any other present or future lawful exercise of the County's police powers shall be resolved in favor of the latter, except that any such exercise that is not of general application in the jurisdiction, or applies exclusively to the Grantee or cable communications systems, which contains provisions inconsistent with this Franchise Agreement shall prevail only if, upon such exercise the County finds an emergency exists constituting a danger to health, safety, property or general welfare and such exercise is mandated by law.

#### SECTION 12. FRANCHISE FEES

- (a) During the term of this Franchise Agreement, the Franchisee shall pay to the County for use of its streets, public places, and other facilities, as well as the maintenance, improvements, and supervision thereof, an annual franchise fee in the amount of five (5%) percent, but the Duplin Board of Commissioners reserves the right to increase the annual fee up to that legally allowed by law, upon passage of an ordinance including and stating the franchise fee rate and upon proper notification of the Grantee. The franchise fee is stated as a percentage of the annual Gross Subscriber Revenues received by the Grantee from operations conducted within the County. This payment shall be in addition to any other tax or payment owed to the County by the Franchisee.
- (b) Method of computation shall be as follows: Sales tax or other taxes levied directly on a per subscription basis and collected by Franchisee shall be deducted from the Gross Subscriber Revenues before computation of sums due the County is made. Payments due the County under the terms of this Franchise Agreement shall be computed quarterly as of September 30, December 31, March 31 and June 30 for the preceding quarter and shall be paid on or before the thirtieth (30th) calendar day from each said computation date at the Office of the County Clerk during regular business hours. The County shall be furnished a statement with each payment, certified as correct by an officer of the Grantee, reflecting a total amount of Gross Subscriber Revenues, and the above charges, deductions and computation, for the three months' payment period covered by the payment. With the payment each



year for the quarter ending December 31, a statement certified by the Vice President of Finance of the Grantee shall be submitted certifying that the statement filed and payments made by the Franchisee for the preceding year was correct.

- (c) Rights of Re-computation. No acceptance of any payment shall be construed as a release or as an accord and satisfaction of any claim the County may have for further or additional sums payable as a franchise fee under this Franchise Agreement or for the performance of any other obligation hereunder.
- (d) Failure to make payment. Failure to pay any fees required by this section may result in action by the Board per Section 13 of this Franchise Agreement. Payment of the delinquent fee or fee plus any interest or penalties may be required by the Board.

### SECTION 13. FORFEITURE OR REVOCATION

- (a) The Board reserves the right to revoke the Franchise Agreement granted hereunder and rescind all rights and privileges associated with the Franchise Agreement in the following circumstances, each of which shall represent a default and breach under this Franchise Agreement.
  - (1) If the Grantee shall default in the performance of any of the material obligations under this Franchise Agreement or under such documents, contracts and other terms and provisions entered into by and between the County and the Grantee;
  - (2) If the Grantee shall fail to provide or maintain in full force and effect the liability and indemnification coverage or the performance bond as required herein pursuant to this Franchise Agreement;
  - (3) If the Grantee's construction schedule is delayed later than the schedule contained in the Franchise Agreement, if any, or beyond any extended date set by the Board;
  - (4) If the Grantee becomes insolvent or unable to pay its debts or is adjudged bankrupt;
  - (5) If the Grantee fails to restore service after ninety-six (96) consecutive hours of interrupted "system-wide" service, except when such service interruption is caused by force beyond the Grantee's control (including but not limited to subscribers), or when approval of such interruption is obtained from the County Manager, or his designee;
  - (6) If there has been intentional material misrepresentation of fact in the application for or negotiation of the Franchise Agreement or any extension of renewal thereof.
- (b) The Grantee shall not be declared at fault or be subject to any sanction under any provision of this Franchise Agreement in any case in which performance of any such provision is prevented for reasons beyond the Grantee's control. A fault shall not be deemed to be beyond the Grantee's control if committed by a corporation or other business entity in which the Grantee holds a controlling interest, whether held directly or indirectly.
- (c) Procedure prior to revocation.

- (1) In the event the County believes that the grounds for revocation exist or have occurred, the County shall notify the Grantee in writing noting the facts on which such belief is grounded. The County shall make written notice, by certified mail return-receipt requested, that the Grantee comply with any such requirement, limitation, term, condition, rule or regulation or correct any action deemed cause for revocation. If, within thirty (30) days following said written notice, Grantee has not furnished reasonably satisfactory evidence that corrective action has been taken or is being actively and expeditiously pursued, or that the alleged violation did not occur, or that the alleged violation, except those involving financial matters were beyond the Grantee's control, the County shall provide the Grantee an opportunity to present evidence, at a public hearing, that the just cause or non-compliance identified in the written notice has been remedied or that the significance thereof does not warrant revocation. County shall cause to be served upon the Grantee, at least thirty (30) days prior to the date of such public hearing, a written notice of this intent to request such revocation, and the time and place of the meeting, notice of which shall be published by the County Clerk, in accordance with North Carolina state law, before such meeting, in a newspaper of general circulation within the County.
  - (2) The Board shall hear any persons interested therein, including the Grantee, and shall determine in its discretion whether or not any failure refusal or neglect by the Grantee was with just cause.
  - (3) If such failure refusal or neglect by the Grantee was with just cause, as defined by the County, the Board shall direct the Grantee to comply within such time and manner and upon such terms and conditions as are reasonable.
  - (4) If the Board shall determine such failure, refusal or neglect by the Grantee was without just cause, then the Board shall, by resolution, declare that the franchise of the Grantee shall be revoked, unless there is compliance by the Grantee within ninety (90) days.
- (d) In the event this Franchise Agreement is revoked or otherwise terminated, the County may under the provisions of existing federal, state, or local laws and at its sole discretion, do any of the following:
- (1) Purchase the system, at fair market price; or
  - (2) Effect a transfer of ownership of the system to another party for good and sufficient consideration.
  - (3) Order the removal of all system facilities from the County within a reasonable period of time.
- (e) In removing its system facilities, the Grantee shall refill, at its own expense, any excavation that shall be made by it and shall leave all public ways and places in as good a condition, normal wear and tear, excepted, as was prevailing prior to the Grantee's removal of system facilities. The County shall inspect and approve the condition of the public ways and public places and cables, wires, attachments and poles after removal. The liability, indemnity, insurance and performance bond as provided herein shall continue in full force and effect during the period of removal and until full compliance by the Grantee with the terms and conditions of this paragraph and the Franchise Agreement is reached.

- (f) In the event of a failure by the Grantee to complete any work required by this Franchise Agreement or any other work required by the County law or ordinance, and upon reasonable notice to the Grantee, the County may cause such work to be done and the Grantee shall reimburse the County the reasonable costs thereof within thirty (30) days after verification of an itemized list of such costs. The County shall be permitted to seek legal and equitable relief to enforce the provisions of this section.
- (g) Upon either the non-renewal or revocation of a franchise, the County may contract with the Grantee to continue to operate the system for a period of six (6) months from the date of such expiration or revocation, or until such time as is mutually agreed upon. The Grantee shall as a subcontractor of the County, continue to operate the cable communications system under the applicable terms and conditions of this Franchise Agreement. The County shall be permitted to seek legal and equitable relief to enforce the provisions of this section.

#### **SECTION 14. RECEIVERSHIP AND FORECLOSURE**

- (a) The Franchise Agreement shall, at the option of the County, cease and terminate one hundred twenty (120) days after the appointment of a receiver or receivers, or trustee or trustees, to take over and conduct the business of the Grantee, whether in a 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) Such receivers or trustees shall have within one hundred twenty (120) days after their election or appointment, fully complied with all the terms and provisions of this Franchise Agreement and the Franchise Agreement granted pursuant hereto, and the receivers or trustees, within said one hundred twenty (120) days, shall have remedied all defaults under the Franchise Agreement; and
  - (2) Such receivers or trustees shall, within said one hundred twenty (120) days, execute an agreement, duly approved by the court having jurisdiction of the premises, whereby such receivers or trustees assume and agree to be bound by each and every term, provision and limitation of this Franchise Agreement.
- (b) In the case of a foreclosure or other judicial sale of the plant, property and equipment of the Grantee or any part thereof, including or excluding this Franchise Agreement, the County may serve notice of termination upon the Grantee and the successful bidder at such sale, in which event the Franchise Agreement and all rights and privileges of the Grantee hereunder shall cease and terminate thirty (30) days after service of such notice unless:
- (1) The County shall have approved the transfer of the Franchise Agreement in the manner this Franchise Agreement provides, and
  - (2) Such successful bidder shall have covenanted and agreed with the County to assume and be bound by all terms and conditions of the Franchise Agreement.

#### **SECTION 15. EQUAL OPPORTUNITY**

The Grantee shall be an equal opportunity/affirmative action employer, adhering to all federal, state or municipal laws.

#### **SECTION 16. RIGHTS RESERVED TO THE GRANTOR**

The County shall have the right, at its expense, to inspect all construction or installation work performed subject to the provisions of this Franchise Agreement as it shall find necessary to ensure compliance with the terms of this Franchise Agreement and other pertinent provisions of the law.

#### SECTION 17. REGULATORY AUTHORITY

- (a) The County may exercise appropriate regulatory authority under the provisions of this Franchise Agreement and applicable law. This authority shall be vested in the Board and administered throughout the County Manager or his designee in order to provide day-to-day administration of this Franchise Agreement and any Franchise Agreement granted hereunder.
- (b) Notwithstanding any other provisions of this Franchise Agreement to the contrary the Grantee shall at all times comply with all applicable laws of the local, state and federal government, In the event that any actions of the state or federal government or any agency thereof, or any court of competent jurisdiction upon final adjudication, substantially reduce in any way the power or authority of the County under this Franchise Agreement or if in compliance with any local, state or federal law or regulation, the Grantee finds conflict with the terms of this Franchise Agreement or any law or regulation of the County, then as soon as possible following knowledge thereof, the Grantee shall notify the County of the point of conflict believed to exist between such law or regulation and the laws or Franchise Agreement of the County. The County shall have the right to initiate re-negotiations with the Grantee to modify any provisions of this Franchise Agreement; to such reasonable extent as may be necessary to carry out the intent and purpose of this Franchise Agreement; provided, however, neither party shall be under any obligation or requirement to agree to a modification which increases the obligations, or impairs the rights of that party.
- (c) The County reserves the right to exercise the maximum plenary(full) authority, as may at any time be lawfully permissible, to regulate the cable communications system, this Franchise Agreement and the Grantee. Should applicable legislative, judicial or regulatory authorities at any time permit regulation not presently permitted to the County, the County may, without the approval of the Grantee, legislate any such additional regulation as may then be permissible, whether or not contemplated by this Franchise Agreement.

#### SECTION 18. REGULATION OF THE FRANCHISE

- (a) The County shall have the following regulatory responsibility:
  - (1) Administration and enforcement of the provisions of this Franchise Agreement;
  - (2) Award renewal, extension or termination of this Franchise Agreement pursuant to the provisions of this Franchise Agreement and other applicable law;
  - (3) Consent prior to sale or transfer of this Franchise Agreement;
  - (4) Technical performance evaluations pursuant to the Act.
- (b) The County also reserves the right of perform the following functions:
  - (1) Analyze the possibility of integrating cable communications with other county, state or regional telecommunications networks;

- (2) Formulate and recommend long-range telecommunications policy for the County and provide for the determination of future cable-related needs and interests of the community;
- (3) Provide the administrative effort necessary for the conduct of performance evaluations pursuant to this Franchise Agreement and any other activities required for the administration of the Franchise Agreement;
- (4) Monitor the Grantee's process for handling citizen complaints and periodically inspect and analyze the records related to such complaints (excluding any personal identification items which are precluded by the privacy act), upon five (5) business days advance written notice to the Grantee;
- (5) Monitor the Grantee's adherence to operational procedure and line-extension policies;
- (6) Assure compliance with applicable laws and ordinances;
- (7) Provide for reasonable continuity in service;
- (8) Receive for examination all data and reports required by this Franchise Agreement.

#### SECTION 19. RATES AND CHARGES

The Grantee shall file with the County schedules which shall describe all services offered, all rates and charges of any kind, and all terms and conditions relating thereto. In addition, the County shall have the right to regulate rates per federal, state and local laws.

#### SECTION 20. PERFORMANCE EVALUATION

- (a) Special evaluation sessions may be held at any time during the term of the Franchise Agreement at the request of the County upon reasonable notice to the Grantee. The intent of this paragraph is to provide an opportunity for the Board to air any performance problems at a public forum after all other negotiation processes have resulted in no agreement or solution.
- (b) All evaluation sessions shall be open to the public and announced in a newspaper of general circulation in accordance with public notice.
- (c) Topics which may be addressed at any scheduled or special evaluation session may include, but not limited to, system performance, Grantee compliance with this Franchise Agreement, customer service and complaint response, subscriber privacy, franchise fees, penalties, applications of new technologies, judicial and FCC filings, and line extensions. At the five year anniversary of this agreement, a specific review may be scheduled, in open board session, to discuss the telecommunications needs of the community, advances in technology or other mutually agreeable items which may need to be discussed.
- (d) During the review and evaluation by the County, the Grantee shall cooperate with the County and shall provide such information and documents as the County may need to reasonably perform its review. The Grantee will be required to provide those documents which are normally available to the Grantee. The intent is that the Grantor can not ask the Grantee to spend extra time and money to formulate documents which are not in a system-wide format.

**SECTION 21. PERFORMANCE BOND**

- (a) **Performance bond.** No later than forty-five (45) days after the effective date of the Franchise agreement, the Grantee shall obtain and maintain during the entire term of the Franchise Agreement and any extensions and renewals thereof, at its cost and expense, and file with the County a corporate surety bond, in the amount of \$25,000, to guarantee the faithful performance of the Grantee of all its obligations provided under this Franchise Agreement. Failure to timely obtain, file and maintain said bond shall constitute a substantial violation of this Franchise Agreement.
- (b) **Conditions.** The performance bond shall provide the following conditions:
- (1) There shall be recoverable by the County, jointly and severally from the principal and surety, any and all fines and penalties due to the County and any and all damages, losses, costs, and expenses suffered or incurred by the County resulting from the failure of the Grantee to: faithfully comply with the provisions of this Franchise Agreement; comply with all applicable orders, permits and directives of any county agency or body having jurisdiction over its acts or defaults; pay any claims, liens or taxes due the County, which arise by reason of the construction, operation, maintenance or repair of the cable system.
  - (2) The total amount of the bond shall be forfeited in favor of the County in the event:
    - (a) The Grantee abandons the cable system at any time during the term of the Franchise Agreement or any extension thereto;
    - (b) The Grantee assigns the Franchise Agreement without the express written consent of the County, where prior consent of the County is required.
- (c) **Reduction of bond.** Upon written application by the Grantee, the County may, at its sole option, permit the amount of the bond to be reduced or waive the requirements for a performance bond. Reductions granted or denied upon application by the Grantee shall be without prejudice to the Grantee's subsequent application or to the County's right to require the full bond at any time thereafter. However, no application shall be made by the Grantee within ninety (90) days of any prior application.
- (d) **Use of performance bond.** Prior to drawing upon the performance bond for the purposes described in this section the County shall notify the Grantee in writing that payment is due, and the Grantee shall have thirty (30) days from the receipt of such written notice to make a full and complete payment of undisputed amounts. If the Grantee does not make the payment within thirty (30) days, the County may withdraw the amount thereof from the performance bond.
- (e) **Notification.** Within thirty (30) days of a withdrawal from the performance bond, the County shall send to the Grantee, by certified mail, return receipt requested, written notification of the amount, data and purpose of such withdrawal.
- (f) **Replenishment of performance bond.** No later than thirty (30) days after receipt by the Grantee of certified mail notification of a withdrawal pursuant of paragraph (e) above, the Grantee shall replenish the performance bond in an amount equal to the amount so withdrawn. Failure to make timely replenishment of such amount to the performance bond shall constitute a substantial violation of this Franchise Agreement.

- (g) **Non-renewal, alteration or cancellation of performance bond.** The performance bond required herein shall be in a form satisfactory to the County and shall require thirty (30) days written notice of any non-renewal, alteration or cancellation to both the County and the Grantee. The Grantee shall, in the event of any such cancellation notice, obtain, pay all premium for, and file with the County, written evidence of the issuance of a replacement bond within thirty (30) days following receipt by the County or the Grantee of any notice of cancellation.

## SECTION 22. LIABILITY AND INSURANCE

- (a) As of the effective date of this Franchise Agreement, the Grantee shall file with the County a certificate of insurance and thereafter maintain a full force with effect at all times for the full term of this Franchise Agreement, at the expense of the Grantee, comprehensive general liability insurance policy, naming the County as additional named insured, written by a company authorized to do business in the state of North Carolina, protecting the County against liability for loss or bodily injury and property damage occasioned by the installation, removal, maintenance or operation of the cable communications system by the Grantee in the following minimum amounts:
- (1) One million dollars (\$1,000,000.00) combined single limit, bodily injury and for the property damage in any one (1) occurrence;
  - (2) One million dollars (\$1,000,000.00) aggregate.
- (b) The Grantee shall also file with the County a certificate of insurance for a comprehensive automobile liability policy written by a company authorized to do business in the State of North Carolina, for all owned, non-owned, hired and leased vehicles operated by the Grantee, with limits no less than one million dollars (\$1,000,000.00) each accident, single limit, bodily injury and property damage combined, or evidence of self-insurance.
- (c) Worker's compensation and employer's liability insurance. The Grantee shall maintain, and by its acceptance of any franchise granted hereunder specifically agrees that it will maintain throughout the term of this Franchise Agreement, worker's compensation and employer's liability, valid in the state, in the minimum amount of the statutory limit for worker's compensation, and one million dollars (\$1,000,000.00) for employer's liability.
- (d) All liability insurance required in this section shall be kept in full force and effect by the Grantee during the existence of this Franchise Agreement and until after the removal of all poles, wires, cables, underground conduits, manholes, and other conductors and fixtures installed by the Grantee incident to the maintenance and operation of the cable communications system as defined in this Franchise Agreement. All policies shall be endorsed to give the County of Duplin thirty (30) days written notice of the intent to amend, cancel or non-renewal by either the Grantee or the insuring company.
- (e) Liability and insurance. The Grantee agrees and binds itself to indemnify, keep and hold free and harmless the County from any and all liability or costs, including attorney's fees and court costs pertaining thereto, arising from any activities herein authorized, in that the Grantee shall pay, and by its acceptance of the Franchise Agreement the Grantee specifically agrees that it will pay, all damages and penalties which the County may be legally required to pay as a result of the Grantee's exercise of this Franchise Agreement. These damages or penalties shall include but shall not be limited to damages arising out of copyright infringements and all other damages

arising out of installation, operation or maintenance of the cable communications system authorized herein, whether or not any act or omission complained of is authorized, allowed or prohibited by this Franchise Agreement. In order for the County to assert its rights hereunder, the County must:

- (1) Notify the Grantee promptly of any claim or legal proceedings which gives rise to such right;
- (2) Afford the Grantee an opportunity to participate in and fully control any compromise, settlement, or other resolution or disposition of such claim or proceeding;
- (3) Cooperate with the reasonable request of the Grantee; and
- (4) Act reasonably under all circumstances so as to protect the Grantee against liability and refrain from compromising any Grantee's rights or defenses.

#### **SECTION 23. AUTHORITY TO CONSTRUCT**

- (a) **Authorization to commence new construction and application procedures.** If the Grantee plans to construct new plant within the County, Grantee shall apply for all necessary licenses from the state, county or other necessary parties, such as the railroads, for crossing under or over their property. In any event, all necessary applications for permits, licenses, certificates and authorizations shall be applied for in a timely fashion so that such filing and processing shall not interfere with or cause delay with the construction schedule. Failure to make such timely application and timely filing shall constitute a substantial violation of this Franchise Agreement.
- (b) **Power to contract.** Upon grant of the Franchise Agreement and in order to construct and operate and maintain a cable system in the County, the Grantee may enter into contract with any public utility companies or any other owner or lessee of any poles or underground areas located within or without the County; obtain rights-of-way permits from appropriate County, state, county and federal officials necessary to cross or otherwise use highways or roads under their respective jurisdiction; obtain permission from the Federal Aviation Administration to erect and maintain antennas; and obtain whatever other permits a county, state or federal agency may require.

#### **SECTION 24. CONSTRUCTION AND TECHNICAL STANDARDS**

- (a) **Compliance with construction and technical standards.** The Grantee shall construct, reconstruct, install, operate and maintain its system in a manner consistent with all applicable laws, ordinances, construction standards, governmental requirements and FCC technical standards. The system will be designed, constructed, operated and maintained for twenty-four (24) hours-a-day continuous operation.
- (b) **State-of-the-Art.** The Grantee shall take reasonable steps to construct, install, operate and maintain its system in a manner which is consistent with the state-of-the-art.
- (c) **Prior to the erection or installation by the Grantee of any towers or poles for use in connection with the installation, construction, maintenance or operation of the cable communications system under this Franchise Agreement, the Grantee shall first submit to the County or other appropriate parties for approval of concise description of the facilities proposed to be erected or installed, including all information normally required by any laws of that entity.**



- (d) Contractor qualifications. Any contractor proposed for work in construction, reconstruction, installation, operation, maintenance and repair of system equipment must be properly licensed under the laws of the state and all local ordinances.
- (e) The County does not guarantee the accuracy of any maps showing the horizontal or vertical location of existing facilities. In public rights-of-way, where necessary, the location may be verified by excavation.
- (f) Construction, reconstruction, installation, operation and maintenance of the cable communications system shall be performed in an orderly and workmanlike manner in accordance with then-current technological standards. All cables and wires shall be installed, where possible, parallel with electric and telephone lines. Multiple cable configurations shall be arranged in parallel and bundled with due respect for engineering considerations.
- (g) Grantee shall at all times comply with:
  - (1) Occupational Safety and Health Administration (OSHA);
  - (2) National Electric Code;
  - (3) National Electrical Safety Code (NESC);
  - (4) National Cable Television Standards Code;
  - (5) AT&T Manual of Construction Procedures (Blue Book);
  - (6) Bell Telephone Systems Code of Pole Line Construction;
  - (7) All federal, state and municipal construction requirements including FCC rules and regulations for utility construction and requirements;
  - (8) All building and zoning codes, and all land use restrictions as the same exist or may be amended hereafter.
- (h) Any antenna structure used in the cable communications system shall comply with construction, marking, and lighting of antenna structure standards as required by federal and state laws and Franchise Agreement.
- (i) All worker facilities, conditions and procedures that are used during construction, installation, operation and maintenance of the cable system shall comply with the standards of the Occupational Safety and Health Administration.
- (j) The Grantee shall maintain equipment capable of providing portable standby power for a minimum of twenty-four (24) hours for the headend and two (2) hours for any one power supply.
- (k) The Grantee shall have all utility lines located before digging within the public right-of-way.

#### SECTION 25. EXTENSION OF SERVICE

- (a) The Grantee shall provide service to all persons requesting such within any area of the County, contiguous to Grantee's existing system, as long as it is "economically feasible" to do so. As used herein "economically feasible" shall mean that there are at least twenty three (23) occupied homes per mile and shall be based upon a measurement taken from the outermost extremity of the potential extension area back through and measured along the shortest usable path of available streets, alleys, public rights-of-ways and public places now laid out or dedicated for such, inclusive of limited access and private easements.

- (b) Grantee shall offer cable service to all areas within the incorporated limits of County, except Grantee has the option to not build cable plant in an area served by another cable operator.
- (c) In areas with less than twenty three (23) homes per proposed cable mile, Grantee shall offer a cost sharing arrangement to residents. Grantee shall bear its pro rata share of the current construction costs based upon the actual number of homes per mile. The cost-sharing arrangement shall consist of the following:
- (1) On the request of a subscriber desiring service, Grantee shall prepare at its cost, an engineering survey and cost analysis to determine the cost of the plant extension required to provide service to the subscriber from the closet usable point on the cable system.
  - (2) The cost of construction shall be allocated based on the following formula: If a request for extension into a residential area requires the construction of cable plant, which does not pass at least twenty three (23) homes per mile, Grantee and subscribers will each bear their proportionate share of construction costs. For example, if there are ten (10) dwelling units per mile, Grantee's share will equal 10/23rd of the construction cost. The remaining cost will be shared equally by each subscriber in the area to be constructed. The line extension formula shall also be applied to a portion of a mile meeting proportionate density requirements. The cost sharing described above would be utilized if there were less than the proportionate share of dwelling units per the portion of a mile needed to reach the dwelling units.
  - (3) Should additional subscribers request cable television service, subscribers utilizing the cost-sharing plan for extension shall be reimbursed pro rata for their contribution or a proportional share thereof. In such case, the pro rata shares shall be recalculated and each new subscriber shall pay the new pro rata share, and all prior subscribers shall receive refunds. In any event, at the end of twenty-four (24) months from completion of the project, the subscribers are no longer eligible for refunds, and the amounts paid in construction costs will be credited to the plant account of the Grantee.
  - (4) The average cost of the line extension shall be recalculated annually and based upon the current costs of labor and material.
- (d) Each person contributing toward the direct cost of the line extension agrees to waive all ownership interest in the line extension. All equipment and components of the line extension, including, but not limited to, cable wire, electronics and pedestals shall at all times remain the exclusive property of the Grantee.
- (e) Grantee shall install a CATV service drop to subscribers of the home requesting such. The cost of the service line installation will be at the rate specified in Grantee's prevailing schedule of installation charges.
- (f) Any subscriber who requests that their cable be buried from Grantee's service pole to the subscriber's home and who would normally be entitled to aerial service may be charged the current hourly service charge to underground the cable.

**SECTION 26. USE OF STREETS**

- (a) **All installations** shall be underground in those areas of the County where public utilities providing telephone and electric service are underground at the time of installation. In areas where either telephone or electric utility facilities are above ground at the time of installation, the Grantee may install its device above ground, provided that, at such time as those facilities are required to be placed underground by the County or are placed underground, the Grantee shall likewise place its services underground without additional cost to the County or to the individual subscriber so served. Where not otherwise required to be placed underground by this Franchise Agreement the Grantee's system shall be located underground at the request of the property owner, provided that the cost of the underground installation shall be borne by the property owner making the request. All new cable passing under the roadway shall be installed in conduit no less than eighteen (18) inches from the top of the conduit to the surface of the ground or as per local, state or federal mandates.
- (b) **Interference** with persons, improvements, public and private property and utilities. The Grantee's system and facilities, including poles, lines, equipment on all appurtenances, shall be located, erected and maintained so that such facilities shall:
- (1) Not endanger or interfere with the health, safety or lives of persons;
  - (2) Not interfere with any improvements the County or state may deem proper to make;
  - (3) Not interfere with the free and proper use of public streets, alleys, bridges, easements or other public ways, places or property, except to the minimum extent possible during actual construction or repair;
  - (4) Not interfere with the rights and reasonable convenience of private property owners, except to the minimum extent possible during actual construction or repair; and
  - (5) no obstruct, hinder or interfere with any gas, electric, water or telephone facilities or other utilities located within the County.
- (c) **Restoration to prior condition.** In case of any disturbance of pavement, sidewalk, driveway or other surfacing, the Grantee shall, at its own cost and expense and in a manner approved by the County, replace and restore all paving, sidewalk, driveway, landscaping or surface of any street or alley disturbed, and in a good workmanlike, timely manner to a condition as good as that which prevailed before said work and in accordance with standards for such work set by the County. Such restoration shall be undertaken within no more than ten (10) days after the disturbance is incurred and shall be completed as soon as possible thereafter, weather permitting.
- (d) **Relocation of the facilities.** In the event that at any time during the period of this Franchise Agreement the County or state shall lawfully elect to site or change the grade of any street, alley or other public ways, the Grantee, upon reasonable notice by the proper authority, shall remove or relocate as necessary its poles, wires, cables, underground conduits, manholes and the fixtures at its own expense.

- (e) **Cooperation with building movers.** The Grantee shall, on the request of any person holding a building moving permit issued by the County Building Inspector, temporarily raise or lower its wire to permit the moving of building. The expense of such temporary removal, raising or lowering of wires shall be paid by the person requesting the same, and the Grantee shall have the authority to require such payment in advance. The Grantee shall be given not less fifteen (15) working days advance notice to arrange for such temporary wire changes.
- (f) **Tree trimming.** The Grantee shall have the authority, except when in conflict with existing county ordinance or other utility agreements, to trim any trees upon and overhanging public right-of-way so as to prevent the branches of such trees from coming in contact with system facilities, except that at the option of the County, such trimming may be done by it or under its supervision and direction, at the expense of the Grantee.
- (g) **Easements.** All necessary easements over and under private property shall be arranged for by the Grantee.
- (h) **Work within rights-of-way.** Consistent with any State policy for temporary street closing, the closing of any part of publicly maintained street or right-of-way must be approved by the appropriate agency.
- (i) **Removal of County property.** No County property is to be removed from a right-of-way, including signing on utility poles, without proper permission from the County.

#### SECTION 27. ERECTION, REMOVAL AND COMMON USE OF POLES

- (a) No poles shall be erected by the Grantee without prior approval of the County, in so far as the County has the legal authority to do so, with regard to location, height, types and any other pertinent aspect. However, no location of any pole or wire-holding structure of the Grantee shall give rise to a vested interest, and such poles and structures shall be removed or modified by the Grantee at its own expense whenever the County determines that the public convenience would be enhanced thereby.
- (b) Where poles already in existence for use in serving the County are available for use by the Grantee, the County may require the Grantee to use such poles and structures, if it determines that the public convenience would be enhanced thereby and the terms of the use available to the Grantee are just and reasonable.
- (c) Where a public utility serving the County desires to make use of the poles or other wire-holding structures of the Grantee, but agreement there of with the Grantee cannot be reached, the County may require the Grantee to permit such use for such consideration and upon such terms as the County shall determine to be just and reasonable. If the County determines that the use would enhance the public convenience and would not unduly interfere with the Grantee's operation.

#### SECTION 28. TESTS AND PERFORMANCE MONITORING

The Grantee will comply with all FCC rules and the Act regarding tests and performance monitoring of its cable communications system. Grantee will provide copies of its results to the County, upon reasonable notice, and in the absence of such rules the Grantee shall comply with the following:

- (a) Such tests shall be performed by or under the supervision of a qualified registered professional engineer or an engineer with proper training and experience. A copy of said engineer's report shall be submitted to the County, upon reasonable notice, describing test results, instrumentation, calibration and test procedures and the qualification of the engineer responsible for the tests.
- (b) System monitor test points shall be established at or near the output of the last amplifier in the longest feeder line, at or near trunk line extremities. Such periodic tests shall be made at the test points as shall be required by the FCC and/or this Franchise Agreement.
- (c) The County shall have the right to employ, at the County's expense, qualified consultants, if necessary or desirable, to assist in the administration of this or any other section of this Franchise Agreement or the Franchise Agreement.

#### SECTION 29. SERVICES TO SUBSCRIBERS AND USERS

- (a) Should the Grantee desire to change the selection of programs or services offered on any of its tiers, it shall use its good faith efforts to maintain the mix, quality and level of services provided over the system. Any such change in programs or services offered shall comply with the FCC rules and regulations and shall be reported to the subscribers at least thirty (30) days prior to the proposed implementation. The Grantee shall use its good faith efforts to ensure diversity of programming.
  - (1) A basic service tier shall be offered to subscribers throughout the term of this Franchise Agreement.
  - (2) The Grantee shall provide, when standard installation is possible, basic cable and cable programming service, super station package and one (1) free outlet to each of the following public facilities located within one hundred eighty-eight (188) feet of existing services lines of the Grantee: all courthouses, libraries, police and fire stations, municipal office buildings and schools. The Grantee shall notify the county in writing when standard installation is not possible. No monthly service fee shall be charged for the first outlet installed. The Grantee shall provide service to new construction hereafter for the above public facilities, provided they are within one hundred eighty-eight (188) feet of the existing service lines of the Grantee. Installation costs and fees for additional outlets and equipment shall be charged to the County at the Grantee's prevailing rates.
- (b) The Grantee shall, when technically feasible, provide and maintain, at a minimum, at least one non-commercial community channel available on a first-come, first-served, nondiscriminatory basis, at no cost to users.
- (c) Community Channel.
  - (1) Grantee, or its successor, shall provide a community channel to the County, consisting of educational and governmental programming and local origination programming. At such time as demand requires a separate channel for education and a separate channel for government, both parties to this Agreement agree to the combination of the channels. The determination on the need for separate channels will be mutually agreed upon by both parties.
  - (2) Falcon, will provide necessary facilities, personnel and administrative support for operation of the Community Channel.

- (3) Grantee will continue, as reasonably feasible, and in conjunction with the county staff, to educate the citizens of the County as to the benefits of community programming.
  - (4) Grantee shall cooperate with the county staff in providing promotional announcements on the availability of community programming.
  - (5) Grantee shall cooperate with school and government officials to maximize use and benefit from educational and governmental programming.
  - (6) Grantee agrees to make a one-time, lump-sum grant to the County in the amount of \$1,000.00 for such cable-related purposes as the County may from time-to-time determine for support of the Community Channel.
- (d) System Upgrade. The intent of the following is to outline the modernization of the cable system. Falcon will use the most economically and technically feasible technology to upgrade the system to a State-of-the-Art system. This may include a combination of technologies including, but not limited to, fiber optic and coaxial technology, and a combination of analog and digital technology depending on the application. The upgraded system will meet or exceed all applicable FCC technical standards. A fiber optic backbone system will be used to support the County system. The technology currently in use, will be modified because it does not meet the community needs related to quality of video and sound; does not meet the consumer service standards; and is the major cause of service related problems. The upgrade will be completed in two phases which will be completed within thirty-six (36) months from the effective date of this Agreement. Grantee shall complete the upgrade of the system serving all areas of the County with a minimum of 60 channel capacity. Grantee will meet, as scheduled, on a quarterly basis with the franchise authority to provide an update on the system upgrade schedule.
- (1) Design/Make-Ready Phase. This phase includes the base mapping and electronic design used to obtain the necessary permits and agreements for actual construction of the system. Completion of this phase is estimated to require six (6) to twelve (12) months from the effective date of this Agreement and the following shall be accomplished:
    - (a) Complete mapping of the system.
    - (b) Obtain necessary permits from all affected agencies and complete negotiations for pole attachments.
    - (c) Complete necessary action to provide material and equipment for the construction of the upgrade project, as per Falcon's inventory control system.
  - (2) Construction Phase. This phase includes the actual construction of the upgrade project. As a general rule, the construction will begin in the incorporated areas of the county and progress to unincorporated areas. This phase will be completed within eighteen (18) to twenty-four (24) months of the completion of the Design/Make-Ready Phase. In some cases, individual headends may be subject to consolidation or elimination as dictated by technical and/or economic efficiency considerations. During the construction phase of the following will be accomplished.

- (a) Chinquapin Headend serving the Towns of Kenansville, Wallace (Rose Hill, Teachey and Magnolia served through the Wallace receiver site), Beulaville and Richlands will be upgraded to deliver a minimum of 60 channel capacity.
  - (b) Warsaw Headend will be upgraded to deliver a minimum of 60 channel capacity.
  - (c) Calyпсо and Faison Headend will be upgraded to deliver a minimum of 60 channel capacity.
  - (d) Chinquapin Microwave Grantee will cause a complete and extensive evaluation of the current microwave system by engaging a reputable professional to complete both a microwave and tower analysis throughout the area served by the microwave. If the evaluation provides that the system does not meet the industry technical standards or the FCC standards, then Grantee will take immediate action to provide a State-of-the-Art technology to provide enhanced signal quality that fully meets all applicable community needs and FCC technical standards. Grantee shall initiate a preventative maintenance plan to ensure the microwave is performing to FCC technical and manufacturer's standards. Every year a performance review of the microwave system will be conducted by Falcon. The results will be forwarded to the Grantor along with a description of any specific action Grantee will take should corrective action be needed. Should the review indicate that the service provided by the microwave is un-repairable or cannot be repaired to meet the FCC or manufacturer's technical standards, then Grantee will take immediate action to provide a State-of-the-Art technology to provide enhanced signal quality that fully meets all applicable community needs and FCC technical standards. Grantee shall comply with the FCC regulations and requirements for the transmission of broadcast digital signals on its cable system.
- (b) Grantee shall maintain an office in Duplin County, centrally located, to provide a full range of services to subscribers. Services provided will consist of, but not be limited to, bill payment center, service center and customer service center.

#### SECTION 30. INSTALLATION, CONNECTIONS, OTHER GRANTEE SERVICES

- (a) **Standard installations.** Standard installation shall consist of a subscriber connection not exceeding one hundred and eighty eight (188) feet from a single point or pedestal attachment to the customer's residence. Service in excess of one hundred and eighty-eight (188) feet or of a nonstandard nature will be billed to the requester. The desire of the subscriber as to the point of entry into the residence shall be observed whenever possible, subject to the Grantee's good-faith judgement in regard to, but limited to, safety, efficiency and system performance. The Grantee shall use due care in the process of installation and shall repair any damage to the subscriber's property caused by said installation. Such restoration shall be undertaken within a reasonable time after the damage is incurred and shall be completed as soon as possible thereafter, said time not to exceed fifteen (15) days, weather permitting.

- (b) **Antennas and antenna switches.** The Grantee shall not, as a condition to providing cable communications service, require any subscriber or potential subscriber to remove any existing antenna structures for the receipt of over-the-air television signals.
- (c) **Lockout devices.** The Grantee shall provide to the subscribers information concerning the availability of a lockout device for use by a subscriber. The Grantee reserves the right to require a reasonable deposit for the use of this device. The lockout device described herein shall be made available to all subscribers requesting it, beginning with the passage of this Franchise Agreement.
- (d) **Re-connection.** The Grantee shall restore service to customers wishing restoration of service, provided the customer shall first satisfy any previous obligations owed. Further, any such re-connection may be on terms and conditions established by the Grantee.
- (e) **Free disconnection.** Subscribers shall have the right to have cable service disconnected without charge therefore, notwithstanding transfer fees currently in effect. Such disconnection shall be made as soon as practicable. A pro rata refund of unused service charges shall be paid to the customer within forty-five (45) days from the date of termination of service.
- (f) **Delinquent accounts.** The Grantee shall use its good faith efforts to collect delinquent subscriber accounts. Whenever possible, the Grantee shall provide the customer with at least seven (7) working days written notice prior to disconnection.
- (g) **Emergency use of facilities.** The Grantee shall provide emergency alert capability pursuant to the 1992 Cable Act Statute 16 (b), Communications Act of 1934, Statute 624 (g), 47 U.S.C. 554(g).

#### SECTION 31. CUSTOMER SERVICES

Grantee will meet the customer service as established in Appendix A, as may be amended from time-to-time.

#### SECTION 32. PROTECTION OF SUBSCRIBER PRIVACY

The Grantee shall comply with all present and future FCC rules and regulations, as applicable, regarding subscriber privacy, and in the absence of such the Grantee shall comply with the following:

- (a) At the time of initial installation of any cable service or other service to the subscriber, and at least once a year thereafter, the Grantee shall provide notice, in the form of a separate written statement to each subscriber, which clearly and conspicuously informs the subscriber of:
  - (1) The nature of personally identifiable information collected or to be collected with respect to the subscriber and the nature of the use of such information;
  - (2) The nature, frequency and purpose of any disclosure which may be made of such information, including an identification of the types of persons to whom the disclosure may be made;
  - (3) The period during which such information might be maintained by the cable operator;
  - (4) The times and places at which the subscriber may have access to such information in accordance with this Franchise Agreement and other applicable federal, state and local law.



- (b) The Grantee shall not use the cable system to collect personally identifiable information concerning any subscriber, except as necessary to render a cable service or other service provided by the cable operator to the subscriber.
- (c) The Grantee shall not, without the specific written or electronic consent of the subscribers concerned, sell, disclose, or otherwise make available to any party any list of the names and addresses of individual subscribers, any list which identifies the viewing habits of individual subscribers, or any personal data, social security number, income and other data the Grantee may have on file about individual subscribers, except as necessary to render or conduct a legitimate business activity related to a cable service or other service provided by the cable operator to the subscriber, or pursuant to a court order, or if the Grantee has provided the subscriber the opportunity to prohibit or limit such disclosure and the disclosure does not reveal directly or indirectly the extent of viewing or other use by the subscriber of a cable service or other service provided by the cable operator, or the nature of any transaction made by the subscriber over the cable system.
- (d) Each subscriber shall be provided access to all personally identifiable information regarding such subscriber that the Grantee collects or maintains. Such information shall be made available to the subscriber at reasonable times and at a convenient place designated by the Grantee. The subscriber shall be provided the reasonable opportunity to correct any error in such information.

### SECTION 33. RIGHTS OF INDIVIDUALS

- (a) **Nondiscrimination required.** The Grantee shall not deny service, deny access, or otherwise discriminate against subscribers, channel users or general citizens on the basis of race, color, religion, national origin, age, sex, or physical or mental handicaps, provided the subscriber shall pay all applicable fees for the service desired. The Grantee shall comply at all times with all applicable federal, state and local laws and this Franchise Agreement relating to nondiscrimination which is hereby incorporated and made part of this Franchise Agreement by reference.
- (b) **Information accessibility.**
  - (1) Each individual shall have the right to information concerning the provision of this Franchise Agreement and the rules formulated pursuant to it by the Board, agent, or entity created hereunder.
  - (2) Each document required to be maintained, prepared, filed, or submitted under the provision of this Franchise Agreement or pursuant to it, except those required and designated confidential by the Grantee or the FCC, shall be a public document, available for public inspection and copying at the requester's expense, at the office of the Grantee during normal business hours. The charge for such copying shall approximate the cost of mechanical reproduction and shall not include a charge for labor.
  - (3) Each individual shall have the right to representation on such boards, commissions, agencies or other entities created hereunder or hereafter by the Board pursuant to the provisions of this Franchise Agreement. Such representation by citizens of the County shall be in the manner and form as the Board may determine.

**SECTION 34. REPORTS REQUIRED**

The Grantee shall file with the County, when requested and upon reasonable notice:

- (a) **Regulatory communications.** All reports required by the Federal Communications Commission (FCC), including, but not limited to, annual proof of performance tests and results.
- (b) **Facilities report.** An annual report setting forth the physical miles of plant construction and plant in operation during the fiscal year.
- (c) **Grantee rules.** The Grantee's schedule of charges, contract or application forms of regular subscriber policy regarding the processing of subscriber complaints, delinquent subscriber disconnect or reconnect procedures and any other terms and conditions adopted as the Grantee's policy in connection with its system subscribers.
- (d) **Proof of bonds and insurance.** The Grantee shall submit to the County the required performance bond, or a certified copy thereof, and written evidence of payment of required premium, and certification of policies of insurance required by this Franchise Agreement, and written notice of payment of required premium.
- (e) **Financial reports.** The financial reports, specified herein, for the Grantee shall be submitted annually to the County.
- (f) **Operational reports.** The following system and operational reports shall be submitted to the County, upon written notification, and after reasonable notification:
  - (1) A report on the system's technical tests and measurements as set forth in the Act;
  - (2) A summary of the previous year's activities, including, but not limited to, new services offered.

**SECTION 35. RECORDS REQUIRED**

- (a) The Grantee shall at all times maintain and make available to the County upon written notice and reasonable request, a full and complete set of plans, records and "as-built" maps showing the exact location of all cable communication system equipment installed or in use in the County, exclusive of subscriber service drops. These plans, records and "as built maps" may be treated as proprietary information and may be maintained and viewed at the cable operator's office.
- (b) Other records. The County may impose reasonable requests for additional information, records and documents from time to time, as may be reasonably necessary to monitor or ascertain the Grantee's compliance with this Franchise Agreement.

**SECTION 36. REMEDIES**

Should there be any unresolved issues pertaining to the performance of the Grantee between the County and Grantee, the Grantee may recover material and liquidated damages under the provisions of this Franchise Agreement, as well as all provisions of the Act.

- (a) **Schedule of liquidated damages.** Because Franchisee's failure to comply with certain material provisions of this Agreement will result in injury to the County or to subscribers, and because it will be difficult to estimate the extent of such injury, the County and Franchisee hereby agree that liquidated damages and penalties stated below represent both parties' best estimate of the damages resulting from the specified injury. To maintain that estimate, the parties agree that the liquidated damage amount are in 1996 dollars and shall be

increased each year by the increase in the US County Average of the Consumer Price Index, if inflation from the date of this Agreement has exceeded twenty (20) percent.

- (b) **Violations.** For the violation of any of the following, the County will notify Franchisee in writing of the violation. The County shall provide Franchisee with detailed written notice of any Agreement violation upon which it proposes to take action, and a ninety (90) day period within which Franchisee may demonstrate that a violation does not exist or to cure an alleged violation or, if the violation cannot be corrected in 90 days, to submit a plan satisfactory to the County to correct the violation. If an alleged violation is proven to exist, and no cure or action on a plan acceptable to the County has been received by the County within ninety (90) days, such liquidated damages shall be chargeable to the performance bond as set forth in this Agreement if not tendered by Franchisee within thirty (30) days of notification by the County. Franchisee may petition the County Board for relief for just cause. The imposition of liquidated damages shall not preclude the County from exercising the other enforcement provisions of this Agreement, including revocation, or other statutory or judicially imposed penalties. No penalty shall be assessed if the violation occurs without fault of the Grantee or occurs as a result of circumstances beyond its control. Liquidated damage may be imposed as follows:

- (1) For failure to materially complete construction or extend service in accordance with this Agreement: \$100.00 for each day the violation continues;
- (2) For failure to materially comply with requirements for Community Channel: \$100 for each day the violation continues;
- (3) For transferring the Agreement without approval: \$500 for each day the violation continues;
- (4) For violation of the customer service standards measured on an individual basis: \$50 per violation. For violations of applicable customer service standards for which the operator's compliance is measured in annual terms of its response to individual customers, \$1,500.00 for any period during which it fails to meet applicable performance standards.
- (5) For failure to provide data, documents, record or reports or any other information required by this Franchise Agreement: \$50.00 for each day the violation continues.
- (6) For failure to test, analyze and report on the performance of the system following a request by the County: \$50.00 for each day the violation continues.

#### SECTION 37. WAIVER

The failure of the County at any time to require performance by Falcon of any provision hereof shall in no way affect the right of the County hereafter to enforce the same. Nor shall the waiver by the County of any breach of any provision hereof be taken to be a waiver of any succeeding breach of such provision, or as a waiver of the provision itself.

#### SECTION 38. CUMULATIVE PROVISIONS

The rights and remedies reserved to the County by this Franchise Agreement are cumulative and shall be in addition to and not in derogation of any other rights or remedies which the County may have with respect to the subject matter of this Franchise Agreement, and a waiver thereof at any time shall have no effect on the enforcement of such rights or remedies at a future time.

**SECTION 39. CAPTIONS**

Captions to sections throughout this Franchise Agreement are solely to facilitate the reading and reference to the sections and provisions of this Franchise Agreement. Such captions shall not affect the meaning or interpretation of this Franchise Agreement.

**SECTION 40. NO JOINT VENTURE**

Nothing herein shall be deemed to create a joint venture or principle-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 41. ENTIRE AGREEMENT**

This agreement and all attachments hereto, as incorporated herein, represent the entire understanding and agreement between the parties hereto with respect to the subject matter hereof, supersede all prior oral negotiations between the parties, and can be amended, supplemented, modified, or changed only by a written document executed by the parties.

**SECTION 42. FORCE MAJEURE**

Notwithstanding any provision of the contrary contained herein, neither the County nor the Grantee shall be held liable for or suffer any penalty or detriment for, any failure to comply with any provision of this Franchise Agreement if such failure to comply accrues from any act of God or any other condition not within the reasonable control of such non-complying person; provided, however, that this provision shall not apply to Grantee's financial obligations hereunder.

**SECTION 43. NOTICES**

All notices and other communications hereunder shall be in writing and shall be deemed to have been given on the date of actual delivery, by registered or certified mail, return receipt requested, postage prepaid. The address for service of notice to the Grantee shall be addressed to Falcon cable media, Post Office Box 236, Holly Ridge, North Carolina 28445. Notices to the County shall be addressed to the County Clerk, County of Duplin, P.O. Box 910, Kenansville, North Carolina 28349. Either the County or the Grantee may change address to which all notices shall be sent by addressing a notice of such change in the manner provided in this section.

**ADOPTED AND EFFECTIVE THIS THE 16th DAY OF February 1998, after being introduced, read and adopted during the two regularly scheduled meetings of February 2, 1998 and February 16, 1998.**

**FOR THE COUNTY OF DUPLIN**

County Seal

S. J. Fountain  
Chairman

**ATTEST:**

James W. Barnhardt, Jr.  
Clerk to the Board

Approved as to form and legal sufficiency:

Timothy W. Smith  
County Attorney

000230

FOR FALCON CABLE MEDIA:

BY: Howard Jan  
Vice President

DATE: 4/3/98

ATTEST:

BY: [Signature]

TITLE: Admin Asst

DATE: 4/3/98

Notary Certification:

APPENDIX ACustomer Service Standards1. Subscriber Privacy

In accordance with the Act, the company shall abide by the provisions of the Act; and no less than annually provide notice in the form of a separate written statement to subscribers the provision of the Act.

2. Employee Identification

When calling in person, on subscribers or other residents, all employees or authorized representatives of the Grantee, including subcontractors, are required to display an employee identification card with their name, photograph and signature, and a telephone number that can be used for verification of the representative capacity with the Grantee. All vehicles, including subcontractors, shall display the name of the cable-telecommunication company.

3. Office and Telephone Availability

- A. Knowledgeable, qualified company representatives shall be available to respond to customer telephone inquiries Monday through Friday during normal business hours. Additionally, based on community needs, system shall staff telephone for supplemental hours on weekdays and/or weekends.
- B. Under normal operating conditions, telephone answer time by a customer service representative, including wait time required to transfer the call, shall not exceed 30 seconds. This standard shall be met no less than seventy-five percent of the time measured on an annual basis.
- C. Under normal operating conditions, the customer shall receive a busy signal less than three percent of the total time that the cable office is open for business. This standard shall be met no less than seventy-five percent of the time measured on an annual basis.
- D. Customer service center and bill payment locations shall be open for transactions Monday through Friday during normal business hours.
- E. Franchisee shall be responsible for adopting, publishing and implementing subscriber complaint procedures. The procedures shall be designed to resolve subscriber complaints in a timely and satisfactory manner; to develop sensitivity and responsiveness to subscriber needs on the part of the franchise management; and to improve the quality and dependability of services to subscribers by the Grantee. Established Complaint Procedures shall include specific provisions for registering subscriber repair service complaints received by telephone twenty-four (24) hours each day and seven (7) days each week; for permitting subscriber repair service complaints to be received at the Grantee's business office from 8:00 a.m. until 5:00 p.m. on Monday through Friday of each week; and the address of the Grantee's business office.

4. Installations, Outage and Service Calls.

Under normal operating conditions, each of the following standards shall be met no less than 75% of the time measured on an annual basis.

- A. Standard installation, excluding underground, shall be performed within seven business days after an order has been placed. "Standard" installation are up to 188 feet from the existing distribution system. This standard

- shall be met seventy-five percent of the time.
- B. Excluding those situations beyond the control of the Grantee, the Grantee shall respond to service interruptions promptly and no later than 24 hours after the interruption becomes known to the Grantee. Grantee must begin actions to correct service problems unrelated to outages the next business day after notification to the Grantee of the service problem.
  - C. The appointment window alternatives for installations, service calls and other installation activities shall be (a) morning, (b) afternoon, or (c) all day during normal business hours. Additionally, based upon community needs, the Grantee shall schedule supplemental hours during which appointments can be set.
  - D. If, at any time, an installer or technician is running late, an attempt to contact the customer shall be made and the appointment reschedule as necessary at a time which is convenient for the customer.
  - E. The Grantee shall render efficient service, make repairs promptly and interrupt service only for good cause and for the shortest time possible.
  - F. Grantee shall receive customer calls twenty-four (24) hours per day and respond to single customer outage complaint calls until 7:00 p.m. on normal business days. After 7:00 p.m. on any day, trained technicians shall respond to calls if three (3) or more complaints are received by subscribers served in a common area.

5. Communication, Statements, Refunds, and Credits

- A. The cable company shall provide written information in each of the following areas at the time of installation and at any future time upon request (this standard shall be met no less than ninety-five percent of the time measured on an annual basis): products and services offered;
  - prices and service options;
  - installation and service policies;
  - how to use the cable service
- B. Statements (billing) shall be clear, concise and understandable. The itemized charges identified on the subscriber bill as the total charge for cable service must include all fees and costs.
- C. Refund checks shall be issued promptly, but no later than the earlier of 45 days or the customer's next billing cycle following the resolution of the request, and the return of the equipment supplied by the cable company. This standard shall be measured on an annual basis and shall be met ninety-five percent of the time.
- D. Customers shall be notified in writing a minimum of 30 days in advance of any rate or channel change, provided the change is within the control of the Grantee. This performance shall be measured on an individual basis and shall be met one hundred percent of the time.
- E. Outage credit granted to subscribers as follows:

Should Grantee fail to correct a service problem, pertaining to a service interruption, within 24 hours after having been provided notice, upon request of the subscriber, Grantee shall credit 1/30th of the monthly charge for the affected tier or premium service program to the subscriber for each 24-hour period or fraction thereof following the first 24-hour period during which the subscriber experiences reduced service. This performance is measured on an individual basis.

6. Complaint-Appeals

- A. Upon notification by a subscriber of an unresolved complaint, the County Manager shall determine the facts of the complaint by obtaining information from the

subscriber and this Franchise Agreement; and shall act to resolve the complaint in a manner consistent with the authority granted the County Manager by the Board.

- B. The County reserves the right to regulate the rates to the maximum extent allowed by law, to include the filing of complaints at the FCC, as may be permitted by applicable law.

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NOISE ORDINANCE

by Authority of NCGS 153A-133

By ordinance of the County of Duplin hereby created, it shall be unlawful for any person or persons to wilfully create or assist in the creating of any loud, raucous and disturbing noise, which terms shall mean any sound which, because of its level, duration and character, annoys, disturbs, injures or endangers the comfort, health, peace or safety of any reasonable person of the County of Duplin. Noise as defined hereunder shall include sound from whatever source created, including, but not limited to amplified sounds created by amplification equipment.

**Enforcement and penalties.**

Where there is a violation of any provision of this article, the County, at its discretion, may take one (1) or more of the following enforcement actions.

- (1) A police officer, noise control officer, or animal control officer may issue a citation for violation of this ordinance subjecting the violator to a one hundred dollar civil penalty, which penalty may provide for a fifteen dollar delinquency charge upon nonpayment, and which penalty and delinquency charge may be recovered by the county in a civil action.

- (2) A misdemeanor warrant may be issued either immediately or upon issuance of a citation and the violator's failure to pay same.

Misdemeanors shall be punishable by a fine of five hundred dollars (\$500.00) and/or up to thirty (30) days. up to imprisonment for

Effective Date: March 1, 1998

Adopted this the 16th day of February, 1998.

S. J. Fountain  
Chairman  
Duplin County Board of Commissioners

Attest: James W. Barnhardt, Jr.  
Clerk