

**FRANCHISE AGREEMENT**

**THIS FRANCHISE AGREEMENT** made and entered into this 8<sup>th</sup> day of October , 2015, by and between the, the Lexington-Fayette Urban County Government, a political subdivision of the Commonwealth of Kentucky (hereinafter "Lexington"), and Windstream Kentucky East, LLC created and existing under and by virtue of the laws of the Delaware (hereinafter "Windstream").

**WITNESSETH:**

**WHEREAS**, by Ordinance No. 98-2015 adopted September 10, 2015, Lexington created a ten (10) year, non-exclusive franchise for a cable television system within the confines of Fayette County. KY; and

**WHEREAS**, by Invitation to Bid 135-2015, Lexington offered at bid a non-exclusive cable television franchise pursuant to Ordinance No. 98-2015; and

**WHEREAS**, by Resolution No. ~~146~~-2015 adopted October 8<sup>th</sup>, 2015, Lexington accepted the bid of Windstream to acquire said franchise; and

**WHEREAS**, Lexington and Windstream have entered into this Franchise Agreement to memorialize the grant by Lexington to Windstream of said franchise subject to the terms and conditions reflected in Ordinance No. 98-2015.

**NOW THEREFORE**, for and in consideration of the mutual covenants and agreements contained herein the receipt and sufficiency of which are hereby acknowledged, Lexington and Windstream hereby agree to incorporate the foregoing recitals as if fully set forth herein and further agree as follows:

1. Ordinance No. 98-2015, which is attached hereto as Exhibit "A", is incorporated herein by reference in its entirety and shall apply as if fully set forth herein.

2. The bid of Windstream for said franchise, which is attached hereto as Exhibit “B”, is incorporated herein by reference in its entirety and shall apply as if fully set forth herein.
3. Resolution No. 66-2015, which is attached hereto as Exhibit “C”, is incorporated herein by reference in its entirety and shall apply as if fully set forth herein.
4. Lexington has granted unto Windstream a non-exclusive franchise for a cable television system within the confines of the Lexington-Fayette Urban County Government, for a term of ten (10) years, subject to the provisions of the Ordinance No 98-2015.
5. The franchise memorialized in this Franchise Agreement shall commence October 8<sup>th</sup>, 2015, and shall expire as provided in the terms and provisions of Ordinance No. 98-2015.
6. Windstream does hereby bind itself, its successors and assigns, to faithfully and fully perform each and every condition of said franchise as memorialized in this Franchise Agreement, and further to faithfully perform all acts required of it pursuant to said franchise.
7. This Franchise Agreement memorializes the agreement between the parties contained and embodied in the Ordinance No. 98-2015 and shall be binding upon and inure to the benefit of the respective successors in interest to the parties hereto.

**IN WITNESS WHEREOF**, Lexington and Windstream have executed this Franchise Agreement as their free and voluntary act and deed effective as of the day and year first above written.

[Signatures on following page]

Lexington-Fayette Urban County Government, KY

BY: [Signature]  
MAYOR

ATTEST:  
[Signature]  
CITY CLERK

Windstream Kentucky, East LLC  
BY: [Signature]

STATE OF Arkansas )  
COUNTY OF Pulaski )

The foregoing Franchise Agreement was subscribed, sworn to and acknowledged before me by Sarah Day, as Interim President - Consumer Windstream Kentucky East, LLC. on this the 29<sup>th</sup> day of September, 2015.

My commission expires: 7-22-18

[Signature]  
NOTARY PUBLIC

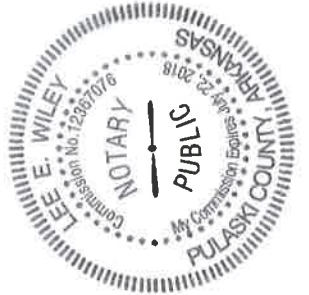


Exhibit List

- A Ordinance No. 98-2015
- B Bid
- C Resolution No. 616 -2015

ORDINANCE NO. 98 -2015

AN ORDINANCE CREATING A TEN (10) YEAR, NON-EXCLUSIVE FRANCHISE FOR A CABLE TELEVISION SYSTEM WITHIN THE CONFINES OF THE LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT SAID FRANCHISE PROVIDING FOR: FULL FINANCIAL AND SHAREHOLDER DISCLOSURE; INDEMNIFICATION BY THE FRANCHISE GRANTEE AND ADEQUATE INSURANCE COVERAGE; A \$50,000.00 LETTER OF CREDIT TO ENSURE FRANCHISE COMPLIANCE; PAYMENT TO THE GOVERNMENT; REQUIREMENTS FOR PROVIDING DATA, TESTING THE SYSTEM, AND MEETING MINIMUM OPERATIONAL STANDARDS; CONDITIONS OF STREET OCCUPANCY; USE OF POLES; MINIMUM CONSTRUCTION STANDARDS; MINIMUM REQUIREMENTS FOR EXTENDING THE SYSTEM; ACCESS TO COMMUNITY FACILITIES; PUBLIC, EDUCATIONAL AND GOVERNMENT ACCESS CHANNELS; EMERGENCY ALERT OVERRIDE; ANTENNA SWITCHES; TWO HOUR STAND-BY POWER; TESTING AND ANALYZING THE SYSTEM AND PROOF OF PERFORMANCE; ESTABLISHMENT OF CONSUMER SERVICES STANDARDS; ESTABLISHMENT OF STANDARDS FOR BILLING PRACTICES; ESTABLISHMENT OF A COMPLAINT PROCEDURE; REFUNDS TO SUBSCRIBERS FOR FAILURE OF SERVICE; RATE REGULATION; COUNCIL APPROVAL REQUIRED FOR A TRANSFER OF CONTROL OR ASSIGNMENT OF THE FRANCHISE; STANDARDS AND PROCEDURES ESTABLISHED FOR FORFEITURE OF THE FRANCHISE, ASSESSMENT OF PENALTIES AND VALUATION OF THE SYSTEM; FORECLOSURE AND RECEIVERSHIP PROVISIONS; RESERVING GOVERNMENT RIGHTS IN THE FRANCHISE; ASSURANCES OF NONDISCRIMINATION; PROTECTIONS OF SUBSCRIBER PRIVACY; ADMINISTRATIVE SUPERVISION OF THE FRANCHISE; GOVERNMENT ACCESS TO PROPERTY AND RECORDS.

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WHEREAS, pursuant to Kentucky Constitution Section 164 and Kentucky Revised Statute 67.083, the Lexington-Fayette Urban County Government is authorized and empowered to award cable television franchises, and

WHEREAS, Section 621(a)(1) of the Communications Act of 1934 (the "Cable Act") prohibits franchising authorities from unreasonably refusing to award competitive franchises for the provision of cable services (47 U.S.C. § 541(a)(1)), and

WHEREAS, the Federal Communications Commission ("FCC") in the FCC's Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 5101 (2006), in *Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as amended by the Cable Television Consumer Protection and Competition Act of 1992 ("FCC Order")* has found that new entrant providers of cable television service, "face 'steep economic challenges' in an 'industry characterized by large fixed and sunk costs,' without the resulting benefits incumbent cable operators enjoyed for years as monopolist in the video services marketplace," (FCC Order at 63) and

WHEREAS, the FCC's record indicates that "a competitive video provider who enters the market today is in a fundamentally different situation from that of the incumbent cable operator" because the new entrant must "win every customer from the incumbent" and thus does not have "anywhere near the number of subscribers over which to spread the costs." (FCC Order at 63), and

WHEREAS, the FCC has determined that its construction of Section 621(a)(1) "best serves the [Communications] Act's purposes of promoting competition and broadband deployment." (FCC Order at 43), and

WHEREAS, the FCC has expressly recognized that it is unlawful for a franchising authority "to refuse to grant a competitive franchise on the basis of unreasonable build-out mandates," (FCC Order at 43) and

WHEREAS, the FCC has found that "[b]uild-out requirements... impose significant financial risks on competitive applicants, who must incur substantial construction costs to deploy facilities within the franchise area in exchange for the opportunity to capture a relatively small percentage of the market," (FCC Order at 43)

THEREFORE, BE IT ORDAINED BY THE LEXINGTON-FAYETTE URBAN COUNTY COUNCIL:

That this Ordinance be and hereby is adopted as the "Competitive Cable Television Ordinance" for the Lexington-Fayette Urban County Government:

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## Section 1. DEFINITIONS

- (a) "Applicant" means a person or party which is applying for a new franchise. Grantees submitting proposals for franchise renewals shall not be considered Applicants.
- (b) "Basic Cable Service" shall have the meaning in this Ordinance as it is defined in Section 602(3) of the Communications Act of 1934, as it may be amended. Currently the definition is: any service tier which includes the retransmission of local television broadcast signals.
- (c) "Cable Service" or "Cable Television Service" shall have the meaning in this Ordinance as it is defined in Section 602(6) of the Communications Act of 1934 as it may be amended. Currently the definition is: the one-way transmission to Subscribers of (i) video programming, or (ii) other programming service; and Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.
- (d) "Cable System" or "Cable Television System" shall have the meaning in this Ordinance as it is defined in Section 602(7) of the Communications Act of 1934, as it may be amended. Currently the definition is: 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 (1) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (2) a facility that serves Subscribers without using any public right-of-way; (3) a facility of a common carrier which is subject, in whole or in part, to the provisions of title II of the Federal Communications Act, except that such facility shall be considered a Cable System (other than for purposes of 47 U.S.C. § 541(c)) to the extent such facility is used in the transmission of video programming directly to Subscribers, unless the extent of such use is solely to provide interactive on-demand services; (4) an open video system that complies with Section 653 of the Communications Act, 47 U.S.C. § 573; or (5) any facilities of any electric utility used solely for operating its electric utility systems.
- (e) "Council" means the Lexington-Fayette Urban County Council.
- (f) "Communications Act" means the Communications Act of 1934, as amended from time to time (47 U.S.C. § 151 et seq.).
- (g) "Equipment and apparatus" means any manholes, underground conduits, poles, cables, boxes, wires, fixtures, conductors, or other facilities necessary, essential, used or useful to and operated by the Cable System.
- (h) "FCC" means the Federal Communications Commission, or its lawful successor.

- (i) "Franchise Fee" means for the purposes of this Ordinance any fee that may be imposed by the Government on Grantee as compensation for Grantee's use of public rights-of-way and roads or that is defined by Federal law as a franchise fee under Section 622(g) of the Communications Act (47 U.S.C. § 542(g)) or by Kentucky law under KRS 136.660. Use of this definition in this Ordinance is without prejudice to any rights Grantee or Government may have under Federal and Kentucky law as they may be amended.
- (j) "Government" means (unless otherwise specified) the Lexington-Fayette Urban County Government, an urban county government created pursuant to the Kentucky Revised Statutes, as it now exists in its present territorial limits, or may hereafter be extended or reduced, and its elected and appointed officials, employees, agents, boards, consultants, assigns, volunteers and successors in interest.
- (k) "Grantee" means a party to which a franchise under this Ordinance is granted by the Council, or its successors and assigns.
- (l) "Gross Revenue" means any and all revenue (as determined in accordance with GAAP) collected from Grantee's Subscribers within the Lexington-Fayette Urban County that is derived by the Grantee from the provision of Cable Service through Grantee's Cable System within the Lexington-Fayette Urban County. Gross Revenues include, but are not limited to, revenues from Subscriber rates for pay television, premium channels, video programming service tiers, advertising on video programming channels, Cable Service installations, Cable Service rebates, or commissions received from travel or home shopping services programming channels, commercial leased access of Cable Service channels, and all other Cable Services. Also, unless prohibited or preempted by either federal or state law. However, Gross Revenues does not mean any taxes or fees imposed and/or assessed by law or regulation on Subscribers (including state sales taxes) which a franchised cable operator is obligated to collect and pay in full to the applicable governmental authorities. Gross Revenues shall also exclude uncollected bad debt.
- (m) "Headend" means the control center of a Cable System, where incoming signals are received, amplified, converted, processed, and combined into a common cable, along with any origination cablecasting, for transmission to Subscribers.
- (n) "Normal Operating Conditions" means those service conditions which are within the control of the Grantee. Those conditions which are not within the control of the Grantee include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, utility company work (including made-ready work) on poles, vehicular accidents which involve utility equipment, severing of Cable System distribution plant by third parties, labor strikes, vandalism, accidents and severe or unusual weather conditions. Those conditions which are ordinarily within the control of the Grantee include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and scheduled maintenance of the Cable System.
- (o) "Person" or "Party" is any person, firm, partnership, association, corporation, company, or organization of any kind.

- (p) "Public Access Content" means the video/audio stream of scheduled public access programming distributed by a party that operates a public access studio.
- (q) "Road" shall mean the surface of and the space above and below any public road, street, highway, freeway, lane, path, public way or place, sidewalk, alley, court, boulevard, parkway, drive or easement now or hereafter held by the Government for the purpose of public travel and shall include other easements or rights-of-way as shall be now held or hereafter held by the Government which shall, within their proper use and meaning entitle the Government and its Grantee to the use thereof for the purposes of installing or transmitting Cable System transmissions over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments, and other property as may be ordinarily necessary and pertinent to a Cable System.
- (r) "Shall" is mandatory, not merely directive.

(s) "Subscriber" means a person who is legally receiving Cable Television Service from the Grantee.

(t) "User" means a party utilizing a Cable System channel for purposes of production or transmission of material to Subscribers, as contrasted with receipt thereof in a Subscriber capacity.

#### Section 2. FINANCIAL, CONTRACTUAL, SHAREHOLDER AND SYSTEM DISCLOSURE

The provisions of this Section 2 shall not apply to cable franchise renewals.

- (a) No new franchise will be granted unless all requirements of this Ordinance regarding financial, contractual, shareholder and system disclosure have been met.
- (b) Applicants, including shareholders and parties with a controlling interest in the Applicant, shall provide access to all agreements and understandings, with any person, firm, group, association or corporation with respect to the ownership of this franchise and the proposed Cable System. This section shall include, but not be limited to, any agreements between local Applicants and national companies with respect to the ownership of this franchise.
- (c) Applicants, including shareholders and parties with a controlling interest in the Applicant, shall submit all requested information as provided by the terms of this Ordinance or the application documents, which are incorporated herein by reference. The requested information must be complete and verified as true by the Applicant.
- (d) Applicants, including parties with a controlling interest in the Applicant, shall provide access to public information with respect to the numbers of shares of stock, and the holders thereof.
- (e) Applicants, including shareholders and parties with a controlling interest in the Applicant, shall disclose any information required by the application documents

regarding other Cable Systems in which they hold an interest of any nature, including, but not limited to the following:

- (1) locations of all other franchises and the dates of award for each location;
  - (2) estimated construction costs and estimated completion dates for each system where construction is incomplete as of the date of application;
  - (3) estimated number of miles of construction and number of miles completed in each system as of the date of this application;
  - (4) date for completion of construction as promised in the application for each system.
- (f) Applicants, including shareholders and parties with a controlling interest in the Applicant, shall disclose any information required by the application documents regarding pending applications for other Cable Systems, including but not limited to the following:
- (1) location of other franchise applications and date of application for each system;
  - (2) estimated dates of franchise awards;
  - (3) estimated number of miles of construction; and estimated construction costs.

### Section 3. BIDS PROCESS FOR RENEWALS & NEW APPLICANTS

- (a) All bids received by the Government will become the sole property of the Government.
- (b) Subject to applicable law, the Government reserves the right to reject any and all bids and waive all informalities and/or technicalities where the best interest of the Government may be served.
- (c) Bids must be sealed, and submitted at the time and place indicated in the request for proposals. Bids may be modified at any time prior to the opening of the bids, provided that any modifications must be duly executed in the manner that the bid must be executed. No bid shall be opened or inspected before the public opening.
- (d) Before submitting a bid, each Party must (a) examine the Ordinance thoroughly, (b) familiarize itself with local conditions that may in any manner affect performance under the franchise, (c) familiarize itself with federal, state and local laws, ordinances, rules and regulations affecting performance under the franchise, and (d) carefully correlate its observations with the requirements of the ordinance.
- (e) The Government may make such investigations as it deems necessary to determine the legal, financial and technical ability of each Party to perform under the franchise, and the Party shall furnish to the Government all such relevant information and data for this

purpose as the Government may request. The Government reserves the right, consistent with the standards and procedures established in applicable law, to reject any bid if the evidence submitted by, or investigation of, such applicant fails to satisfy the Government that such Party is properly qualified to carry out the obligations of the franchise and to complete the work contemplated therein. Conditional bids will not be accepted.

Section 4. APPLICATIONS FOR NEW FRANCHISES.

The provisions of this Section 4 shall not apply to renewal applications.

- (a) All applications received by the Government from the Applicants will become the sole property of the Government.
- (b) The Government reserves the right to reject any and all applications and waive informalities, and/or technicalities where the best interest of the Government may be served.
- (c) All questions regarding the meaning or intent of the Ordinance or application documents shall be submitted to the Government in writing. Replies will be issued by Addenda mailed or delivered to all parties recorded by the Government as having received the application documents. The Government reserves the right to make extensions of time for receiving applications as it deems necessary. Questions received less than fourteen (14) days prior to the date for the opening of applications will not be answered. Only replies to questions by written Addenda will be binding. All applications must contain an acknowledgment of receipt of all Addenda.
- (d) Applications must be submitted at the time and place indicated in the application documents. Applications may be modified at any time prior to the opening of the applications, provided that any modifications must be duly executed in the manner that the Applicant's application must be executed.
- (e) Before submitting its application, each Applicant must (i) examine the Ordinance and the application documents thoroughly, (ii) familiarize itself with local conditions that may in any manner affect performance under the franchise, and (iii) familiarize itself with federal, state and local laws, Ordinances, rules and regulations affecting performance under the franchise.
- (f) The Government may make such investigations as it deems necessary to determine the ability of the Applicant to perform under the franchise, and the Applicant shall furnish to the Government all such information and data for this purpose as the Government may request. The Government reserves the right to reject any application if the evidence submitted by, or investigation of, such Applicant fails to satisfy the Government that such Applicant is properly qualified to carry out the obligations of the franchise and to complete the work contemplated therein. Conditional applications will not be accepted.
- (g) The Applicant shall prepare a technical report that describes the details of the Cable System construction plans. The technical report shall include the following details and be submitted and approved by the Government before construction:
  - A. Justification of the site selected, including:
    - listing of television stations carried on the system
    - location of microwave terminals or Headend

- location of local origination centers
- location of antenna site
- distance from antenna site to farthest area served by the system
- height of tower
- height of antenna site in relation to average terrain
- accessibility of antenna site all year round
- local construction restrictions on tower
- power availability for antenna site
- location of antenna arrays on the tower
- direction of desired signal sources
- analysis of potential sources of interference in the nearby environment.

B. System information, including:

- statement of adherence to construction standards
- drawings of the system
- description of local origination equipment
- identification of trunk and feeder cables.

Section 5. GRANT OF NONEXCLUSIVE AUTHORITY

- (a) Any franchise granted pursuant to this Ordinance shall confer to the Grantee the right and privilege to construct, erect, operate, and maintain in, upon, along, across, above, over, and under the roads now laid out or dedicated and all extensions thereof, and additions thereto within the territorial limits of the Lexington-Fayette Urban County, poles, wires, cables, underground conduits, manholes, and other conductors, processors, equipment and fixtures necessary or useful for the maintenance and operation within the territorial limits of the Lexington-Fayette Urban County of a Cable System for the origination, interception and distribution of television and radio signals and any electronic or optical signal permitted by law.
- (b) The right to use and occupy said roads for the purposes herein set forth shall not be exclusive, and the Council reserves the right to grant a similar use of said roads to any party at any time during the period of the franchise.

(c) The Franchise granted herein is non-exclusive. The Government specifically reserves the right to grant, at any time, one or more additional franchises for a System in accordance with State and federal law.

(d) In the event a future cable franchise overall provides a more favorable balance of benefits and burdens, than this Franchise, then this Franchise may be amended to provide such more favorable balance. The Government shall be reasonable in its determination regarding amendment of the Grantee's franchise to provide that balance. Before instituting any litigation with respect to this subsection (d), Grantee shall meet with the Government to seek to resolve the matter by mutual agreement and, if requested by the Government, engage in mediation. If a cable franchise is granted to a new entrant, pursuant to this subsection Grantee shall not abandon cable service in any area in which it provides cable service without the consent of the Government.

(e) Upon the annexation or change of any territory to the Lexington-Fayette Urban County, the right and franchise hereby granted shall extend to the territory so annexed to the extent the Government has authority and all facilities owned, maintained or operated by the Grantee located within, under and over streets and roads of the territory shall hereafter be subject to all terms hereof. The Government shall provide written notice of any territorial annexation or change at least ninety (90) days in advance of such annexation or change.

(f) Nothing in this Ordinance shall (i) abrogate the right of Grantee to perform any public works or public improvements of any description; (ii) be construed as a waiver of any codes or Ordinances of the Government or of the Government's right to require Grantee or any person utilizing the Cable System to secure the appropriate permits or authorizations for such use, or (iii) be construed as a waiver or release of the rights of the Government in and to the rights-of-way.

#### Section 6. DURATION AND ACCEPTANCE OF FRANCHISE

The renewal franchise and the rights, privileges and authority hereby granted to Grantee shall take effect and be in force from and after final passage thereof, as provided by law, and shall continue in force and effect for an initial term of ten (10) years, provided that within thirty (30) days after the date of the passage of the franchise the Grantee shall file with the Clerk of the Lexington-Fayette Urban County Government its unconditional acceptance of the franchise and promise to comply with and abide by all its provisions, terms and conditions. Such acceptance and promise shall be in writing duly executed and sworn to by, or on behalf of the Grantee, before a notary public or other office authorized by law to administer oaths. The Grantee and Government shall have the right, upon mutual agreement, to extend the franchise for an additional term of five (5) years.

#### Section 7. COMPLIANCE WITH APPLICABLE LAWS AND ORDINANCES

(a) The Grantee shall, at all times during the life of the franchise, be subject to all lawful exercise of the police power by the Government and to such reasonable regulation as the



Government shall hereafter provide, provided such exercise or regulation is not inconsistent with the terms of the franchise granted by this Ordinance.

(b) If federal or state law or regulations alter the required services, fees, costs, conditions or standards upon which the Cable System is to operate, this Ordinance and the franchise granted hereunder shall be subject to such law or regulations, consistent with the modified laws or regulations.

(c) In addition to the terms and conditions of this Ordinance, Grantee shall be subject to all of the provisions of the Lexington-Fayette Urban County Government Code of Ordinances, including, but not limited to, Chapter 17C, and the Zoning Ordinance, as well as any future amendments to such ordinances which are generally applicable police-power time, place and manner regulations of the use of the rights-of-way.

#### Section 8. LIABILITY AND INSURANCE

General. The Liability and Insurance provisions of this franchise define the responsibilities of the Grantee to the Government. As used in these Liability and Insurance provisions, the term "Government" shall be defined as follows: "Government" means the Lexington-Fayette Urban County Government and its elected and appointed officials, employees, agents, boards, consultants, assigns, volunteers and successors in interest.

Indemnity. Grantee agrees to indemnify, hold harmless, and defend the Government from any and all losses or claims of whatever kind to the extent that they arise from or are alleged to have arisen, directly or indirectly from the execution, performance or breach of this franchise by Grantee, its employees, agents, servants, owners, principals, lessees, contractors and subcontractors, excluding negligence and misconduct on the part of the Government. This indemnity agreement shall in no way be limited by any financial responsibility, insurance, or loss control requirements below and shall survive to the extent permitted by the applicable statute of limitations.

For purposes of this Indemnity provision:

- (1) The word "defend" includes, but is not limited to, investigating, handling, responding to, resisting, providing a defense for, and defending claims, at Grantee's expense, using an attorney selected by the Grantee and approved in writing by the Government which approval shall not be unreasonably withheld.
- (2) The word "claims" includes, but is not limited to, claims, demands, liens, suits, and other causes of action of whatever kind.
- (3) The word "losses" includes, but is not limited to: attorneys' fees and expenses; costs of litigation; court or administrative agency costs; judgments; fines; penalties; interest, all environmental cleanup and redemption costs of whatever kind; and any liability arising from death, injury or damage of any kind to any person, including employees and agents of Grantee, its servants, owners, principals, licensees, vendees, lessees, contractors and subcontractors or the

Government, and damage to or destruction of any property, including the property of the Government.

(a) Insurance Requirements. Grantee shall procure and maintain for the duration of the franchise the following insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance hereunder by the Grantee:

(1) Commercial General Liability Insurance with:

- A. Limits of not less than \$5,000,000.00 for property damage.
- B. \$5,000,000.00 for personal bodily injury or death to any one person.
- C. \$5,000,000.00 for bodily injury or death aggregate per single accident or occurrence.
- D. Products-Completed Operations coverage.
- E. Personal and Advertising Injury coverage.
- F. Explosion, collapse & underground coverage.
- G. Grantee's certificate of insurance will list as additional insureds, "the Lexington-Fayette Urban County Government, its elected and appointed officials, employees, and, to the extent they have an insurable interest, its agents, boards, consultants, assigns, volunteers and successors in interest."
- H. Additionally, such insurance shall contain endorsement that Grantee's insurance coverage shall be primary insurance with respect to the Government. Any insurance or self-insurance maintained by the Government shall be in excess of the Grantee's insurance and shall not contribute to it.

(2) Comprehensive Automobile Liability Insurance providing limits of not less than \$5,000,000.00.

(3) Workers' Compensation Insurance as required by the Kentucky Revised Statutes and Employers Liability Coverage equal to \$1,000,000 with endorsement that insurer shall agree to waive all rights of subrogation against Government for losses arising from work performed by the Grantee for Government.

(4) The Grantee shall abide by all local, state, and federal insurance regulations.

(b) Acceptability of Insurers. Insurance is to be placed with insurers qualified to do business in the Commonwealth of Kentucky.

(c) Evidence of Insurance. Prior to written acceptance of this Ordinance as required by Section 6, the Government is to be furnished Certificates of Insurance reflecting the above coverages, and Grantee agrees to provide the Government, the following:

- (1) Signed renewal Certificates for expiring policies;
- (2) New Certificates of Insurance if policies or carriers change during terms of this franchise, showing compliance with the above Insurance requirements; and
- (3) Copies of Insurance policies upon request.

(d) Right to Review, Audit and Inspect. Grantee understands and agrees that the Government may review, audit, and inspect any and all of Grantee's relevant records and operations to insure compliance with these Insurance requirements.

(e) Safety and Loss Control. Grantee agrees to adhere to and comply with all Federal, State and Local safety and environmental laws, regulations and Ordinances. The Grantee shall provide all safeguards, safety devices and protective equipment necessary to protect the life, health, safety and property of all persons on the job site, the public and the owner as required by applicable Federal, State and local law.

(f) Maintenance of Insurance. The insurance required in this Section 8 shall not be suspended, voided, canceled by the Grantee, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested to the Government, Division of Risk Management, 200 East Main Street, Lexington, KY 40507.

(g) Definition of Default. Grantee understands and agrees that the failure to comply with any of these insurance, safety or loss control provisions (including with, among other things, Section 8(f)) within ten (10) business days after notice from the Government that the Grantee is not in compliance shall constitute a default under this Ordinance. The Government may elect, at its option, any single remedy or any combination of remedies, as available, including but not limited to, purchasing insurance and charging Grantee for any such insurance premiums purchased, or terminating the Grantee's franchise. The date of default with respect to Section 8(f) shall relate back to the date of breach, without regard to the date on which notice is provided by the Government.

#### Section 9. LETTER OF CREDIT

(a) Within thirty (30) days after the grant and acceptance of this franchise, the Grantee shall arrange for, and shall deposit with the Government, a letter of credit from a financial institution in the amount of fifty thousand dollars (\$50,000.00). The letter of credit shall be used to insure the faithful performance by the Grantee of all of the provisions in this Ordinance; and compliance with all orders, permits and directions of any agency, commission, board, department, division or office of the Government having jurisdiction over its acts or defaults under this Ordinance and the payment by the Grantee of any

claims, liquidated damages, liens and/or taxes due the Government which may arise by reason of the construction, operation or maintenance of the System.

(b) The letter of credit shall be maintained at fifty thousand dollars (\$50,000.00) during the entire term of the franchise, even if amounts are withdrawn pursuant to subsections (a) or (c) of this section.

(c) If the Grantee fails, after receipt of thirty (30) days written notice, to pay to the Government any claims, liquidated damages, liens and/or taxes due the Government, or fails to repay the Government, within such thirty (30) days, any damages, costs or expenses which the Government is compelled to pay by reason of any act or default of the Grantee in connection with the Grantee's franchise; or fails, after thirty (30) days written notice of such failures by the Grantee to comply with any provision of this Ordinance which the Government reasonably determines can be remedied by demand on the letter of credit (subject to compliance with the procedure described in Section 34(c)), the Government may immediately request payment of the amount thereof, from the letter of credit. Upon such request for payment, the Government shall notify the Grantee of the amount and date thereof.

(d) The rights reserved to the Government with respect to the letter of credit are in addition to all other rights of the Government, whether reserved by this franchise or authorized by law, and no action, proceeding or exercise of a right with respect to such letter of credit shall affect any other right the Government may have.

(e) The letter of credit shall contain the following endorsement:

“It is hereby understood and agreed that this letter of credit may not be canceled or not renewed by the surety nor the intention to cancel or not to renew be stated by the surety until thirty (30) days after written notice to the Government of surety's intention to cancel or not to renew.”

#### Section 10. PAYMENT TO THE GOVERNMENT

(a) Payments shall be made at the times and in conformance with the requirements of applicable law, currently Kentucky Revised Statutes, Chapter 136, as revised by House Bill 272 (Tax Modernization) in the 2005 Regular Session of the Kentucky General Assembly (the “Kentucky Franchise Law”). Additionally, the Government may at any time impose any fees or taxes consistent with state or federal law, including, but not limited to property taxes, and occupational license fees but excluding and never including Franchise Fees except to the extent allowed by subsection (c), below.

(b) The excise tax distribution from the state is not a payment in lieu of any tax, fee or other assessment except as specifically provided in this Ordinance, or as required by applicable law. By way of example, and not limitation, permit fees and business license taxes are not waived and remain applicable as provided by law to the extent they are not Franchise

Fees. Such payments shall be made at the times and in conformance with the requirements of the Cable Ordinance.

(c) Government may not collect Franchise Fees from Grantee except to the extent allowed by this subsection (c). If at any time Kentucky law is changed to allow the collection of Franchise Fees by the Grantee, (i) Grantee shall pay Franchise Fees for the reason that the Roads to be used by the Grantee in the operation of its system within the boundaries of the Lexington-Fayette Urban County Government are valuable public properties, acquired and maintained by the Government at great expense to its taxpayers, and that the grant to the Grantee to use said Roads is a valuable property right without which the Grantee would be required to invest substantial capital in right-of-way costs and acquisitions, and (ii) the Franchise Fee shall be in an amount equal five percent (5%) of Grantee's Gross Revenue.

(d) Grantee agrees to timely pay all of the fees applicable to Grantee associated with Chapter 17C of the code of ordinances, including any future amendments. Nothing herein shall be deemed a waiver of any right of Grantee to challenge the imposition of any fee as inconsistent with applicable law.

(e) Subject to Section 622 of the Communications Act and the Kentucky Franchise Law, the payment of the Franchise Fee shall be in addition to any other tax or payment owed to the Government by Grantee.

(f) If any Franchise Fee is owed to the Government under subsection (c), above, it shall be payable quarterly to the Government and the Grantee shall file a complete and accurate report, signed by and certified as accurate by an officer of the Grantee, of all Gross Revenues received within the territorial limits of the Lexington-Fayette Urban County Government during the previous three month period, and said payment shall be made to the Government no later than forty-five (45) days after the expiration of the quarter when due. The Gross Revenue report from operations of the Grantee within the franchise area shall include: a schedule of Gross Revenue by category by month; a schedule of the number of Subscribers by category of service by month; and a schedule of Gross Revenue upon which the Franchise Fee is based.

(g) If any Franchise Fee is owed to the Government under subsection (c), above, upon reasonable notice, the Government shall have the right during Normal Business Hours to inspect the Grantee's relevant revenue records at the Grantee's office, the right to audit and to re-compute any amounts determined to be payable under this Ordinance; provided, however, that such audit shall take place within twelve (12) months following the close of each of the Grantee's fiscal years. If, as a result of such audit or review, the Government determines that Grantee has underpaid its fees to the Government in any twelve (12) month period by ten percent (10%) or more, then, in addition to making full payment of the relevant obligation, Grantee shall reimburse the Government for all of the reasonable costs associated with the audit or review, including costs for attorneys, accountants and other consultants. Any additional amount due to the Government as a result of an audit or review shall be paid within the thirty (30) days following written

notice to the Grantee by the Government, which notice shall include a copy of the audit report and copies of all invoices for which the Government seeks reimbursement.

(h) In the event that any franchise payment or recomputed amount is not made to the Government on or before the applicable dates heretofore specified, interest shall be charged from such date at the annual rate of 2% over prime interest rate.

(i) The Government reserves the right to require the Grantee, to collect any consumer or other tax or other fee that may be lawfully imposed by the Government, the Commonwealth of Kentucky, or the federal government on Cable Services.

(j) No acceptance of any payment by the Government shall be construed as an accord and satisfaction that the amount paid is in fact the release of any claim that the Government may have for further or additional sums payable under this Ordinance.

#### Section 11. NON-WAIVER

Except as provided in federal law, Grantee shall not be excused from complying with any of the terms and conditions of this Ordinance by any failure of the Government, upon any one or more occasions, to insist upon the Grantee's performance or to seek Grantee's compliance with any one or more of such terms or conditions.

#### Section 12. CONDITIONS OF ROAD OCCUPANCY

(a) General Grant of Right. The Grantee acquiring this franchise shall have the right and privilege of constructing, erecting, operating and maintaining a Cable System, equipment and apparatus, upon, through, along, under and over the Roads within the territorial limits of the Lexington-Fayette Urban County Government; subject to the provisions hereof and to all powers (including police power) inherent in, conferred upon or reserved to said Government.

#### (b) Conditions.

(1) Grantee must fully comply with the provisions of Chapter 17C of the code, including any future amendments. To the extent of any conflict between or among the provisions of this franchise and Chapter 17C of the code, this franchise shall apply.

(2) When the Grantee enters upon any Road for the purpose of constructing, erecting, operating, maintaining and/or removing equipment and apparatus, it shall prosecute the work, at its own cost and expense, with due diligence and shall dig and close up all trenches and exposed places as rapidly as possible, and shall leave the Roads in the same condition as when it entered the same for said purpose or purposes. To the extent required of other parties with facilities in the rights-of-way, All such repairs shall be maintained by the company for one (1) year in as good condition as the remainder of said Road. In the event the Grantee fails, refuses or neglects to comply with the above provisions, the Government shall have the right, notwithstanding any other provision of this Ordinance, after

notice in writing having first been given to the Grantee, or any officer or agent representing it, to do said work or make said repairs, and the cost and expense thereof shall be paid to the Government by the Grantee within thirty (30) days from the date on which an itemized bill is presented to the Grantee.

(3) In the construction or reconstruction or maintenance or removal of any of said equipment and apparatus, the Grantee shall have due regard for the rights of the Government and others, and shall not interfere with, or in any way injure the property of the Government or others, under, on, or above the ground. Said Grantee shall comply with all the laws of the Commonwealth of Kentucky and Ordinances of the Government as to placing lights, barricades, flags, danger signals or warning signs and shall be liable for any and all damage that may arise by reason of Grantee's failure or neglect to comply with such Ordinances and laws. Work by the Grantee hereunder shall be done in a workmanlike manner and so as not to unnecessarily interfere with public use of any of said Roads.

(c) Government Changes.

(1) Whenever the Government or any of its departments, agencies and/or agents, servants or employees shall grade, regrade, reconstruct, reconstruct, widen or alter any Road or shall construct, reconstruct, repair, maintain or alter any other municipal public works (including but not limited to storm sewers, sanitary sewers and street lights) therein, it shall be the duty of the Grantee, after receiving thirty (30) days notice by the Government, to change, remove, relay and relocate its equipment and apparatus, poles, wires, cables, conduits and other fixtures, in the Road at its own expense so as to conform to the established grade or line of such Road and so as not to interfere with such municipal public works so constructed, reconstructed or altered.

(2) The Grantee shall be given access to all Road plans and specifications in possession of the Government.

(d) The Grantee shall, at the request of any Person holding a moving permit issued by the Government, temporarily raise or lower its wires to permit the moving of buildings. The expense of such temporary removal or raising or lowering of wires shall be paid by the Person requesting the same, and the Grantee shall have the authority to require such payment in advance. The Grantee shall be given not less than ten (10) business days advance notice to arrange for such temporary wire changes.

(e) The Grantee shall have the authority to trim trees upon and overhanging public Roads so as to prevent the branches of such trees from coming in contact with the wires and cables of the Grantee. Any trimming, removal or other disturbance of trees shall conform to all Ordinances, requirements and directives of the Government.

(f) In all areas within the territorial limits of the Lexington-Fayette Urban County Government, where the cables, wires, and other like facilities of public utilities are placed

underground, the Grantee shall place its cables, wires, or other like facilities underground.

(g) The Grantee shall provide plans and specifications for all construction within streets to the Government for its review at least 30 days prior to the start of construction. Any generally required approval of the Government is necessary before construction commences. This provision shall apply to each construction sequence if the construction is accomplished in phases.

(h) In addition to the provisions contained in this section, Grantee shall comply with all generally applicable local Ordinances pertaining to Road occupancy.

(i) The Government acknowledges that the vast majority, if not all, of Grantee's facilities that are or would be used to provide Cable Service are or would also may be used to provide services other than Cable Service, such as, but not limited, to telecommunications and broadband service ("Mixed Use Facilities"). To the extent that such Mixed Use Facilities use or would use public rights-of-way and such use is also governed by an ordinance or written agreement other than this Ordinance, the provisions of this Section 12 shall not apply to Mixed Use Facilities.

### Section 13. ERECTION, REMOVAL AND COMMON USES OF POLES

(a) No poles or other wire-holding structures to be used exclusively for the provision of Cable Service shall be erected by the Grantee without generally required prior approval of the Government with regard to need, location, height, type, and any other pertinent aspect. However, no location of any pole or wireholding structure of the Grantee shall be a vested interest and such poles or structures shall be removed or modified by the Grantee at its own expense whenever the Government determines that the public health, welfare and/or safety would be enhanced thereby.

(b) If Grantee locates distribution facilities to be used exclusively for the provision of Cable Service where poles or other wireholding structures already existing for use in serving the Lexington-Fayette Urban County are available for use by the Grantee, but it does not make arrangements for such use, the Government may require the Grantee to use such poles and structures if it determines that the public health, welfare and/or safety would be enhanced thereby and if the terms of the use available to the Grantee are just and reasonable.

(c) Where the Government or a public utility serving the Government desires to make use of the poles or other wire-holding structures of the Grantee that are used exclusively for the provision of Cable Service, but agreement thereof with the Grantee cannot be reached, the Council may require the Grantee to permit such use for reasonable and proper consideration consistent with applicable law, if the Council determines that the use would enhance the public health, welfare and/or safety and if such use would not unduly interfere with Grantee's operations.



(d) As further consideration for the granting of the franchise, the Grantee shall permit the Government, at no charge, to utilize conduit duct and/or dark fiber space owned exclusively by the Grantee within the jurisdictional limits of the Government when and for as long as such space is vacant, available, and not reserved for future use; provided, however, that the facilities of the Government which use Grantee's conduit duct or raceway space shall not, in the Grantee's sole discretion, interfere with the Grantee's technical operations and/or performance or compete directly with any services provided by the Grantee (or made available to third parties for the purpose of providing such services), which for the avoidance of doubt, are not limited to Cable Service but, instead, include, among other things, telecommunications and broadband services. Subject to the foregoing, this space shall only be used for police and fire alarm systems, traffic control and traffic signal interconnection systems, municipal data processing, interconnection systems, and other municipal government purposes. The Government's use of the conduit duct and/or dark fiber space shall be subject to the terms and conditions described in any tariff provisions pertaining to such use by a cable television operator, as such term may be used therein, other than those provisions calling for the payment of charges or fees. For purposes of this ordinance, the phrase "conduit duct and/or dark fiber space" shall be limited to structures in which cables or wires may be installed and enclosed raceways for conductors, cable and/or wire and, for avoidance of doubt, shall not include cables and/or wire placed in such structures that are not owned by parties other than the Government, such as Grantee or other users of such structures.

#### Section 14. CONSTRUCTION STANDARDS AND SPECIFICATIONS

- (a) The Grantee shall at all times comply with the following codes and standards to the extent that such codes and standards are applicable and consistent with local law: (i) National Electrical Code (published by National Bureau of Fire Underwriters)(however the Government reserves the right to require, by generally applicable ordinance, observation of greater standards of safety than said Code); (ii) Standards of Good Engineering Practices for Cable Measurements on Cable Televisions Systems (published by National Cable Television Association); (iii) standards of the Occupational Safety and Health Administration; and [(iv) Standards for Steel Antenna Towers and Antenna Supporting Structures (published by the Engineering Department of the Electronic Industry Associations)]. To the extent that such codes and standards are inconsistent with other provisions of this franchise or with local law, the latter will govern.
- (b) All new construction and new installation shall comply with the National Electrical Safety Code (published by the National Bureau of Standards).
- (c) Installation and physical dimensions of any tower constructed for use in the Cable System shall comply with all appropriate Federal Aviation Agency regulations.
- (d) Any antenna structure in the Cable System shall comply, to the extent applicable, with Construction, Marking and Lighting of Antenna Structures, 47 C.F.R. § 17.1 et. seq.

- (e) The Grantee shall at all times use ordinary care and shall install and maintain in use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries, or nuisances to the public.
- (f) The Grantee shall construct and operate the system and related facilities in accordance with all generally accepted related industry codes and standards that are applicable.
- (g) To the extent that such Mixed Use Facilities use or would use public rights-of-way and such use is also governed by an ordinance or written agreement other than this Ordinance, the provisions of this Section 14 shall not apply to Mixed Use Facilities.

Section 15. LINE EXTENSIONS

- (a) The Grantee is hereby authorized to provide Cable Services over a Cable System within the jurisdictional boundaries of the Government, including any areas annexed by the Government during the term of this Franchise. The parties acknowledge that Grantee is the not the first entrant into the wireline video market in the Government's jurisdictional boundaries. The Government acknowledges the Grantee's position that as a new entrant, investment in and expansion of Grantee's Cable System should be driven by market success, and not a contractual requirement for ubiquitous coverage. The Grantee acknowledges that the Government desires wireline competition throughout the entire Government jurisdictional boundaries so all residents may receive the benefits of competitive Cable Services.
- (b) Within ninety (90) days of the Effective Date, Grantee shall submit an affidavit or a corporate officer attesting to the portion of Dwelling Units within the Government (using 140,000 as the denominator) to which Grantee is technically capable of providing Cable Service as described in this Ordinance without deployment of additional non-customer premises facilities to a degree of accuracy of no less than 2.5 percentage points ("Baseline Coverage Threshold").
- (c) Grantee shall not be obligated under this Franchise to expand the provision of Cable Service beyond the Baseline Coverage Threshold until 27.5% of the Dwelling Units in the Initial Coverage Threshold purchase Cable Services from Grantee ("Initial Subscription Threshold"), as reported annually pursuant to Section 39(d). Once the Grantee achieves the Initial Subscription Threshold, determined with reference to the annual report submitted pursuant to Section 39(d), an Additional Coverage Threshold shall be set that shall be an additional 15% of the Dwelling Units in the Government ("Additional Coverage Threshold"). Thus, for example, if the Baseline Coverage Threshold were 40%, once the Initial Subscription Threshold is met, the Additional Coverage Threshold would be 55%. Grantee shall have two years and three months from the close of the fiscal year for which the Grantee first reported (pursuant to Section 39(d)) achieving the Initial Subscription Threshold to increase the number of Dwelling Units to which it is capable of providing service to the Additional Coverage Threshold. For the avoidance of doubt, to the extent that Grantee met the Initial Subscription Threshold prior to the fourth quarter of its fiscal year but, at the end of such fiscal year did not meet the

Initial Subscription Threshold, such Initial Subscription Threshold would nevertheless be deemed to have been met.

(e) Grantee shall not be obligated under this Franchise to expand Grantee's Cable Service offering beyond the Additional Coverage Threshold until 27.5% of the Dwelling Units in the Additional Coverage Threshold purchase Cable Services from Grantee ("Additional Subscription Threshold"), as reported annually pursuant to Section 39(d). Once the Grantee achieves the Additional Subscription Threshold, determined with reference to the annual report submitted pursuant to Section 39(d), the Additional Coverage Threshold shall be adjusted to be an additional 15% of the Dwelling Units in the Government. Thus, for example, if the Baseline Coverage Threshold were 40%, the initial Additional Coverage Threshold would have been 55%, and, once that initial Additional Coverage Threshold were met, a new Additional Coverage Threshold would be established at 70%. Grantee shall have two years and three months from the close of the fiscal year for which the Grantee first reported (pursuant to Section 39(d)) achieving an Additional Coverage Threshold to increase the number of Dwelling Units to which it is capable of providing service to the newly-increased Additional Coverage Threshold. For the avoidance of doubt, to the extent that Grantee met an Additional Subscription Threshold prior to the fourth quarter of its fiscal year but, at the end of such fiscal year did not meet the Additional Subscription Threshold, such Additional Subscription Threshold would nevertheless be deemed to have been met.

(f) The process described in subsection (e) shall be repeated until Grantee is capable of providing service to 98% of the Dwelling Units in the Government ("Maximum Coverage Requirement"). For avoidance of doubt, under no circumstances shall subsection (e) be interpreted to require Grantee to be capable of providing Cable Service to more than 98% of the Dwelling Units in the Government.

(g) At such time as Grantee is required to meet a 98% coverage obligation, Grantee shall also be required to offer Cable Service to all Dwelling Units within five thousand (5,000) route-feet of the nearest network aggregation point at which Cable Service is distributed, but shall not be required to relocate or add network aggregation points to so long as the 98% coverage obligation is met.

(h) As part of its initial deployment in the Government, Grantee commits to offer Cable Service to a significant portion of the Government that falls below the median income level as measured by census block group data. At the Government's request, Grantee will meet with the Government, not less than quarterly, to demonstrate that it has met this commitment.

(i) For purposes of this Section 15, Grantee and the Government stipulate that there are 140,000 Dwelling Units in the Government, although Grantee, at its option, may elect in writing to have the basis for its obligations in this Section 15 be based on a different number of Dwelling Units to the extent that such figure is based on federal, state, or local government-published data released subsequent to the Effective Date.

Section 16. ACCESS TO COMMUNICATIONS FACILITIES AND PROGRAMMING

- (a) The Grantee shall provide TDD (or equivalent) equipment at the Grantee's office that will allow such subscribers to contact the Grantee for any reason relating to the system.
- (b) All television signals transmitted on the cable system shall include any associated closed captioning information for the hearing impaired provided by the programming originator and DVR equipment provided by the Grantee shall be capable of recording all television signals transmitted on the cable system which include associated closed captioning information for the hearing impaired.

Section 17. PUBLIC EDUCATIONAL AND GOVERNMENTAL (PEG) CHANNELS

- (a) The Grantee shall dedicate and activate at no cost to the Government channels for the carriage of non-commercial public, educational and governmental access which shall be available to all subscribers served by the cable system as follows:
  - (1) one (1) full-time public access channel;
  - (2) one (1) full-time government access channel (herein after referred to as "GTV3");
  - (3) one (1) full-time access channel for the Fayette County School system;
  - (4) one (1) full-time access channel for the Fayette County Library; and
  - (5) two (2) full-time access channels for the University of Kentucky.
- (b) All channels designated for PEG access purposes shall be available for PEG access programming on a 24-hour basis subject to the provisions of this section. Neither the Grantee nor the Government shall engage in any program censorship or other control of the content of the access programming on the cable system, except as otherwise permitted or required by law.
- (c) Public Access Channel Interconnection.
  - (1) The Government acknowledges that it is in the public interest for all providers of Cable Service in its jurisdiction to offer a public access channel with the same programming and programming schedule so as to eliminate the need for duplicative production and to ensure consistent and predictable programming schedules between what may be multiple providers of Cable Service within the jurisdiction.
  - (2) To the extent that Grantee does not operate a public access studio of its own, Grantee shall be obligated to make commercially-reasonable efforts to obtain, at Grantee's own expense, Public Access Content from a party that operates a public access studio, to the extent that a party does so.
  - (3) To the extent that Grantee's commercially-reasonable efforts to obtain such content are unsuccessful, Grantee's obligation to provide a public access channel pursuant to Section 17(a) shall be deemed to have been fulfilled, subject to the

following:

- (A) Prior to providing Cable Service without a public access channel, Grantee must have engaged in no less than three (3) months of commercially-reasonable efforts to secure access to the Public Access Content. Such period may have been completely prior to the Effective Date.
- (B) Commencing on the Effective Date or in the first calendar month in which Grantee offers Cable Service without a public access channel, no less than once per calendar month or within ten (10) business days of written request, but no more frequently than twice in any calendar month, Grantee must provide the Government a written description of commercially-reasonable steps that it has taken in attempting to secure access to the Public Access Content. Grantee's continuing obligation to engage in such commercially-reasonable efforts shall expire six (6) months after beginning to provide Cable Service, although Grantee shall be obligated not to unreasonably refuse a commercially-reasonable offer from a party that operates a public access studio in a manner that would be contrary to Sections 17(c)(4)(A) and (B).

- (C) For avoidance of doubt, Grantee shall be deemed to be engaging in commercially-reasonable efforts to obtain the Public Access Content during periods in which the Grantee is awaiting provisioning of necessary facilities by a party that provides a public access channel within the Government at the time.

(4) For purposes of this Section 17(c), Grantee shall not be considered to have been engaged in commercially-reasonable efforts under any of the following conditions:

- (A) It is unwilling to reimburse the party that operates a public access studio no less than annually for a share of reasonable actual public access studio, program processing, and program scheduling costs (which may include an allocation of staffing and overhead) attributable to the creation and processing of Public Access Content based on a reasonable estimate of Grantee's share of the wireline video market in the Government for each of the period of time to which such payment pertains.

- (B) It is unwilling to pay market-based retail rates for video signal transport facilities reasonably necessary for the Public Access Content to be delivered to Grantee by the party operating a public access studio should such party be unwilling to permit Grantee to acquire the Public Access Content at the Grantee's premises.

Section 18. EMERGENCY ALERT OVERRIDE AND CHANNEL

- (a) The Grantee shall comply with applicable Federal and Kentucky law and regulations regarding the Emergency Alert System and, to the extent not consistent therewith, shall

incorporate into its cable television system the capability which will permit the Government, in times, of emergency, to override, by remote access, the audio of all channels simultaneously.

- (b) The availability of this service is provided for the benefit of the community and neither the Government nor the Grantee nor any of their agents, employees, or officers shall be liable in any manner for failure to use or for misuse of the override system.

As provided in applicable law, the Grantee shall cooperate with the Government in the use and operation of the emergency alert override system.

#### Section 19. ANTENNAS AND ANTENNA SWITCHES

The Grantee shall not, as a condition to providing Cable Television Service, require any Subscriber, or potential Subscriber, to remove any existing antenna for the receipt of over-the-air television signals.

#### Section 20. STANDBY POWER

The Grantee shall install and maintain equipment capable of providing two (2) hours standby power for the Headends.

#### Section 21. PROOF OF PERFORMANCE TESTING

(a) Tests and Measurements Generally. Tests and measurements to ensure compliance with technical standards shall be performed in a manner that is consistent with the provisions of 47 C.F.R. 76.609, et seq., to the extent applicable and as amended from time to time.

(b) Government's Rights.

- (1) When there have been similar complaints made, or where there exists other evidence, which, in the reasonable judgment of the Government, casts doubt on the system's compliance with FCC technical standards or any of the standards contained in this Ordinance, the Government shall have the right and authority to compel the Grantee to produce copies of the reports of testing performed to comply with Section 21(a) above with respect to the performance of the Cable System of the Grantee or to test, analyze and report on the performance of the system. Such test or tests shall be made, and the reports of such test or tests shall be delivered to the Government as required in Section 22.
- (2) The Government's right under this provision shall include, but not be limited to, requiring tests, analyses, and reports covering specific subjects and characteristics based on complaints or other evidence when and under such circumstances as the Government has reasonable grounds to believe that the complaints or other evidence require that tests be performed to protect the public against substandard Cable Service.

(3) Said tests and analyses shall be supervised by a registered professional engineer, not on the permanent staff of the Grantee and selected jointly by the Government and the Grantee. The aforesaid person shall sign all records of special tests and forward to the Government such records with a report interpreting the results of the tests and recommending actions to be taken by the Government. Any tests or measurements required by the Government to be taken pursuant to this Section should be reported to the Government within fourteen (14) days after such tests or measurements are performed. Such report shall include the following information: the nature of the complaint which precipitated the special tests; what system component was tested, the equipment used and procedures employed in said testing; the results of such tests; and the method in which such complaints were resolved.

(4) The costs of testing required under this Franchise shall be borne by Grantee if the tests demonstrate the Grantee is not in compliance with applicable FCC standards. Otherwise, the cost shall be borne by the Government.

#### Section 22. PROOF OF PERFORMANCE RECORDS

(a)(1) The results of all tests and measurements required to be taken by the Grantee in Section 21 of this Ordinance shall be delivered to the Government within thirty (30) days after such tests or measurements are performed upon request.

(a)(2) Upon request, the Grantee shall prepare a technical report that describes details of any initial cable system construction plans as described in this section. The technical report shall include the following details and be submitted and approved by the Government before construction:

A. Justification of the site selected, including:

- i. listing of television and FM radio stations carried on the system
- ii. location of microwave terminals
- iii. location of local origination centers
- iv. location of antenna site
- v. distance from antenna site to farthest area served by the system
- vi. height of tower
- vii. height of antenna site in relation to average terrain
- viii. accessibility of antenna site all year round
- ix. local construction restrictions on tower

- x. power availability for antenna site
- xi. location of antenna arrays on the tower
- xii. direction of desired signal sources
- xiii. analysis of potential sources of interference in the nearby environment.

B. System information, including:

- i. statement of adherence to construction standards
- ii. as-built drawings of the system
- iii. description of local origination equipment
- iv. signal level readings for all active channels at all amplifier locations, trunk input and output, and bridge output
- v. identification of trunk and feeder cables
- vi. calculations of system temperature capabilities.

(b) Should any of the following occur, the Grantee must notify the Government with particulars:

- (1) addition to, deletion of, or change in channel position of a channel;
- (2) change in location of headend; and
- (3) interconnection with other cable systems.

Section 23. PERFORMANCE EVALUATION SESSIONS

- (a) The Government may hold performance evaluation sessions after providing written notice to Grantee no less than thirty (30) days prior to such evaluation sessions. All such evaluation sessions shall be open to the public.
- (b) Special Evaluation Sessions. Special evaluation sessions may be held at any time during the term of the franchise at the request of the Government or the Grantee.
- (c) All evaluation sessions shall be open to the public and announced in a newspaper of general circulation in accordance with legal notice.
- (d) Topics which may be discussed at any scheduled or special evaluation session may include, but not be limited to: service; application of new technologies; system performance; services provided; programming offered; customer complaints; privacy; amendments to this ordinance; judicial and FCC rulings; and line extension policies.



(e) Members of the general public may add topics either by working through the negotiating parties or by presenting a petition. If such a petition bears the valid signatures of fifty (50) or more residents of the Lexington-Fayette Urban County, the proposed topic or topics shall be added to the list of topics to be discussed at the evaluation session.

#### Section 24. OPERATIONAL STANDARDS

- (a) The Grantee shall put, keep, and maintain all parts of the system in good condition throughout the entire franchise period.
- (b) Upon the request for service by any person located within the franchise territory, the company shall, within 30 days, furnish the requested service to such person subject to terms of the line extension policy in Section 15.
- (c) The Grantee shall render efficient service, make repairs promptly, and interrupt service only for good cause and for the shortest time possible. Such interruptions, insofar as possible, shall be preceded by notice and shall occur during periods of minimum system use.
- (d) Grantee shall not allow its cable or other operations to interfere with television reception of persons not served by Grantee, nor shall the system interfere with, obstruct or hinder in any manner, the operation of the various utilities serving the residents within the confines of the Lexington-Fayette Urban County Government.
- (e) The Grantee shall continue, through the term of the franchise, to maintain the technical standards and quality of service set forth in this Ordinance.
- (f) If a subscriber requests a digital video recorder ("DVR") from the Grantee, the DVR shall be fully operational.

#### Section 25. CONSUMER SERVICE STANDARDS

##### (a) Office Hours and Telephone Availability.

- (1) Knowledgeable, qualified, company representatives shall be available to respond to customer telephone inquiries Monday through Saturday during normal business hours. Telephone inquiries after normal business hours, if not answered by company representatives, shall be answered by automated equipment. Additionally, based on community needs, Grantee shall staff telephones for supplemental hours on weekdays and/or weekends.
- (2) Under Normal Operating Conditions, telephone answer time by a Customer representative, including wait time, and the time required to transfer the call, shall not exceed thirty (30) seconds. If the call needs to be transferred, transfer time shall not exceed thirty (30) seconds. These standards shall be met no less than ninety percent (90%) of the time under Normal Operating Conditions, measured on an annual basis.

- (3) Under normal operating conditions, the customer shall receive a busy signal less than three percent (3%) of the total time that the Grantee's office is open for business.
  - (4) Grantee shall maintain a customer service office within the Lexington-Fayette Urban County capable of accepting payments, adjusting bills, and responding to other service concerns. The customer service office shall be open at least between 9:00 am and 7:00 pm Monday through Friday and 9:00 am and 4:00 pm on Saturday, excluding holidays. Grantee shall operate a call center that can set up installation appointments, resolve complaints and respond to technical service calls and/or technical service e-mails.
  - (5) Customers who are not satisfied after speaking with an initial customer service representative may ask to speak with a supervisor.
  - (6) Grantee shall permit customers to return cable equipment by U.S. mail, UPS or similar delivery method at the Grantee's expense and shall advise customers of this option when customers inquire about returning equipment.
- (b) Installations, Outages and Service Calls. Under normal operating conditions, each of the following four standards will be met no less than 95% of the time measured on an annual basis.
- (1) Standard installations shall be performed within seven business days after an order has been placed. "Standard installations" are up to 150 feet from the existing distribution system. Subscriber service representatives shall appropriately identify themselves with Grantee-issued picture identification and, upon request, means of verification, before entering the property.
  - (2) Excluding those situations beyond the control of the Grantee, the Grantee shall respond to service interruptions promptly and in no event later than 24 hours. Other service problems will be responded to within 36 hours during the normal work week.
  - (3) Subscribers experiencing service outages for which Grantee or its equipment is responsible shall be credited with one day's service for each day during which the subscriber experiences an outage of four or more hours upon request.
  - (4) The appointment window alternatives for installations, service calls, and other installation activities will be either a specific time or a maximum four-hour time block. Additionally, based on community needs, the Grantee shall schedule supplemental hours during which appointments can be set.
  - (5) If at any time an installer or technician is running late, an attempt to contact the customer shall be made. The appointment may be rescheduled as necessary at a time which is convenient for the customer.
  - (6) All service technicians and installers shall be appropriately trained.

- (c) Grantee shall comply with FCC customer service standards. In the event of an inconsistency between FCC customer service standards and the terms of this Franchise, the Franchise shall control.
- (d) Grantee shall designate an employee who shall serve as ombudsman whom the City may contact in order to resolve any outstanding customer service issues. Grantee shall provide to the City the email address and individual business telephone number for such employee.

#### Section 26. COMPLAINT PROCEDURE

- (a) Government Official Responsible. The Office of the Mayor is designated by the Government as having primary responsibility for the continuing administration of the franchise and implementation of complaint procedures.
- (b) Subscriber Notice of Complaint Procedures. The Grantee shall establish procedures for receiving, acting upon, and resolving Subscriber technical, customer service, Cable Service, and billing complaints. The Grantee shall furnish a notice of such procedures to each Subscriber at the time of initial subscription to the system as required by Federal regulations.
- (c) Complaint Records. The Grantee shall maintain a written record or "log", listing date and time of written customer technical, customer service, Cable Service, and billing complaints, describing the nature of the technical, customer service, Cable Service, and billing complaints and when and what action was taken by the Grantee in response thereto; such record shall be kept at Grantee's local office, for as long as business needs require (but for not less than two (2) years), and shall be available for inspection by the Government during Normal Business Hours. Nothing herein shall require Grantee to make available any personally identifiable information or other information which Grantee may not disclose under applicable law.
- (d) Repetition of Similar Complaints. When there have been similar complaints made, which, in the judgment of the Government cast doubt on the reliability or quality of Cable Service, the government shall have the right and authority to compel the Grantee to test, analyze and report on the performance of the system pursuant to the special testing procedures enumerated in Section 21 of this Ordinance.
- (e) Upon request from Subscriber, Grantee shall respond in writing regarding any resolution of Subscriber's complaint.

#### Section 27. BILLING PRACTICES

- (a) Each subscriber bill shall itemize the package of services, additional outlets, pay-per-view services, additional services, and clearly state the charge for each.
- (b) Each bill shall clearly state (1) the due date for payment; (2) the amount of late payment fees; and (3) a telephone number for billing inquiries.

- (c) Upon initial installation, and at least once annually, and at such times as there is a change in the information, each subscriber shall receive written notice of (1) all equipment and services available and the rates/charges for each, including but not limited to the Basic Cable Service rate; (2) billing and complaint procedures, including addresses and telephone numbers where Subscribers may make billing inquiries and/or complaints; (3) notice that complaints not satisfactorily handled by the Grantee may be referred to the Government (telephone number must be provided); (4) availability of parental lock-out devices; and (5) written instructions on how to use the cable service.
- (d) The Government and the subscribers are to be notified of rate changes or channel changes at least thirty (30) days in advance as required by applicable law.
- (e) Grantee shall not charge Subscribers for any services they have not affirmatively requested.
- (f) Upon request from Subscriber, Grantee shall confirm in writing regarding any agreements or bill modifications made over the phone.

#### Section 28. REFUNDS TO SUBSCRIBERS AND USERS

- (a) If the Grantee fails to provide service to a Subscriber, the Grantee shall, after being afforded a reasonable opportunity to provide the service, refund all deposits or advance charges paid for the service in question by said Subscriber promptly. This provision does not alter the Grantee's responsibility to Subscribers under any separate contractual agreements the Grantee might have with Subscribers or relieve the Grantee of liability for damage that might result to the Government or any Subscriber because of the Grantee's failure to provide a service as promised.
- (b) If any Subscriber terminates, for personal reasons, any monthly service prior to the end of a prepaid period, a pro-rata portion of any prepaid Subscriber service fee, using the number of days as a basis, shall be refunded to the Subscriber by the Grantee.

#### Section 29. FAILURE TO PROVIDE SERVICE AS PROMISED

Failure to provide the cable services outlined in this Ordinance shall be deemed a material breach of this ordinance for which the provisions of Section 34 shall apply.

#### Section 30. CABLE RATES AND RATE REGULATION

- (a) The Grantee shall provide a copy of its current rate schedule to the Government.
- (b) The Government reserves the right to regulate rates for cable services to the fullest extent permitted by law and in accordance with such law.
- (c) The Grantee shall provide information regarding its Basic Cable Service rate on its website.

Section 31. DISCONNECTION

- (a) No disconnection shall occur for at least thirty (30) days after the due date of said monthly fee or charge. The thirty (30) day period shall include ten (10) days written notice to the delinquent Subscriber of the intent to disconnect.
- (b) After disconnection, upon payment in full of the delinquent fee or charge and the payment of a reconnection charge, the Grantee shall promptly reinstate the Subscriber's Cable Service.

Section 32. PREFERENTIAL OR DISCRIMINATORY PRACTICES PROHIBITED:  
BILLING PRACTICES

- (a) The Grantee shall not, as to rates, charges, service, services facilities, rules, regulations, or in any other respect, make or grant any illegal preference or advantage to any party, nor subject any party to any illegal prejudice or disadvantage; provided, however, that this section shall not prohibit promotional activities of the Grantee or the provision of free service to employees of Grantee.
- (b) Unless otherwise provided in this franchise, Grantee shall not require payment for services more than ninety (90) days in advance.
- (c) The Grantee shall make Cable Services available to persons with disabilities as provided by applicable law. Grantee shall provide telecommunication devices for the deaf (TTY) and shall disseminate information on the cost and availability of closed captioning equipment for the hearing impaired and such other services to persons with disabilities as required by applicable law.

Section 33. TRANSFER OF CONTROL/ASSIGNMENT

- (a) No transfer of control or assignment shall take place, whether by forced or voluntary sale, lease, mortgage, assignment, encumbrance or any other form of disposition, without prior notice to and approval by the Council which shall not be unreasonably refused. The notice shall include full identifying particulars of the proposed transaction, and the council shall act by resolution. The Council shall have one hundred twenty (120) days within which to approve or disapprove a transfer of control or assignment, if no action is taken within such one hundred twenty (120) days; approval shall be deemed to have been given.
- (b) In making a determination on whether to grant an application for a transfer of control or an assignment, the Council may consider the financial, technical and other qualifications of the transferee (assignee) to operate the system; whether the incumbent cable operator is in compliance with this ordinance and, if not, the proposed transferee's (assignee's) commitment to cure such noncompliance and any other criteria allowed by applicable law.
- (c) The consent or approval of the Council to any assignment, lease, transfer, sub-lease, or

mortgage of the Grantee shall not constitute a waiver or release of the rights of the Government in and to the streets.

- (d) For the purposes of this section the term "control" is not limited to majority stock ownership, but includes actual working control in whatever manner exercised.
- (e) A rebuttable presumption that a transfer of control has occurred shall arise upon the acquisition or accumulation by any person or group of persons of fifty percent (50%) of the voting shares of the Grantee.
- (f) A mortgage or pledge of the cable system equipment of any part thereof or a leasing by a Grantee from another person of said cable system equipment or part thereof for financing purposes or otherwise shall be made only with prior approval of the Council and shall be subject and subordinate to the rights of the Government under this ordinance or applicable law. For purposes of this subsection, "cable system equipment" means equipment used exclusively for the provision of Cable Service within the jurisdiction of the Government that is also valued at or more than a cumulative \$100,000.00, and is not used to support Cable Systems outside of the jurisdiction of the Government.

#### Section 34. FORFEITURE OF FRANCHISE

- (a) Forfeiture. In addition to all other rights and powers pertaining to the Government by virtue of the franchise or otherwise, the Government, by and through its Council, reserves the right to terminate and cancel the franchise and all rights and privileges of the Grantee hereunder in the event that the Grantee:
  - (1) Violates any material provision of the franchise or any material rule, order, or determination of the Government made pursuant to the franchise, except where such violation is without fault or through excusable neglect;
  - (2) Attempts to evade any material provision of the franchise or practices any fraud or deceit upon the Government;
  - (3) Knowingly makes a material misrepresentation of any fact in the proposal for renewal, or negotiation of the franchise; or
  - (4) Willfully fails to restore Cable Service following ninety-six (96) or more consecutive hours of interrupted service, except when approval of such interruption is obtained from the Government.
- (b) Penalties. Penalties shall be recoverable from Grantee as follows:
  - (1) For failure to extend the system as required by Section 15: five hundred dollars (\$500.00) per day or part thereof that the violation continues.
  - (2) For failure to provide data and reports as required by Section 39: five hundred dollars (\$500.00) per day or part thereof that the violation continues;

- (3) For failure to provide insurance as required by Section 8: five hundred dollars (\$500.00) per day or part thereof that the violation continues;
- (4) For failure to provide a letter of credit as required by Section 9: five hundred dollars (\$500.00) per day or part thereof that the violation continues;
- (5) For failure to provide PEG access channel(s) as required by Section 17: five hundred dollars (\$500.00) per day or part thereof that the violation continues;
- (6) For failure to comply with the operational standards following the Council's resolution directing Grantee to make improvements pursuant to Section 24: five hundred dollars (\$500.00) per day or part thereof that the violation continues;
- (7) For failure to test, analyze, and report on the performance of the system following the reasonable request of the Government pursuant to Section 21 and 22: five hundred dollars (\$500.00) per day or part thereof that the violation continues;
- (8) Failure to meet the customer service standards of Section 25: five hundred dollars (\$500.00) per day or part thereof that the violation continues;
- (9) For failure to comply within thirty (30) days of any Council resolution directing compliance with any other provision of this ordinance: five hundred dollars (\$500.00) per day or part thereof that the violation continues.

(c) Forfeiture and Penalties Procedure.

- (1) Prior to terminating the Franchise under subsection (a) or imposing a penalty under subsection (b), the Government shall make a written demand that the Grantee comply with the provision of the Franchise or rule, order or determination made pursuant to the Franchise with which the Government believes Grantee is not in compliance and explain the basis for such belief. If the violation by the Grantee continues for a period of thirty (30) days following such written demand without written proof that the corrective action has been taken or is being actively and expeditiously pursued, the Government may place a request for termination of the franchise or imposition of penalties upon a regular Council meeting agenda. The Government shall cause to be served upon Grantee, at least thirty (30) days prior to the date of such Council meeting, a written notice of intent to request such termination or penalties and the time and place of the meeting, legal notice of which shall be published in a newspaper of general jurisdiction within the confines of the Lexington-Fayette Urban County.
- (2) The Council shall consider the request of the Government at an open meeting and shall hear any person interested therein, including Grantee and any persons produced by Grantee, and shall determine in its discretion, whether or not any violation by the Grantee was with just cause. Grantee shall be permitted to have a transcript of the meeting made at Grantee's cost.
- (3) If such violation by the Grantee is found to have been with just cause, the Council shall direct the Grantee to comply therewith within such time and manner and upon such terms and conditions as are just and reasonable.
- (4) If the Council determines such violation by the Grantee was without just cause, then the Council may, by resolution, declare that the franchise of the Grantee shall be terminated and forfeited as provided in subsection (a) or impose penalties as provided in subsection (b) unless, in either case, there is compliance by the Grantee within such period as the Council may fix which shall be not less than thirty (30) days.
- (d) Notwithstanding any other provisions of this Franchise, Grantee shall not be liable or subject to forfeiture, penalties or any other sanction for delay in performance of, or failure to perform, in whole or in part, its obligations pursuant to this Ordinance due to strike, unavailability of materials, or equipment, war or act of war (whether an actual declaration of war is made or not), insurrection, riot, civil disturbance, sabotage or vandalism, customer tampering or interference, act of public enemy, accident, fire, flood, or other events, to the extent that such causes or other events are beyond the control of the Grantee.
- (e) Grantee reserves all rights to seek review of any decision by the Council under this Section in an appropriate court.



(f) In the event of revocation, the Grantee shall have two years from the date on which it ceases operations to remove, at its own expense, all portions of its cable television system from all streets within the confines of the Lexington-Fayette Urban County, and shall restore said streets to a condition reasonably satisfactory to the Government within such period of time.

#### Section 35. FORECLOSURE

Upon the foreclosure or other judicial sale of all or a substantial part of the system, or upon the termination of any lease covering all or a substantial part of the system, the Grantee shall immediately notify the Government of such fact, and such notification shall be treated as a notification that a change in control of the Grantee has taken place, and the provisions of Section 33 of the ordinance, governing the consent of the Council to such change in control of the Grantee, shall apply.

#### Section 36. RECEIVERSHIP

The Council shall have the right to cancel this franchise one hundred and twenty (120) days after the appointment of a receiver, or trustee, to take over and conduct the business of the Grantee, whether in receivership, reorganization, bankruptcy, or other action or proceeding, unless such receivership or trusteeship shall have been vacated prior to the expiration of said one hundred and twenty (120) days, or unless:

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

#### Section 37. GOVERNMENT RIGHTS IN FRANCHISE

(a) In the event that the Council terminates this franchise pursuant to appropriate provisions of this ordinance, the Government shall have the right to purchase the any portions of the Cable System that are used exclusively for the provision of Cable Service ("Cable-Exclusive System") at a price not to exceed its then fair market value. In determining the fair market value of the system, the original cost of all tangible and intangible property, as well as the salvage value, the book value, the replacement cost, cash flow, and other factors may be considered. Under no circumstances shall any valuation be made for "goodwill" or any right or privilege granted by the franchise.

(b) Continuity of Service Mandatory. It shall be the right of all subscribers to receive all available services insofar as their financial and other obligations to the Grantee are honored. In the event that the Grantee elects to overbuild, rebuild, modify or sell the system, or the Council terminates this franchise, or the Council elects to purchase the

Cable-Exclusive System, the Grantee shall use reasonable commercial efforts to ensure that all Subscribers receive continuous, uninterrupted service. In the event of purchase by the Government or a change of Grantee, the current Grantee shall cooperate with the Government to operate the Cable-Exclusive System for a temporary period in maintaining continuity of service to all Subscribers.

- (c) The right is hereby reserved to the Government to adopt, in addition to the provisions contained herein and in existing applicable ordinances, such additional regulations as it shall find necessary in exercise of the police power; provided that such regulations, by ordinance or otherwise, shall be reasonable and not in conflict with the rights herein granted.
- (d) The Government shall have the right to make such inspections it shall find necessary to insure compliance with the terms of the franchise and other pertinent provisions of law.
- (e) The Government shall have the rights upon reasonable notice and during normal business hours, to inspect the books, records, maps, plans, and other like materials of the Grantee in order to evaluate Grantee's compliance with the terms of the Franchise.
- (f) At the expiration without right of renewal of the term for which the franchise is granted, or upon its termination and cancellation, as provided for herein, the Government shall have the right to require the Grantee to remove at its own expense all portions of the Cable-Exclusive System from all streets within the confines of the Lexington-Fayette Urban County.
- (g) In the event the Grantee fails to operate the cable television system for five (5) consecutive days without prior approval of the Government, except for strikes, acts of God, or other circumstances beyond the control of the Grantee, the Government, its agent or contractor, shall have the right to operate the portions of the Cable System that are also part of the Cable-Exclusive System until such time that the Grantee again operates the system or until a new operator is selected, in the event of revocation. If the Government is required to fulfill this obligation for the Grantee, the Grantee shall reimburse the Government for all costs or damages that are the result of the Grantee's failure to perform.

#### Section 38. VALUATION OF THE SYSTEM: MEDIATION

- (a) It is the intent of the Government to provide for the orderly resolution of any controversy or dispute between the Grantee and the Government arising out of the valuation of the Cable-Exclusive System in the event that the Government elects to purchase the system under Section 37(a) of this Ordinance.
- (b) Any mediation under this section shall not be the first resort to resolve the controversy or dispute between the Government and the Grantee, but shall be undertaken only after reasonable time and full effort to reach agreement by negotiation.
- (c) Any controversy or dispute regarding the valuation of the system under Section 37, upon

the election of either the Grantee or the Government, shall be submitted to non-binding mediation with a mediator selected by mutual agreement.

(d) The fee of the mediator selected shall be borne equally between the Grantee and the Government.

#### Section 39. REPORTS AND FILINGS

(a) Copies of all petitions, applications, and communications submitted by the Grantee to the Federal Communications Commission, Securities and Exchange Commission, or any other federal or state regulatory commission or agency having jurisdiction respect to any matters regarding cable television operations authorized pursuant to the franchise, shall be submitted to the Government upon thirty (30) days written request. In so requesting, the Government shall either permit Grantee to fulfill such request by either providing a single electronic copy or descriptions of Internet Uniform Resource Locators (URLs) where such documents can be readily found.

(b) If requested by the Government in writing, Grantee shall make provide to the Government within thirty (30) days of said request the following :

- (1) construction information indicating the number of homes passed and the number of cable plant miles constructed;
- (2) information indicating the number of calls received, number of calls abandoned, number of calls receiving a busy signal and, to the extent it is germane to franchise obligation, the number of customer service representatives in Lexington which handle local calls.
- (3) installation information indicating: the number of total standard installations performed; the number of standard installations performed within seven days; number of service interruptions responded to within 24 hours; number of other service problems reported; number of other service problems responded to within 36 hours, and all other information necessary to monitor the Grantee's compliance with the Subscriber protection standards of this Ordinance;
- (4) information indicating the number of Subscribers;
- (5) a current copy of the Subscriber service agreement; a current list of all rates, charges, and available services, and a current channel list;
- (6) a summary of the previous year's activities in the development of the system, including, but not limited to, services begun or dropped, the previous year's constructions activities, and a summary of any policy changes taking effect during the year;
- (7) a copy of all Grantee's published rules and regulations applicable to Subscribers and users of the Cable System; and a summary of the Grantee's hours of operation;

(8) subject to section 631 of the Communications Act, 47 U.S.C. § 551, a summary of written Subscriber or consumer complaints, identifying complaints by number and category, and their disposition; and, where complaints involve recurrent system problems, the nature of each problem and what steps have been taken to correct them;

(9) a copy of updated maps depicting the location of all trunks. Strand maps shall be furnished. As-built maps may be viewed at Grantee's office without copying or note-taking. Proprietary maps, shall be afforded confidentiality protection pursuant to state law;

(10) a listing of Grantee's closings or holidays for the year;

(11) a list of all persons owning or controlling five percent (5%) or more of the stock, partnership shares or assets of the Grantee and a list of any parent corporation, parent entity, or holding company that owns the Grantee or by ownership of other entities controls the Grantee; and

(12) if the Grantee is a corporation, a list of officers and members of the board, a copy of the Grantee's report to its shareholders (if it prepared such a report), a list of the board members of any parent corporation; and where a parent corporation's stock is publicly traded, that corporation's annual report.

(c) If at any time the Grantee is subject to a Franchise Fee, within three (3) months of the close of its fiscal year, the Grantee shall submit an annual report to the Office of the Mayor that includes the following information:

A gross revenue report on all gross revenue (as defined herein) from operations of the Grantee within the franchised area, prepared by a qualified financial officer [in accordance with the provisions of the Codification of Statements on Auditing Standards promulgated by the American Institute of Certified Public Accountants,] and including: a schedule of gross revenue by category by quarter; a schedule of the number of subscribers by category of service by quarter; and a schedule of gross revenue by revenue category by quarter upon which the quarterly license fee is computed and a list of the payments to the Government for the license term.

(d) Within three (3) months of the close of its fiscal year, the Grantee shall submit an annual report to the Office of the Mayor that provides the number of Cable Service subscribers by quarter by category of service provided as well as the number of dwelling units to which the Grantee is technically capable of providing Cable Service. To the extent that the Grantee is subject to a Franchise Fee, this information may be included in the report described in Section 39(c) rather than being filed as a separate report.

Section 40. FRANCHISE RENEWAL

The franchise granted under this Ordinance may be renewed under the authority of 47 U.S.C. § 546 as it may be amended.

Section 41. RIGHTS OF INDIVIDUALS

- (a) 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, or sex. Grantee shall comply at all times with all other applicable federal, state and local laws, and all executive and administrative orders relating to nondiscrimination. Grantee shall not deny service, deny access, or otherwise discriminate against persons owning or renting apartment units.
- (b) The Grantee shall comply with all applicable nondiscrimination and affirmative action requirements of any laws, regulations and executive directives of the United States, the Commonwealth of Kentucky, and the Government.
- (c) The Grantee shall not discriminate in its employment practices against any employee or Applicant for employment because of race, color, religion, national origin, ancestry, sex, age or physical handicap. The Grantee shall take affirmative action to ensure that employees are treated, during employment, without regard to their age, sex, race, color, national origin, ancestry, or physical handicap. This condition includes, but is not limited to the following: recruitment advertising, employment interviews, employment rates of pay, upgrading, transfer, demotion, layoff, and termination.
- (d) The Grantee shall submit to the Government, upon request, a copy of the Grantee's EEO submissions required to be filed with the FCC.
- (e) Grantee shall comply with all privacy laws of the state or federal government. Grantee shall strictly observe the privacy and property rights of Subscribers. The Subscriber's rights of privacy shall be protected at all times by the Grantee in accordance with applicable law.

Section 42. SUPERVISION OF THE FRANCHISE

- (a) The Mayor (or his/her designee), with the approval of the Council, shall serve as Cable Communications Officer.
- (b) Notwithstanding other provisions of this Ordinance, the Cable Communications Officer shall have the following duties and responsibilities to supervise the provisions of this Ordinance:
  - (1) Serve as liaison between the Government and the Grantee;
  - (2) Monitor Grantee's adherence to construction and installation schedule and line extension policy;

- (3) Assure compliance of applicable laws and Ordinances;
- (4) Monitor operation standards as contained in this Ordinance;
- (5) At the Council's direction, arrange tests and analysis of equipment and performance;
- (6) Monitor road and traffic disruptions for construction and repair purposes;
- (7) Assure continuity in service;
- (8) Receive biannually, examine and recommend action on the logs of written citizen complaints;
- (9) Assist in evaluating uses of access channels,
- (10) Receive for examination all data and reports required by this Ordinance; and
- (11) Perform tasks as specified by the Council.

Section 43. GOVERNMENT'S RIGHT OF INTERVENTION

The Grantee agrees not to oppose intervention by the Government in any suit or proceeding arising out of the Grantee's performance hereunder.

Section 44. FURTHER AGREEMENT AND WAIVER BY GRANTEE

- (a) The Grantee agrees to abide by all provisions of the franchise, and further agrees that it will not at any future time set up as against the Government a claim that the provisions of the franchise were unreasonable, arbitrary, or void on the effective date of the franchise except for subsequent changes in state or federal law which may render provisions unenforceable.
- (b) In any court proceeding involving any claim by Grantee against the Government or any official, member, employee, or agent of the Government arising from the regulation of cable service or from a decision of approval or disapproval with respect to a grant, renewal, transfer, or amendment of a franchise, any relief, to the extent such relief is required by any other provision of Federal, State, or local law, shall be limited to injunctive relief and declaratory relief.
- (c) Grantee, by acceptance of this franchise, acknowledges that it has not been induced to enter into this franchise by any understanding or promise or other statement, whether verbal or written, by or on behalf of the Government or by any third person concerning any terms and conditions not expressed in this Ordinance.
- (d) Grantee, in conducting the operation or work to be performed pursuant to this Ordinance is not an agent of the Government.
- (e) The Government, through its Council, Mayor, Cable Communications Officer, or other employee designated in writing by the Mayor, may, at all reasonable times, have access as reasonably necessary to the administration of this franchise to all or any of the property owned or used in part or in whole by the Grantee in its operating and maintaining the cable television system under this franchise. In like manner, the Council or its above-mentioned officers, agents or employees, may at all reasonable times enter in or upon said property to inspect or examine it, and may inspect, examine or verify all or any of the accounts, books, records, contracts, documents or papers of the Grantee reasonably necessary to the administration of this franchise.

Section 45. LAW GOVERNS

In any controversy or dispute under this Ordinance, federal law and the law of the Commonwealth of Kentucky, if not conflicting, shall apply.

Section 46. SEVERABILITY

If any section, sentence, clause or phrase of this Ordinance is held unconstitutional or otherwise invalid, such infirmity shall not affect the validity of the remainder of the Ordinance.

Section 47. TIME IS OF THE ESSENCE

Whenever this Ordinance sets forth any time for any act to be performed by or on the behalf of the Grantee, such time shall be deemed of the essence and the Grantee's failure to perform

within the allotted time shall, in all cases, be sufficient grounds for the Government to invoke the remedies available under the terms and conditions of this Ordinance.

Section 48. CONFIDENTIALITY

To the extent permitted by applicable law, the Government shall maintain confidentiality of information provided by the Grantee when Grantee has designated such information as proprietary.

Section 49. EFFECTIVE DATE

This Ordinance shall become effective on the date of its passage.

PASSED LEXINGTON-FAYETTE URBAN COUNTY COUNCIL: September 10, 2015

/s/ Jim Gray  
MAYOR

ATTESTED:

/s/ Martha Allen  
CLERK OF URBAN COUNTY COUNCIL

PUBLISHED: September 17, 2015-1t



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September 25, 2015

**BY OVERNIGHT COURIER**

Lexington-Fayette Urban County Government  
Attention: Division of Central Purchasing  
200 E. Main Street – Room 338  
Lexington, KY 40507

*RE: Response to Lexington-Fayette Urban County Government Invitation to Bid 135-2015*

Dear Sirs/Mesdames:

Windstream Kentucky East, LLC (“Windstream”) hereby expresses its intent to submit a bid in response to Invitation to Bid No. 135-2015 and also states that it is willing to comply with the terms of Ordinance No. 98-2015. Upon availability of application materials, Windstream expects to submit such bid as soon as possible.

Please contact me if you have any questions regarding this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'Edward B. Krachmer', written over a horizontal line.

Edward B. Krachmer  
Senior Regulatory Counsel

# **LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT APPLICATION FOR NEW CABLE TELEVISION FRANCHISE**

## **A. General Information Regarding the Application Process**

1. All applications received by the Lexington-Fayette Urban County Government ("LFUCG") from any applicant for new cable television franchises ("Applicant") will become the sole property of the LFUCG. The LFUCG reserves the right to reject any and all applications and waive informalities, and/or technicalities where the best interest of the LFUCG may be served.
2. All questions regarding the meaning or intent of the application documents shall be submitted to the LFUCG in writing. Replies will be mailed or delivered to all parties recorded by the LFUCG as having received the application documents. The LFUCG reserves the right to make extensions of time for receiving applications as it deems necessary. Questions received less than fourteen (14) days prior to the date for the opening of applications will not be answered.
3. Applications may be modified at any time prior to the opening of the applications, provided that any modifications must be duly executed in the manner that the Applicant's application must be executed.
4. All Applicants that are granted cable television franchises shall be required to obtain and maintain any necessary and lawful permit, license certification, grant, registration or any other authorization required by any appropriate governmental entity
5. Before submitting its application, each Applicant must (i) examine the Cable Television Franchise Ordinance ("Ordinance") and the application documents thoroughly, (ii) familiarize itself with local conditions that may in any manner affect performance under the franchise, and (iii) familiarize itself with federal, state and local laws, ordinances, rules and regulations affecting performance under a cable television franchise.
6. The LFUCG may make such investigations as it deems necessary to determine the ability of the Applicant to perform under the franchise, and the LFUCG reserves the right to require such supplementary, additional or other information that it deems necessary. The LFUCG reserves the right to reject any application if the evidence submitted by, or investigation of, such Applicant fails to satisfy the LFUCG that such Applicant is properly qualified to carry out the obligations of a cable television franchise and to complete the work contemplated therein. Conditional applications will not be accepted.
7. Information submitted on applications is a public record under the Kentucky Open Records Act, Sections 61.870, et. seq. of the Kentucky Revised Statutes. Under that law, certain kinds of proprietary and trade information are exempt from disclosure. Should an

Applicant believe that any information required to be submitted involves confidential proprietary or trade information, the Applicant should contact LFUCG before the application is filed and request a determination as to whether the information is covered by the exemption. If no such request is made prior to the filing of the application, the Applicant will be deemed to have waived any entitlement to confidentiality under the Open Records Act.

**B. Applicant Information**

Applicant Name: Windstream Kentucky East, LLC

Applicant Address: 4001 Rodney Parham Rd., Little Rock, AR 72212

E-Mail Address: edward.krachmer@windstream.com

Phone Number: (501) 748-5777

Fax Number: (330) 486-3696

**C. Local Representative Information**

Name: Brian Harman, DVP – Field Operations

Address: 130 W. New Circle Rd., Lexington. KY 40505

E-Mail Address: brian.harman@windstream.com

Phone Number: (859) 357-6101

Fax Number: (859) 357-6163

**D. Emergency Contact Information**

Name: Brian Harman, DVP – Field Operations

Address: 130 W. New Circle Rd., Lexington. KY 40505

E-Mail Address: brian.harman@windstream.com

Phone Number: (859) 357-6101

Fax Number: (859) 357-6163

**E. Description of Proposed System Design**

The Applicant must submit a technical description of the type of system proposed by the Applicant and the Applicant's plan for the installation and construction of the system. The technical description shall include the following details and be submitted and approved by the LFUCG before construction:

1. Justification of the site selected, including:
  - a. listing of television stations carried on the system
  - b. location of microwave terminals or headend
  - c. location of local origination centers
  - d. location of antenna site
  - e. distance from antenna site to farthest area served by the system
  - f. height of tower
  - g. height of antenna site in relation to average terrain
  - h. accessibility of antenna site all year round
  - i. local construction restrictions on tower
  - j. power availability for antenna site
  - k. location of antenna arrays on the tower
  - l. direction of desired signal sources
  - m. analysis of potential sources of interference in the nearby environment.
2. System information, including:
  - a. statement of adherence to construction standards
  - b. drawings of the system
  - c. description of local origination equipment
  - d. identification of trunk and feeder cables

**Windstream Response:** Windstream proposes to operate what is known as an Internet protocol television system, otherwise known as "IPTV." Such a system would use the broadband distribution network that it has already deployed pursuant to its Franchise Agreement (and successor agreements) with the LFUCG ("Telecom Franchise").<sup>1</sup> Any further upgrades to or expansion of such network would be conducted pursuant to the Telecom Franchise, as described in Sections 12(i) and 14(g) of Ordinance No. 98-2015 (the "Ordinance") as Windstream does not anticipate that there will be any distribution facilities that will be used solely for the provision of Cable Service, as described in such sections of the Ordinance.

Lexington would be the second market in which Windstream has launched such a Cable System (as such term is defined in Section 1(d) of the Ordinance, having launched such service in Lincoln, Nebraska in April of this year, with other markets anticipated in coming years. For multiple reasons, including its relatively-central location and proximity to national distribution facilities, Windstream selected Lexington as the location of its national head end that receives national programming for distribution by interstate fiber connections to

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<sup>1</sup> Adopted pursuant to Resolution 686-2014. Windstream is what is known as the "incumbent local exchange carrier" in the LFUCG jurisdiction and, pursuant to federal and state law, and therefore expects to continue operating a "telecommunications system" in such area for the indefinite future.

local head ends in markets outside of Kentucky. Windstream has constructed satellite dishes at 679 Wilson Downing Rd. Lexington, KY 40517. Such signals are routed to Windstream's head end at 151 N. Martin Luther King Blvd., Lexington, KY 40507, via pre-existing dedicated telecommunications circuits established through the Telecom Franchise. Windstream will receive over-the-air broadcast signals via antennas on the rooftop of its headend as described below.

Windstream's cable system in Lexington would use the same platform and end user equipment as has been successfully used by Windstream in Lincoln and has been successfully used by AT&T (U-verse) and CenturyLink (Prism), as well as other telecommunications carriers, for several years. Windstream's vendors, Ericsson and Alcatel-Lucent, are well-established companies with strong reputations for reliability.

1. *Justification of the site selected, including:*

a. *Listing of television stations carried on the system.*

Windstream expects to carry the following local broadcast stations on its Cable System: WDKY, WKLE, WKYT, WLEX, WLJC, WTVQ, and WUPX.

b. *Location of microwave terminals or head end.*

Windstream's head end will be located at 151 N. Martin Luther King Blvd., Lexington, KY 40507. This site, which is a Windstream facility, was selected due to available space and power, as well as proximity to broadband transmission facilities.

c. *Location of local origination centers.*

Windstream does not expect to be operating any local origination centers of its own.

d. *Location of antenna site.*

Windstream will have multiple antennas located on the roof of 200 E. Main St., Lexington, KY 40503. This site, which is a Windstream facility, was selected due to its proximity to the head end as well as its rooftop elevation.

e. *Distance from antenna site to farthest area served by the system.*

Windstream estimates that upon launch, its Cable System will be able to serve locations approximately 5.2 miles from its antenna

site and, ultimately to the extent that its Cable System extends to the furthest border of Lafayette County, approximately 6.0 miles.

*f. Height of tower.*

Windstream proposes to use two masts, each ten feet tall. One mast will have two antennas, the other mast will have one antenna. Windstream notes that the roofline will cover three feet of such antennas, making them seven feet tall above the roofline.

*g. Height of antenna site in relation to average terrain.*

Approximately -384 feet for antennas mounted at the top of the masts.

*h. Accessibility of antenna site all year round.*

Windstream expects that the antenna site will be accessible all year.

*i. Local construction restrictions on tower.*

Windstream is unaware of any local construction restricts that would prevent construction and operation of the two antenna masts as described herein.

*j. Power availability for antenna site.*

The antennas will be passively-powered through their connections to equipment located inside the building.

*k. Location of antenna arrays on the tower.*

The mast with two antennas will have an antenna at ten feet (top of the mast – ten feet up the mast/seven feet above roofline) and the other antenna at 6.5 feet (3.5 feet above roofline). The mast with one antenna will have its antenna at the top of the mast – ten feet up the mast/seven feet above the roofline.

*l. Direction of desired signal sources.*

All bearings are from due north and are approximate:

WKYT: 95°  
WTVQ: 97°  
WLEX: 97-98°

WUPX: 101°  
WKLE: 138°  
WDKY: 139°  
WLJC: 123°

*m. Analysis of potential sources of interference in the nearby environment.*

Windstream has determined that its antennas will be able to receive more than an adequate signal given local sources of interference. To the extent that this is not the case, Windstream will arrange for wireline-based alternative means of obtaining such signals.

*2. System information, including:*

*a. Statement of adherence to construction standards.*

Windstream will adhere to all applicable construction standards.

*b. Drawings of the system.*

Please see Confidential Exhibit A, attached hereto under seal.

*c. Description of local origination equipment.*

Because Windstream does not expect to operate any local origination centers of its own, Windstream has no local origination equipment to describe.

*d. Identification of trunk and feeder cables.*

Please see Confidential Exhibit A, attached hereto under seal.

**F. Description of All Types of Service Proposed**

**Windstream Response:** Windstream proposes to provide Cable Service (as such term is defined in Section 1(c) of the Ordinance) technically capable of delivering customers' choice of well over 140 channels of digital programming, many of which would be available in high definition format. This would include PEG channels as described in Section 17 of the Ordinance, as well as the local broadcast channels described in D(1)(a), above, and a variety of music channels. The Cable System would be two-way activated, support interactive cable services, and would be designed for optimum reliability and flexibility. Windstream expects to offer its Cable Service in tiers of channels with options to add premium channels, as well as to view video-on-demand. A single Digital Video Recorder (DVR) and set-top boxes would be required to view Windstream's Cable Service. Windstream will such equipment to customers.

## G. Disclosure of Financial Information & Ownership of the Applicant

1. Applicant, including shareholders and parties with a controlling interest in the Applicant, shall provide access to all agreements and understandings, with any person, firm, group, association or corporation with respect to the ownership of this franchise and the proposed Cable System. This shall include, but not be limited to, any agreements between local Applicant and national companies with respect to the ownership of this franchise.

**Windstream Response:** Neither Windstream, nor its shareholders and parties with a controlling interest in Windstream (or subsidiaries thereof), have any agreements or understandings relating to ownership of the franchise and the proposed Cable System.

2. Applicant, including shareholders and parties with a controlling interest in the Applicant, shall submit all requested information as provided by the terms of the Ordinance or the application documents. The requested information must be complete and verified as true by the Applicant.

**Windstream Response:** Windstream agrees to comply with this obligation and has done so with respect to this Application.

3. Applicant, including parties with a controlling interest in the Applicant, shall provide access to public information with respect to the numbers of shares of stock, and the holders thereof.

**Windstream Response:** Windstream Kentucky East, LLC is a wholly-owned direct subsidiary of Windstream Services, LLC, which is a wholly-owned direct subsidiary of Windstream Holdings, Inc., a publicly-traded company (NASDAQ:WIN). No entity or person owns ten percent or more of Windstream Holdings, Inc. To the extent that the LFUCG desires further information about the holders of stock in Windstream Holdings, Inc., Windstream will comply with such request to the extent that it is able.

4. Applicant, including shareholders and parties with a controlling interest in the Applicant, shall disclose any information required by the application documents regarding other Cable Systems in which they hold an interest of any nature, including, but not limited to the following:
  - a. locations of all other franchises and the dates of award for each location;
  - b. estimated construction costs and estimated completion dates for each system where construction is incomplete as of the date of application;
  - c. estimated number of miles of construction and number of miles completed in each system as of the date of this application; and



- d. the date for completion of construction as promised in the application for each system.

**Windstream Response:** Windstream Kentucky East, LLC does not operate any other Cable Systems. Subsidiaries of Windstream Services, LLC do, however, operate Cable Systems. Construction of all of these Cable Systems with the possible exception of the Windstream Nebraska, Inc. (“Windstream Nebraska”) system in Lincoln (discussed below), has been complete for several years. Because Windstream has no further construction commitments regarding such systems (virtually all of which were constructed by predecessors in interest), details about past (completed) construction would not be pertinent to Windstream’s financial qualifications and Windstream therefore respectfully requests that the LFUCG, pursuant to Section 3(b) of the Ordinance, waive the requirement to provide information requested in this subsection regarding such systems.

With regard to the Windstream Nebraska Cable System (franchise agreement fully executed January 8, 2015), as discussed above, such system is identical in nature to the Cable System proposed herein in that Cable Service is delivered over pre-existing broadband transmission facilities. Increasing the delivery capabilities generally entails facility upgrades, not construction of “miles” of system. Further, Windstream’s obligations to expand its coverage beyond that as of the date of this Application are conditioned on the commercial viability of such upgrades, which, by definition require sufficient cash flows to fund the projects. In light of this, there is no way to determine the amount of further construction that will be necessary, to whatever extent such facility upgrades could be considered construction. In light of these considerations, Windstream respectfully requests that the LFUCG, pursuant to Section 3(b) of the Ordinance, waive the requirement to provide further information requested in this subsection regarding the Windstream Nebraska Cable System.

Windstream will provide further information requested by the LFUCG with regard to this subsection, as well as all other sections and subsections.

5. Applicant, including shareholders and parties with a controlling interest in the Applicant, shall disclose any information required by the application documents regarding pending applications for other Cable Systems, including but not limited to the following:
  - a. location of other franchise applications and date of application for each system;
  - b. estimated dates of franchise awards; and
  - c. estimated number of miles of construction; and estimated construction costs.

**Windstream Response:** Neither Windstream nor any of its shareholders or parties with a controlling interest in Windstream (or subsidiaries thereof) have any other pending requests for franchises to provide Cable Service.

**H. Additional Requirements - Please submit the following:**

1. Copy of all required insurance policies and certificates with a signed statement from LFUCG's Insurance and Risk Coordinator that such policies and certificates are acceptable to LFUCG.

**Windstream Response:** Please see Exhibit B, attached hereto. Windstream notes that both the Commercial General Liability and Umbrella Coverages provide, among other things, explosion, collapse, and underground coverage. LFUCG staff has indicated that such certificate is sufficient as a demonstration of Windstream's coverages. In light of this, Windstream respectfully requests that the LFUCG waive the requirement to provide actual copies of policies and obtain written approval from the LFUCG's Insurance and Risk Coordinator.

2. Supplementary, additional or other information that the Applicant deems reasonable for consideration.

**Windstream Response:** If Windstream's bid is accepted, Windstream also proposes to undertake the following:

- a. Establish a program to provide affordable broadband Internet access service to low income residents. This program would provide a monthly billing credit sufficient to reduce the price of stand-alone 3 mbps (download) to \$15.00 per month and would be available to all residents who meet the FCC's eligibility requirements for the Lifeline program (although such program currently does not pertain to broadband Internet access).
- b. Provide sufficient lit transport capacity for the carriage of one channel of HD video and audio signal for use by GTV3 between the GTV3 studio and the following locations within one year of the date on which Windstream's bid is accepted unless otherwise noted below:

Cheapside Park Pavilion (251 W. Main St.)  
Embassy Suites Lexington (1801 Newton Pike)  
Fire Training Center on Old Frankfort Pike (1375 Old Frankfort Pk.)  
Hilton Lexington/Downtown Ballroom (369 W. Vine St.)  
Hyatt Regency Lexington Patterson Ballroom (401 W. High St.)

Lexington Center Bluegrass Ballroom (430 W. Vine St.)  
Robert F. Stephens Courthouse Plaza (120-150 N.  
Limestone)  
21C Hotel Ballroom (167 W. Main St.)\*  
Centrepont Hotel Ballroom (100 W. Main St.)\*

\* Within six months year of receiving written notice that such facility has opened for business or one year of the date on which Windstream's bid is accepted, whichever is later.

- c. Windstream will provide 100 courtesy service installations at locations of the LFUCG's choice for ten years to City-owned property (each with a DVR and up to two set-top boxes for a total of 300 possible viewing connections). Such DVRs and set-top boxes shall be provided at no cost to the LFUCG. Requested service locations must be otherwise technically eligible to receive Windstream's service. Service at requested locations that are technically eligible to receive service will be installed free of charge, with no non-recurring charges. Upon receiving a request for such service, Windstream will install such service within fifteen days (additional time requested due to potential complexities of provisioning service in large business buildings) of request (or the date on which Windstream's bid is accepted, whichever is later), but, under no circumstances, will be obligated to make more than 20 installations in one month. Windstream may specify a designated contact for the LFUCG's ordering of service. To the extent that the LFUCG requests the relocation of an installation, LFUCG shall bear Windstream's customary charge for such service relocation. Courtesy service will be at the lowest tier of service. To the extent that the LFUCG desires higher tiers of service, full retail non-equipment rates (not merely the incremental price of the higher tier) will apply, although the locations at which LFUCG desires such service shall nevertheless count toward Windstream's 100-courtesy installation commitment.
- d. Windstream will connect its headend to GTV3 by a fiber link and, to the extent that GTV3 moves, will expend up to \$10,000.00 to deploy fiber and install necessary electronics to GTV3's new location.
- e. To the extent that 85% of Windstream's non-on-demand video programming channels (excludes music channels) are offered in HD, Windstream will carry GTV3 in HD, although Windstream will not bear the cost of any required upconverter.

f. Windstream will assist GTV3 in establishing a relationship with Windstream's on-screen programming guide vendor, although Windstream will not bear any costs that GTV3 incurs with regard to such relationship.

g. Once Windstream begins selling its own local advertising, Windstream will provide 25 PSAs per month for GTV3 and the LFUCG on a schedule to be determined by Windstream, which shall be reasonably varied by day of week and time of day.

h. Windstream will bear share of the cost of providing a public access studio that shall not exceed a reasonable determination of Windstream's share of the wireline video market.

i. Although Windstream intends to carry GTV3 on channel 3 and has no plans to ever change such channel position, to the extent that Windstream does, Windstream will reimburse GTV3 for up to \$20,000.00 of rebranding costs.

j. Windstream shall make a lump-sum payment of \$56,000.00 to the LFUCG within 60 days of acceptance of Windstream's bid and a \$6,000.00 payment within 60 days of the anniversary of the acceptance of such bid for the following nine years.

k. Windstream will bear the cost of publication of the bid ordinance up to an amount of \$1,000.00.

Windstream also emphasizes that this Application is for an initial franchise to provide Cable Service. In this regard, Windstream submits this Application under the first sentence of Section 6 of the Ordinance, despite an initial use of the term "renewal franchise," applies equally to initial franchises, such as that for which Windstream is applying.

(Application continues on the following page)

**I. CERTIFICATION REQUIRED**

Applicant hereby certifies that the information provided by the Applicant is true and correct and that the person signing on behalf of the applicant is authorized to do so. Applicant further acknowledges and certifies that is shall be responsible to certify to LFUCG any material changes to the information provided in the completed application during the term of any cable television franchise. Additionally, the Applicant agrees to be bound by all provisions of the Ordinance and agrees to obtain all permits and authorizations prior to constructing, installing or operating a cable television system.

Complete Legal Name of Applicant: Windstream Kentucky East, LLC

By: Sarah Taylor

Title: Interim President – Consumer & SMB

Date: September 29, 2015

## **Exhibit B**



# CERTIFICATE OF LIABILITY INSURANCE

7/17/2016

DATE (MM/DD/YYYY)  
9/16/2015

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Lockton Companies  
444 W. 47th Street, Suite 900  
Kansas City, MO 64112-1906  
(816) 960-9000

CONTACT NAME:  
PHONE (A/C, No., Ext):  
FAX (A/C, No.):  
ADDRESS:  
INSURER(S) AFFORDING COVERAGE NAIC #

INSURER A:	ACE AMERICAN INSURANCE COMPANY	42757
INSURER B:	Agri General Insurance Company	20699
INSURER C:	ACE Property & Casualty Insurance Co	20702
INSURER D:	ACE Fire Underwriters Insurance Company	43575
INSURER E:	Indemnity Insurance Co of North America	
INSURER F:		

COVERAGES WINC007 CERTIFICATE NUMBER: 13670200 REVISION NUMBER: XXXXXXXX

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDITIONAL INSURED	INSURANCE	WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	COMMERCIAL GENERAL LIABILITY CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR 2MIL AGG PER LOC 2MIL AGG PER PROJECT GEN'L AGGREGATE LIMIT APPLIES PER: POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:	Y	N		HDOG27394255	7/17/2015	7/17/2016	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea. occurrence) \$ 100,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 2,000,000 GENERAL AGGREGATE \$ 10,000,000 PRODUCTS - COM/OP AGG \$ 2,000,000
A	AUTOMOBILE LIABILITY ANY AUTO ALL OWNED AUTOS SCHEDULED AUTOS NON-OWNED AUTOS HIRED AUTOS	Y	N		ISAH08857635	7/17/2015	7/17/2016	COMBINED SINGLE LIMIT (Ea. accident) \$ 4,000,000 BODILY INJURY (Per person) \$ XXXXXXXXXX BODILY INJURY (Per accident) \$ XXXXXXXXXX PROPERTY DAMAGE (Per accident) \$ XXXXXXXXXX
C	UMBRELLA LIAB EXCESS LIAB DED <input type="checkbox"/> RETENTION \$	Y	N		XOOG27836045	7/17/2015	7/17/2016	EACH OCCURRENCE \$ 5,000,000 AGGREGATE \$ 5,000,000
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y	N/A		WLRC48152077(AZ,CA,MA) WLRC48152089(TN) SCFC48152107(WI) WLRC48152065 (AOS)	7/17/2015 7/17/2015 7/17/2015	7/17/2016 7/17/2016 7/17/2016	E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)  
LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT CABLE TELEVISION FRANCHISE AGREEMENT WITH WINDSTREAM KENTUCKY EAST, LLC. WINDSTREAM KENTUCKY EAST, LLC IS A NAMED INSURED UNDER ALL WINDSTREAM POLICIES. LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT, ITS ELECTED AND APPOINTED OFFICIALS, EMPLOYEES, AND, TO THE EXTENT THEY HAVE AN INSURABLE INTEREST, ITS AGENTS, BOARDS, CONSULTANTS, ASSIGNS, VOLUNTEERS AND SUCCESSORS IN INTEREST ARE ADDITIONAL INSUREDS FOR GENERAL, AUTO AND UMBRELLA IF REQUIRED BY WRITTEN CONTRACT, SUBJECT TO POLICY TERMS, CONDITIONS, EXCLUSIONS AND LIMITATIONS.

<b>CERTIFICATE HOLDER</b>		<b>CANCELLATION</b>	
13670200 LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT 200 EAST MAIN STREET LEXINGTON KY 40507		SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.	
AUTHORIZED REPRESENTATIVE <i>Jays M Amelle</i>			

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GENERAL LIABILITY COVERAGE IS PRIMARY, NON-CONTRIBUTORY. SUBROGATION IS WAIVED, IF REQUIRED BY WRITTEN CONTRACT, AS ALLOWED BY LAW.



RESOLUTION 616 -2015

A RESOLUTION ACCEPTING THE BID OF WINDSTREAM KENTUCKY EAST LLC, IN ACCORDANCE WITH THE PROVISIONS OF ORDINANCE NO. 98-2015, CREATING AND OFFERING FOR SALE A TEN (10) YEAR FRANCHISE FOR THE OPERATION OF A NON-EXCLUSIVE CABLE TELEVISION SYSTEM IN FAYETTE COUNTY, AND AUTHORIZING THE MAYOR, ON BEHALF OF THE URBAN COUNTY GOVERNMENT, TO EXECUTE A FRANCHISE AGREEMENT WITH WINDSTREAM KENTUCKY EAST LLC, INCORPORATING THE TERMS AND CONDITIONS OF ORDINANCE NO. 98-2015.

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**WHEREAS**, by Ordinance No. 98-2015 adopted September 10, 2015, the Lexington-Fayette Urban County Government ("Lexington") created a ten (10) year, non-exclusive franchise for a cable television system within the confines of Lexington; and

**WHEREAS**, by Invitation to Bid 135-2015, Lexington offered at bid a non-exclusive cable television franchise pursuant to Ordinance No. 98-2015; and

**WHEREAS**, after publication of said advertisement on September 21, 2015, Lexington received a bid from Windstream Kentucky East, LLC.

NOW, THEREFORE, BE IT RESOLVED BY THE LEXINGTON-FAYETTE URBAN COUNTY COUNCIL AS FOLLOWS:

Section 1 - That a ten (10) year, non-exclusive cable television franchise created by Ordinance No. 98-2015 be, and it hereby is, awarded to Windstream Kentucky East, LLC.

Section 2 - All prior ordinances, or resolutions, or parts thereof in conflict herewith, are to the extent of such conflict, hereby repealed.

Section 3 - That the Mayor is hereby authorized to sign the Franchise Agreement which memorializes the award by Lexington to Windstream Kentucky East, LLC of said franchise subject to the terms and conditions reflected in Ordinance No. 98-2015 and this Resolution.

Section 4 - That the statements set forth in the Preamble to this Resolution are hereby incorporated in this Resolution by reference, the same as if set forth at length herein.

