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March 1, 2011

Ms. Marlene Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

**Re: Petitions for Declaratory Ruling Regarding Public, Educational, and
Governmental (“PEG”) Access Channels, MB Docket No. 09-13, CSR-8126**

Dear Ms. Dortch:

On February 25, 2011, on behalf of the City of Macon, Georgia, and the Alliance for Community Media (the “Alliance”), the undersigned, together with Macon City Councilman Tom Ellington and the Alliance’s Executive Director, Sylvia Strobel, met with the following FCC Legal Advisors:

- Marilyn Sonn, Legal Advisor to Chairman Genachowski;
- Joshua Cinelli, Legal Advisor to Commissioner Copps;
- Rosemary Harold, Legal Advisor to Commissioner McDowell; and
- Jennifer Tatel, Legal Advisor to Commissioner Baker.

We also met with the following professionals in the Media Bureau:

- Mary Beth Murphy
- Holly Sauer
- John Norton
- John Gabrysch
- Alison Neplokh and
- Michelle Carey.

The purpose of our meetings was to discuss the City of Macon’s support of the Alliance’s Petition for Declaratory Ruling in the above-captioned proceeding, and to outline the impact on community media the Commission’s failure to act has had. Special focus was given to the challenges being experienced in Macon, Georgia. The elements of the presentation were reduced

to writing in the attached comments by the City of Macon. (Other than the chart outlining the FCC's delay in addressing the Alliance's Petition, neither the comments, nor any of its attachments, were distributed at the meetings.) The comments are being filed in the docket, and attached hereto for other parties' review.

Pursuant to Section 1.1206 of the Commission's rules, a copy of this letter is being filed via ECFS with your office and this letter and enclosure are being emailed to each of the named professionals above as well as Dave Grimaldi, Legal Advisor to Commissioner Clyburn.

Please do not hesitate to contact the undersigned with any questions.

Very truly yours,

MILLER & VAN EATON, P.L.L.C.

By



Gerard L. Lederer

cc by email:
Marilyn Sonn
Joshua Cinelli
Rosemary Harold
Jennifer Tatel
Dave Grimaldi
Mary Beth Murphy
Holly Sauer
John Norton
John Gabrysch
Alison Neplokh
Michelle Carey
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of Petition for Declaratory
Ruling Regarding Public, Educational, and
Governmental Programming

MB Docket No. 09-13

CSR-8127

CSR-8128

**COMMENTS AND REQUEST FOR ACTION
BY THE
CITY OF MACON, GEORGIA**

The City of Macon, Georgia (“City”), files these comments in support of the Petition for Declaratory Ruling regarding Public, Educational, and Governmental (“PEG”) programming filed by the Alliance for Community Media¹ (“ACM”) in January of 2009.² The City further files to document that the Federal Communications Commission’s delay in acting upon ACM’s petition continues to harm community media around the country; the City is now the latest example.

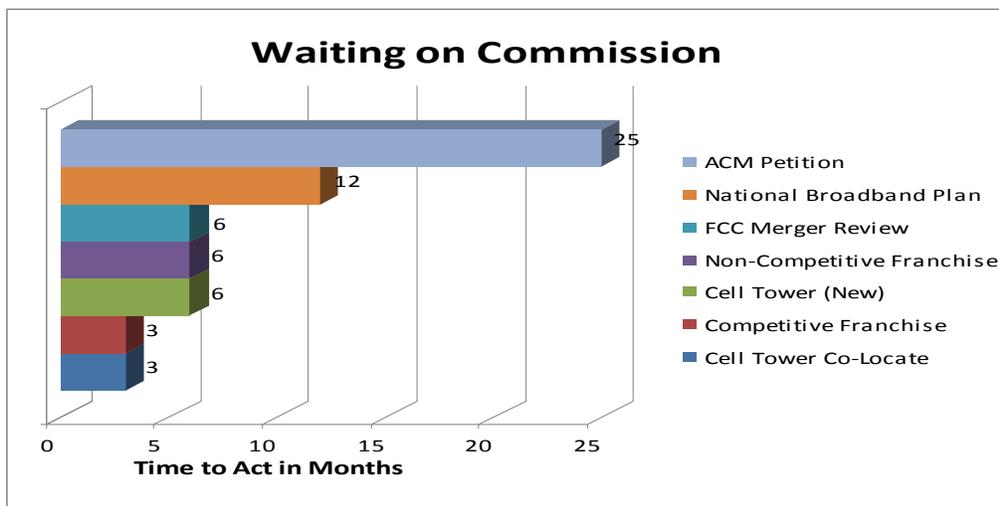
I. The Commission Has Unreasonably Delayed Action on the ACM Petition.

Since January 2009, the Commission has been considering petitions for declaratory ruling regarding the Cable Act’s requirements with respect to the carriage

¹ *Petition for Declaratory Ruling of Alliance for Community Media et al.*, MB Docket No. 09-13 (Jan. 30, 2009) (“ACM Petition”).

² The City of Macon made these same points in *ex parte* meetings at the FCC on February 25, 2011. The City was represented by the Honorable Tom Ellington, Ph. D, a member of the City Council, and Gerard L. Lederer, Esquire, in meetings with the offices of Chairman Genachowski and Commissioners Copps, McDowell, and Baker.

of PEG access channels.³ On February 6, 2009, the Media Bureau released a Public Notice seeking public comments on three petitions, including ACM's. In response to this notice, over 6,000 comments were filed, most in support of ACM's call for the Commission to clarify the Cable Act's basic protections of PEG access channels. Despite this, some 25 months later, the Commission has still not yet issued a decision in this docket. This unexplained delay has been deeply frustrating, and it far exceeds the timelines for action that Congress has imposed on the agency and that the FCC has imposed on local governments:



Equally frustrating to Macon and other local governments around the country is that while we have anxiously awaited Commission action on ACM's Petition, the Media

³ *Entities File Petitions for Declaratory Ruling Regarding Public, Educational, and Governmental Programming*, DA 09-203 (Feb. 6, 2009). The three petitions are: *Petition for Declaratory Ruling Regarding Primary Jurisdiction Referral in City of Dearborn et al. v. Comcast of Michigan III, Inc. et al., of the City of Dearborn, Michigan et al.*, MB Docket No. 09-13 (Dec. 9, 2008) (the "Dearborn Petition"); *Petition for Declaratory Ruling of the City of Lansing, Michigan*, MB Docket No. 09-13 (Jan. 27, 2009) (the "Lansing Petition"); and the ACM Petition.

Bureau has issued more than sixty (60) orders requested by cable operators freeing them from rate regulation in over 800 communities around the nation.⁴

II. Congress Sought To Protect PEG Channels From Cable Operator Control.

ACM has clearly documented Congress's intention to protect PEG channels from a cable operator's control. ACM points out that Congress barred discrimination against PEG access channels in 1984 and reinforced that position when it adopted 1992 amendments to the Cable Act.⁵ For example, Congress enacted Section 623(b)(7)(A)'s basic service tier requirement to clarify that cable operators may not discriminate against PEG access channels:

PEG programming is delivered on channels set aside for community use in many cable systems, and these channels *are available to all community members on a nondiscriminatory basis, usually without charge* PEG channels serve a substantial and compelling government interest in diversity, a free market of [ideas,] and an informed and well-educated citizenry.⁶

ACM further clarifies that through its own signal quality rules, the Commission has barred discrimination against PEG access channels.⁷ Macon also joins ACM's call for

⁴ See, e.g., *In re Cox Commc'ns Inc.*, 23 FCC Rcd. 5048 (2008) (finding Cox is subject to effective competition in the City of Macon).

⁵ Petition at 23-30.

⁶ For a more complete discussion, see ACM's Petition at 25; H.R. Rep. No. 102-628, 102d Cong., 2d Sess. at 85 (1992).

⁷ ACM Petition at 26-27.

the Commission to apply Section 611(e), which prohibits a cable operator's "exercise [of] any editorial control over any [PEG] use of channel capacity."⁸

But even beyond these important legal arguments, Macon files in this matter to shine a light on the fact that since the release of the public notice *25 months* have passed without a Commission decision. The impact of this delay has been significant,⁹ and cable operators and video programmers are increasingly using this delay to their advantage. The operators are moving ahead with their plans to "re-claim" PEG capacity and to use it for their own commercial purposes, regardless of how the Commission ultimately interprets the Cable Act.¹⁰ If the Commission does not act quickly, it risks surrendering its jurisdiction over these important questions.

III. The New Challenge to PEG Channels in the City of Macon.

The City now alerts the Commission of yet another cable operator in another section of the country that seeks to take advantage of the Commission's failure to act. In the City, Cox Communications ("Cox") has moved ahead with plans to exercise

⁸ ACM Petition at 30; 47 U.S.C. § 531(e).

⁹In addition to the other communities that have been before the Commission, Macon further understands that AT&T has still not changed its PEG delivery mechanism to fully comply with the Cable Act issues raised by ACM or the City of Lansing. This is equally important to the City as AT&T has been granted a state franchise to serve Macon. We can assume that Macon consumers will be forced to suffer the "Channel 99 PEG stream" solution imposed on communities by AT&T, should the Commission fail to act on ACM's petition.

¹⁰ See, e.g., *Petition for Emergency Petition of Temporary Standstill* of the McAllen Independent School District, filed September 21, 2010, in which communities across the state of Texas made the Commission aware of their challenges.

discriminatory, unlawful control over this important public interest benefit—PEG access channels—to further its own commercial interests.

A. Background

Cox provides cable television service in Macon, Georgia. The company originally provided its services pursuant to a franchise agreement negotiated with the City,¹¹ but more recently has provided cable services pursuant to a franchise it obtained pursuant to Georgia state franchise law.¹²

B. Georgia State Law

While Georgia state law provides that an incumbent cable operator is free to renege on commitments made in a local franchise, the law specifically instructs that local franchise provisions related to PEG channel support and operation remain in effect through the end of the local franchise’s term.¹³ The franchise Cox executed with Macon was not scheduled to expire until December 31, 2017, and it requires Cox to

¹¹ A copy of the franchise is attached hereto as Appendix A.

¹² A copy of the Georgia Consumer Choice for Television Act may be downloaded at <http://www.sos.ga.gov/corporations/hb227%20GA%20Video%20Franchising%20Bill.pdf>

¹³Section 36-76-4 (g) (4) & (5) of the Georgia Code provide:

- (4) An incumbent service provider that elects to terminate a franchise under this subsection shall continue to provide PEG access support, as such existed on January 1, 2007, under the same terms as the terminated local franchise had it not been terminated until the local franchise would have expired under its own terms.
- (5) Notwithstanding a termination of a local franchise pursuant to this subsection, a municipality or county shall be entitled to operate its existing PEG channel or channels, as such existed on January 1, 2007, relating to the number of channels and the usage criteria for such channels under the same terms as the terminated local franchise had it not been terminated, pursuant to this subsection, until July 1, 2012.”

obtain city approval prior to changing the location of any of the PEG channels.

Nevertheless, Cox contends that these provisions are no longer in force.

C. Cox Actions

Cox has converted its PEG channels from the original analog format to a digital format and changed the channel location.¹⁴ Cox indicated that it has made this change to harvest the bandwidth dedicated to PEG programming for the company's own commercial offerings. Despite this, the company has converted no other programming currently delivered in an analog format. The result has been a windfall to the company while Macon consumers that lack the resources to rent a digital box, or the time to travel to Cox offices to pick up and install such a device, can no longer access these PEG channels.

D. Macon Reaction

When it became clear that Cox would not address the concerns of Macon's elected leadership to protect its consumers, the mayor and city council met to adopt a resolution calling on the FCC to act on ACM's petition. A copy of the Resolution is attached hereto as Appendix B. The resolution authorized Councilman Tom Ellington to travel to Washington to make the Commission aware of the challenges facing Cox subscribers, and to point out that unlike the Michigan and Texas communities that filed

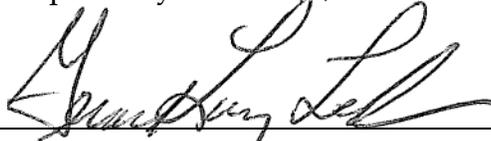
¹⁴ If a viewer obtains a digital converter box, the viewer can still find the PEG channels at the same channel location. If a viewer relies upon a digital converter installed in the viewer's television, however, the PEG channel locations have changed.

petitions with the Commission, Macon lacks the resources to protect its consumers through litigation. Because it is not clear that the State of Georgia has the authority to enforce local franchise terms, if the citizens of Macon are to be protected, the FCC must act.

IV. Conclusion

As recent developments in the City show, the Commission must act immediately on ACM's Petition. The Commission should clarify that the designation of PEG channels is defined by federal law, which imposes, among other things, a basic duty on a cable operator to transmit PEG channels to all cable subscribers in the community.

Respectfully submitted,



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PRIVILEGED AND CONFIDENTIAL

**FRANCHISE AGREEMENT
TO PROVIDE CABLE SERVICES**

BETWEEN

CITY OF MACON

AND

COX COMMUNICATIONS, INC.

September 4, 2002

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AGREEMENT

This **AGREEMENT**, executed as of the 4th day of September, 2002 (the "Effective Date"), by and between the City of Macon, Georgia (hereinafter referred to as the "Franchising Authority"), and Cox Communications, Inc., a corporation duly organized and validly existing under the laws of the State of Delaware, doing business as Cox Communications Middle Georgia, whose principal place of business is located at 6601 Hawkinsville Road, Macon, Georgia 31206 (hereinafter referred to as the "Company"). For purposes of this Agreement, unless otherwise defined in this Agreement, the capitalized terms, phrases, words and their derivations shall have the meanings set forth in Appendix A.

WITNESSETH:

In consideration of the covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby covenant and agree as follows:

SECTION 1 GRANT OF AUTHORITY

1.1 Grant of Franchise. The Franchising Authority hereby grants under the Cable Act a nonexclusive franchise (the "Franchise") to occupy and use the Streets within the Franchise Area in order to construct, operate, maintain, upgrade, repair and remove the System to provide Services through the System, subject to the terms and conditions of this Agreement. The Company shall obtain a separate franchise or other authorization required by the Franchising Authority to provide services other than Cable Services in the Franchise Area, through the System or otherwise, to the extent such franchise or authorization is required pursuant to applicable federal, state or local law, regulation or ordinance. The Franchise shall not be construed to authorize the license or lease to any other Person or entity of the right to physically occupy or use the public rights-of-way for the conduct of any private business.

1.2 Term of Franchise. The Franchise shall commence upon the Effective Date and shall expire on December 31, 2017, unless the Franchise is renewed or the Franchise is sooner terminated pursuant to this Agreement by the revocation of the Franchise as provided in Section 10. Upon termination of the Franchise, all rights of the Company in the Franchise shall cease, and the rights of the Franchising Authority and the Company to the System, or any part thereof, shall be determined as provided in Section 10.

1.3 Renewal. Subject to Section 626 of the Cable Act (47 U.S.C. § 546) and such terms and conditions as may be lawfully established by the Franchising Authority, the Franchising Authority reserves the right to grant or deny renewal of the Franchise.

1.4 Reservation of Authority. Nothing in this Agreement shall (i) abrogate the right of the Franchising Authority to perform any public works or public improvements of any description, (ii) be construed as a waiver of any codes or ordinances of the

Franchising Authority or of the Franchising Authority's right to require the Company or any Person utilizing the 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 Franchising Authority in and to the Streets. In the event that all or part of the Streets within the Franchise Area are eliminated, discontinued and closed, the Franchise shall cease with respect to such Streets upon the effective date of the final action of the Franchising Authority with respect thereto.

SECTION 2 THE SYSTEM

2.1 The System and Its Operations

2.1.1 General Obligation. The Company shall construct, operate, maintain and upgrade the System as provided in this Agreement. Without limiting the foregoing, the System shall be at least a 750 MHz System and shall provide Services to Subscribers that include, at a minimum, 78 activated Channels on the Subscriber Network and other characteristics set forth in Appendix B. The System will be capable of offering a wide variety of broadband services, including digital services.

2.1.2 Testing Procedures; Technical Performance. Throughout the term of this Agreement, the Company shall operate and maintain the System in accordance with the testing procedures and the technical performance standards of the Federal Communications Commission ("FCC"), as may be amended from time to time.

2.1.3 Emergency Override. The System shall be installed and operated with an emergency alert system in compliance with the rules of the FCC; provided, however, that, notwithstanding any such FCC rules, by December 31, 2001, the System shall be configured such that, to the extent not prohibited by federal law, in the event of a local emergency as reasonably determined by the Franchising Authority, the Franchising Authority or other appropriate entity designated by the Franchising Authority, shall be able to interrupt, to the extent permitted by FCC regulations, audio and video Signals distributed over the System for the delivery of appropriate Signals necessitated by such emergency. At a minimum, the System shall be capable of permitting the Franchising Authority to override the System audio and video from the Franchising Authority's emergency operations center located at 700 Poplar Street, Macon, Georgia, and "911" center located at 911 First Street, Macon, Georgia, and provide a scrolled video message directing Subscribers to the Governmental Channel for further information. The Company shall cooperate with the Franchising Authority in the use and operation of the emergency override system.

2.2 Requirements With Respect to Work on the System

2.2.1 General Requirements. The Company shall comply with the terms set forth in Appendix C in connection with all work involved in the construction, operation, maintenance, repair, upgrade and removal of the System, in addition to any other requirements or procedures reasonably specified by the Franchising Authority. All

work involved in the construction, operation, maintenance, repair, upgrade and removal of the System shall be performed in a safe, thorough and reliable manner using materials of good and durable quality. If, at any time, it is determined by the Franchising Authority or any other agency or authority of competent jurisdiction that any part of the System, including, without limitation, any means used to distribute Signals over or within the System, is harmful to the health or safety of any Person, then the Company shall, at its own cost and expense, promptly correct all such conditions.

2.2.2 Maps and Plats. The Company shall, upon request make available at the Franchising Authority Engineer's Office true and accurate maps or plats of all existing and proposed installations and update the same at reasonable intervals so that the Engineer will at all times have access to a current set of such maps and plats. To enable the Franchising Authority to coordinate construction and other work in the public rights-of-way, the Company shall, upon request, but not more often than twice in any calendar year, meet with the Franchising Authority Engineer to discuss reasonably anticipated plans for construction in the coming six (6) months.

2.2.3 Undergrounding of System. For any System expansion, the Company shall place the System underground in localities where telephone and power lines are underground. For existing facilities, the Company shall replace aerial facilities concurrently and in cooperation with similar programs of the telephone and power utilities. At no time shall the System be the only aerial facility, provided that, if the utilities' placement of facilities underground is discretionary and not required by the Franchising Authority or applicable law, the Company may maintain aerial facilities on poles owned by the Company, subject to applicable permitting and other requirements. Where undergrounding is required, the Company shall have the option of sharing or not sharing in utility trenches.

2.2.4 No Liability to Company or Affiliated Persons. Neither the Franchising Authority nor its officers, employees, agents, attorneys, consultants or independent contractors shall have any liability to the Company or any Affiliated Person as a result of or in connection with the protection, breaking through, movement, removal, alteration or relocation of any part of the System by or on behalf of the Company or the Franchising Authority in connection with any emergency, public work, public improvement, alteration of any municipal structure, any change in the grade or line of any Street, or the elimination, discontinuation and closing of any Street, as provided in this Agreement; provided, however, except in an emergency, the Franchising Authority must provide reasonable notice to the Company of any such Project and will perform such work only if the Company fails to complete the work within a reasonable schedule as established by the Franchising Authority. The foregoing provision freeing the Franchising Authority from liability pursuant to this Section shall not apply to damages caused by violation of Chapter 25-9 of the Official Code of Georgia Annotated, relating to notification prior to excavation near underground utilities, as now or hereafter amended.

SECTION 3 SERVICE OBLIGATIONS

3.1 Service to All Persons. As the upgrade of each node of the System is completed, and thereafter throughout the term of the Franchise, the Company shall make all Services distributed over the System available to every dwelling unit within the Franchise Area reaching the minimum density of at least thirty-five (35) dwelling units per mile. Service shall be offered to all new homes or previously unserved single dwellings located within 150 feet of the Company's feeder cable. Service to new subdivisions shall be offered when residences meet the above criteria or are thirty percent (30%) inhabited. The Company may elect to offer Services to areas not meeting the above standards.

3.2 Programming Services. The Company shall offer to all Subscribers a diversity of video programming Services.

3.3 No Discrimination. Neither the Company nor any Affiliated Person shall discriminate or permit discrimination between or among any Persons in the availability of Services. It shall be the right of all Persons to receive continuously all available Services insofar as their financial and other obligations to the Company are satisfied.

3.4 Service to Governmental and Institutional Facilities. The Company shall provide, at no charge, wiring and up to ten (10) outlets with free Basic Service and Cable Programming Service, as those terms are defined in the Cable Act, to all owned and occupied, and leased and occupied, governmental and institutional buildings controlled by the Franchising Authority and to all public schools, serving any grades from kindergarten through twelve, in the Franchise Area. For each building and school, the Franchising Authority or school, as the case may be, shall designate the number of outlets per building and school, up to a maximum of ten (10) outlets per building and school. If additional outlets and Service are requested, the Franchising Authority or school, as the case may be, shall pay for such wiring and Service at the Company's actual cost, not to include any profit or mark-up.

3.5 Interconnection. Throughout the term of this Agreement, the Company shall construct, operate, maintain and upgrade the System such that it shall be capable of transmitting and receiving Signals to and from any other Cable Systems in the Franchise Area for the sole purpose of exchanging educational, governmental or public access Channels and emergency alert Signals. All costs of any such interconnection shall be shared on an equitable basis by the systems. The Company shall not be required to interconnect if, after good-faith negotiations, agreement cannot be reached with such other Cable Systems over the terms and conditions of completing the interconnect. The interconnection plan shall be subject to the review and approval of the Franchising Authority.

3.6 Equal Protection. In the event the Franchising Authority enters into a franchise, permit, license, authorization, or other agreement of any kind with any third party other than the Company for the construction, operation or maintenance of a Cable

System or the provision of Cable Service to any part of the Franchise Area that is executed after the Effective Date of this Agreement, the material provisions thereof shall be reasonably comparable to those contained herein, and the obligations imposed on the grantee thereunder shall be no less burdensome nor more favorable than the obligations imposed upon the Company hereunder, in order that one operator not be granted an unfair competitive advantage over another, and to provide all parties equal protection under the law. The Franchising Authority shall also enforce the terms of any franchise, permit, license, authorization or other agreement of any kind with any third party for the construction, operation or maintenance of a Cable System or the provision of Cable Service to any part of the Franchise Area in order that one operator not be granted an unfair competitive advantage over another, and to provide all parties equal protection under the law.

SECTION 4 PEG ACCESS AND INSTITUTIONAL ADVANCED SERVICES

4.1 Advanced Services. The Franchising Authority may purchase, either through the Company or an Affiliated Person, voice, video and data services (including any necessary construction and installation services and equipment needed to use said voice, video and data services) that are otherwise available to the Company's commercial customers within the Franchise Area ("Advanced Services"). The Franchising Authority shall be entitled to purchase such Advanced Services at the lesser of: (i) the rate tariffed by the State of Georgia, less a twenty percent (20%) discount; or (ii) the Company's or Affiliated Person's standard published rate for such services less a twenty percent (20%) discount. (The standard published rate less twenty percent (20%) discount shall automatically apply if such Advanced Services are non-tariffed.) Such Advanced Services shall be provided to the Franchising Authority by the Company, either itself or through an Affiliated Person, after a commercial service agreement has been agreed to by the Franchising Authority and the Company or an Affiliated Person. The Advanced Services purchased by the Franchising Authority pursuant to this Section 4.1 may be used by the Franchising Authority for non-commercial educational or governmental purposes, provided, however, nothing in this Section 4.1 shall prevent the Franchising Authority from making available, for a fee or otherwise, information created or collected by the Franchising Authority or public institutions.

4.2 Public, Educational and Governmental (PEG) Access Production and Facilities Support. The Company shall provide Public, Educational and Governmental Channels ("PEG Channels") on the Subscriber Network in accordance with the following.

4.2.1 PEG Channel Capacity: On the Effective Date, the Company shall provide one (1) Governmental Channel to be shared on an equitable basis during the Franchise Term with all governmental entities in order to accommodate their reasonable governmental programming needs, one (1) Educational Channel and one (1) Public Channel for noncommercial television programming transmission to Subscribers. The Governmental and Educational Channels shall be managed and programmed by the Franchising Authority, or such entity as may be designated by the Franchising Authority.

The Public Channel shall be operated by the Company as provided in Section 4.2.3 hereof. The Company may not exercise any editorial control over the content of programming on the PEG Channels except: (i) to ensure compliance with the terms of this Franchise, and (ii) except as permitted by applicable law. Upon a minimum of one hundred eighty (180) days advance notice to the Company by the Franchising Authority, which notice shall not occur sooner than October 1, 2005, the Company shall make available one (1) additional PEG Channel which may be allocated by the Franchising Authority for public, educational and/or governmental uses, as provided herein. The Company shall have no obligation to make such additional PEG Channel available unless at least one (1) of the PEG Channels has at least twelve (12) consecutive hours of video programming for sixty (60) days immediately preceding such notice and no single program is repeated more than three (3) times in any such twelve (12) hour period.

4.2.2 PEG Channel Location. The current locations of PEG Channels are as follows: (i) Public Channel – Channel 18; (ii) Educational Channel – Channel 17; and (iii) Governmental Channel – Channel 14. The Company shall not assign or change the foregoing Channel locations of PEG Channels without the prior written approval of the Franchising Authority, provided, however, that the Franchising Authority's consent shall not be required if the specific dial location of the PEG Channel must be provided to a broadcaster pursuant to applicable must-carry rules. In the event the Franchising Authority approves any change in PEG Channel location, the Company shall bear all costs incurred by the Franchising Authority in connection with each such change, such costs not to exceed Five Thousand Dollars (\$5,000.00) per each PEG Channel for each change. Such costs may include, but shall not be limited to, costs of notifying Subscribers of the change by mail and by notice distributed on the PEG Channel at the previous location on the System, costs of promotional materials and costs of replacing items containing logos, including but not limited to new stationery and other printed materials.

4.2.3 Management of Public Access. The Company shall operate the Public Channel to support and promote the development and production of programming that serves local community needs and interests. The Company shall provide the following specific support for the Public Channel:

(i) A fully equipped Local Origination and Public Access Studio ("Studio") that shall be available on a nondiscriminatory basis for public access use by individuals and non-commercial tax-exempt organizations, subject to the Company's reasonable rules and regulations for public access which shall be reviewed and approved by the City. The Studio may also be used by the Company in the development and production of local origination programming and for any other purposes;

(ii) Ongoing maintenance of all facilities and equipment located at the Studio; and

(iii) Personnel to train users to develop and produce programming for the Public Channel.

4.2.4 Capital Grants. (i) The Company shall pay to the Franchising Authority Twenty Thousand Dollars (\$20,000.00) per year in capital funds ("Annual Capital Grant") throughout the first thirteen (13) years of the Franchise, for a total of fourteen (14) such Annual Capital Grants. Such Annual Capital Grants shall be used by the Franchising Authority for capital facilities and equipment and capital purposes related to the Educational and Government Channels. The first Annual Capital Grant shall be due and payable on the Effective Date of this Agreement, and each subsequent Annual Capital Grant shall be due and payable on each subsequent anniversary date of this Agreement up to and including the thirteenth (13th) anniversary date.

(ii) The Franchising Authority shall have the authority to allocate the Annual Capital Grant as it deems appropriate to support the Educational and Governmental Channels.

4.2.5 Fiber Link to System Headend. The Company shall furnish and maintain a fiber link from the Studio location to the Company's headend, which fiber link shall enable the transmission of video programming between the Studio and the System headend, and the distribution of such video programming to Subscribers on the Subscriber Network. The Company shall provide, at its own cost and expense, sufficient equipment at the Studio, including but not limited to laser transmission equipment located within the Studio, to ensure that (a) the transmission of video programming from the Studio to the headend shall be without any noticeable alteration or degradation of Signal quality, and (b) the equipment used to distribute such video programming to Subscribers shall perform at a level that equals or exceeds the performance level of equipment used to distribute any other Channel on the Subscriber Network.

4.2.6 Transmission Services for Educational and Governmental Channels.

(i) Upon at least seventy-two (72) hours advance notice, the Company shall, at its own expense, furnish a temporary distribution network that will allow the distribution of video programming from the locations listed in Section I of Appendix D to Subscribers on the Subscriber Network. The Company shall connect its temporary distribution network to the transmission equipment described in the following sentence and provided by the educational or governmental entity at a single, mutually agreeable demarcation point at such locations (typically a media center). The educational or governmental institution shall provide, at its own cost and expense, a channel-specific RF modulator and all video production equipment on its side of the demarcation point at each such location listed in Section I of Appendix D. The Company shall provide, at its own cost and expense, sufficient equipment on its side of the demarcation point at the locations listed in Section I of Appendix D to ensure that (a) the transmission of such video programming from the origination point to the System headend shall be without any noticeable alteration or degradation of Signal quality, and (b) the equipment used to distribute such video programming to Subscribers shall perform at a level that equals or exceeds the performance level of equipment used to distribute any other Channel on the Subscriber Network.

(ii) Within eighteen (18) months after the Effective Date, the Company shall also, at its own expense, furnish and maintain a permanent distribution network that will allow the distribution of video programming from the locations listed in Section II of Appendix D to the System headend and/or the Studio location. The respective obligations and responsibilities of the Company and the entities providing educational or governmental programming with regard to location of demarcation points, provision of equipment and transmission of video programming at the locations listed in Section II of Appendix D shall be the same as set forth above in Section 4.2.6(i) for the locations listed in Section I of Appendix D.

(iii) The Company, upon request of the Franchising Authority, shall meet with the Franchising Authority to discuss the most appropriate routing for the transmission and distribution required in Section 4.2.6(ii). To the extent technically and economically practicable, the Company shall endeavor to transport educational and governmental video programming from the temporary and permanent educational and governmental locations to the Company's existing fiber distribution network over as short a path as possible.

4.2.7 Switching. Unless otherwise requested by the Franchising Authority, the Company shall be responsible for, and shall provide sufficient equipment at the headend to perform, all switching in connection with the PEG Channels.

4.2.8 Promotional Activities. In order to promote the PEG programming contemplated under this Agreement and in furtherance of the Franchising Authority's PEG objectives, the Company shall engage in the following promotional activities, at its own expense unless otherwise noted:

(i) Bill Insert. No more than twice each year during the term of the Franchise, the Company shall, at no expense to the Franchising Authority, include with the monthly bills the Company sends to Subscribers one bill insert devoted entirely to PEG Channel programming and activities. The Franchising Authority shall be responsible for producing said bill insert and shall have sole control over its content. Said bill insert must be in compliance with the Company's specifications for bill inserts. The Company shall provide the Franchising Authority with up to Five Hundred dollars (\$500.00) to be used to produce each bill insert. The Company shall use best efforts to place such insert in the bills for the particular month requested by the Franchising Authority.

(ii) Public Service Announcements. Each year, during the term of the Franchise, the Company shall, at its own expense, produce and air, with cross-channel insertion, one Public Service Announcement ("PSA") promoting programming and activities in connection with the PEG Channels, with a value of Two Hundred Thousand dollars (\$200,000.00) per year. The Company shall solicit from the Franchising Authority its desired placement of the PSA, provided, however, that the Company shall ultimately determine the placement of the PSA spots in the Company's programming rotation.

4.3 PEG Contributions and Advanced Services Discounts Not to be Set Off Against Franchise Fees or Vice Versa. The Company acknowledges that all contributions, discounts, services, equipment, facilities, support, resources and other activities to be paid for or supplied by the Company pursuant to or in connection with its performance under this Section 4 and Appendix D to this Agreement are for the benefit of all Subscribers and the public. The Company agrees that such contributions, discounts, services, equipment, facilities, support, resources and other things of value are not within the meaning of the term "franchise fee" as defined by Section 622(g)(1) of the Cable Act (47 U.S.C. § 542(g)(1)) (or any successor thereto) and are within one or more exclusions to the term "franchise fee" provided by Section 622(g)(2)(A)-(D) of the Cable Act (47 U.S.C. § 542(g)(2)(A)-(D)) (or any successor thereto). The Company further agrees that such contributions, discounts, services, equipment, facilities, support, resources and other things of value shall not be deemed to be: (i) "Payments-in-kind" or involuntary payments chargeable against the compensation to be paid to the Franchising Authority by the Company pursuant to Section 7.1 hereof or (ii) part of the compensation to be paid to the Franchising Authority by the Company pursuant to Section 7.1 hereof.

SECTION 5 FEES AND CHARGES

5.1 Rates, Fees and Charges To Be Set Forth in Appendix E. All rates, fees, charges, deposits and associated terms and conditions to be imposed by the Company or any Affiliated Person for any Service as of the Effective Date are set forth in Appendix E. Before any new or modified rate, fee, charge, deposit or associated term or condition may be imposed, the Company must submit to the Franchising Authority a revised Company rate card which reflects all new rates, fees, charges, deposits and associated terms and conditions, which revised Company rate card must be submitted to the Franchising Authority prior to notifying affected Subscribers (which may be by any means permitted under applicable law).

5.2 Prohibition Against Discrimination in Fees and Charges. Except to the extent otherwise expressly permitted by applicable law, (i) neither the Company nor any Affiliated Person shall discriminate or permit discrimination between or among any Persons in the rates, terms and conditions for any Service, except as set forth below; (ii) the Company shall provide Service to each resident at the same rates charged to all other residential Subscribers; (iii) the Company shall not require the subscription to any tier other than the Basic Service tier as a condition of access to video programming offered on a per-Channel or per-program basis; and (iv) the Company shall not discriminate between Subscribers to the Basic Service tier and other Subscribers with regard to the rates charged for video programming offered on a per-Channel or per-program basis. The foregoing requirements shall not prevent (to the extent permitted by applicable law) the use of: (i) different charges for residential Subscribers than for nonresidential Subscribers; (ii) short-term sales promotions and other short-term discounts or reduced charges; (iii) reasonable discounts or reduced charges to senior citizens or economically disadvantaged groups; or (iv) bulk rate arrangements.

5.3 Parental Control Devices. Upon the request of a Subscriber, the Company shall provide (by sale or lease) to each Subscriber, one of the following devices by which the Subscriber can block completely the video and audio Signals of a particular Cable Service during periods selected by that Subscriber: (i) a parental control device; or (ii) a converter with a parental control feature; or (iii) within a reasonable time after the request, a filter, trap or other method or device. The choice of such device shall be at the Subscriber's election, to the extent permissible under applicable law, and shall be delivered in the shortest period permissible under applicable law after the Subscriber's request.

5.4 Franchising Authority's Regulation of Fees and Charges. The Franchising Authority reserves the right to regulate the rates, fees, charges, deposits and associated terms and conditions for any Service provided pursuant to this Agreement to the fullest extent permitted by applicable law, and the Franchising Authority may, to the extent permitted by applicable law, establish rules and regulations in connection therewith from time to time. In connection with such regulation, the Franchising Authority shall comply with FCC rules and provide the public with an opportunity to comment.

SECTION 6 CONSUMER PROTECTION AND CUSTOMER SERVICE; SUBSCRIBER BILLS; AND PRIVACY PROTECTION

6.1 Customer Service and Consumer Protection Standards

6.1.1 Company To Comply With Standards Provided Under FCC Rules. The Company shall comply in all respects with the requirements set forth in Appendix F and the customer Service requirements established by the FCC pursuant to Section 632 of the Cable Act (47 U.S.C. § 552).

6.2 Subscriber Bills

6.2.1 Bill Format Generally. Subscriber bills shall be designed in such a way as to present the information contained therein clearly and comprehensibly to Subscribers, and in a way that (i) is not misleading, (ii) does not omit material information, and (iii) does not mischaracterize any information. The Company may itemize costs on Subscriber bills, to the extent permitted by Section 622(c) of the Cable Act (47 U.S.C. § 542(c)) and the FCC's rules thereunder.

6.3 Privacy Protection

6.3.1 Company To Protect Privacy. The Company shall protect all Subscribers against invasions of privacy and shall comply with applicable law, including, without limitation, Section 631 of the Cable Act (47 U.S.C. § 551) and regulations adopted pursuant thereto.

6.3.2 Company To Provide Certain Information To Franchising Authority. The Company shall cooperate with the Franchising Authority to provide information about Subscribers subject to the limitations of Section 631 of the Cable Act (47 U.S.C. § 551) and any other rules and regulations of the FCC adopted pursuant thereto so as to ensure the Franchising Authority's ability to enforce the terms and conditions of this Agreement to the maximum extent permitted by applicable laws, including but not limited to Section 631 of the Cable Act.

SECTION 7 COMPENSATION AND OTHER PAYMENTS

7.1 Compensation to the Franchising Authority. As compensation for the Franchise, the Company shall pay, or cause to be paid, to the Franchising Authority the amounts set forth in this Section 7.1.

7.1.1 Franchise Fees -- Amount. The Company shall pay to the Franchising Authority Franchise fees in an amount equal to five percent (5%) of Gross Revenue derived from the operation of the System to provide Cable Services.

7.1.2 Franchise Fees -- Payment. All such payments of Franchise fees shall be made on a quarterly basis and shall be remitted simultaneously with the submission of the Company's quarterly report required pursuant to Section 7.1.3.

7.1.3 Company To Submit Franchise Fee Report. The Company shall submit to the Franchising Authority a report, in the form provided in Appendix G, not later than forty-five (45) days after the last day of each March, June, September and December throughout the term of this Agreement setting forth the Gross Revenue for the quarter ending on said last day.

7.1.4 Franchise Fee Payments Subject to Audit; Remedy for Underpayment. No acceptance of any Franchise fee payment by the Franchising Authority shall be construed as an accord and satisfaction that the amount paid is in fact the correct amount or a release of any claim that the Franchising Authority may have further or additional sums payable under this Agreement, and all amounts paid shall be subject to audit and recomputation by the Franchising Authority.

If, as a result of such audit or any other review, the Franchising Authority determines that the Company has underpaid its fees in any twelve (12) month period by five percent (5%) or more, then, in addition to making full payment of the relevant obligation, the Company shall reimburse the Franchising Authority for all of the

reasonable costs associated with the audit or review, including all reasonable out-of-pocket costs for attorneys, accountants and other consultants.

7.2 Payments Not To Be Set Off Against Taxes or Vice Versa. The parties agree that the compensation and other payments to be made pursuant to this Section 7 and any other provision of this Agreement, are not a tax and are not in the nature of a tax and are in addition to any and all taxes of general applicability or other fees or charges (including any fees or charges which may be imposed on the Company for the use of poles, conduits or similar facilities that may be owned or controlled by the Franchising Authority) which the Company or any Affiliated Person shall be required to pay to the Franchising Authority.

7.3 Interest on Late Payments. If any payment required by this Agreement is not actually received by the Franchising Authority on or before the applicable date fixed in this Agreement or by the Franchising Authority, the Company shall pay interest thereon, from the due date to the date paid, at a rate of one percent (1%) per month, compounded daily, for the period of delinquency.

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

SECTION 8 OVERSIGHT AND REGULATION

8.1 Franchising Authority's Right of Oversight. The Franchising Authority shall have the right to oversee, regulate and periodically inspect the construction, operation, maintenance and upgrade of the System, and all parts thereof, in accordance with the provisions of this Agreement and applicable law, including the Franchising Authority's police power.

8.2 Reports. At the request of the Franchising Authority, the Company shall promptly submit to the Franchising Authority such reasonable information as the Franchising Authority may request regarding compliance with any term or condition of this Agreement, with respect to the Company, the System or its operation, any Service distributed over the System, or any activity or function associated with the production or distribution of any Service over the System.

8.3 Company To Maintain
Books, Records and Files

8.3.1 Books and Records. Throughout the term of the Agreement, the Company shall maintain in the Franchise Area, or make available in the Franchise

Area within thirty (30) business days, complete and accurate books of account and records regarding the Company's ownership and operation of the System and the provision of Services over the System, in a manner reasonably acceptable to the Franchising Authority, including, without limitation, books of account and records adequate to enable the Company to demonstrate that it is, and throughout the term of this Agreement has been, in compliance with this Agreement. All such documents pertaining to financial matters which may be the subject of an audit by the Franchising Authority shall be retained by the Company for a minimum of five (5) years.

8.3.2 File for Public Inspection. Throughout the term of this Agreement, the Company shall maintain, in a file available for public inspection during normal business hours, in the Franchise Area those documents required pursuant to the FCC's rules and regulations.

8.3.3 Performance Evaluation. Upon the Franchising Authority's request, but not prior to two (2) years after the Effective Date and not more frequently than every two (2) years, the Company shall prepare a status presentation to provide information to the Franchising Authority regarding System performance, customer service satisfaction and future System planning. If on evaluating the status presentation contents, the Franchising Authority reasonably determines that additional information is needed to complete the evaluation of the Company's performance under the terms of this Agreement, the Company shall provide additional relevant data.

Should the Franchising Authority reasonably determine that, based on the presentation and additional information presented, if any, and expressed community concerns, that Cable Service or customer service do not meet the standards set forth in this Agreement, then the Franchising Authority may administer the remedies as provided forth in Section 10 of this Agreement.

8.4 Franchising Authority's Rights of Inspection and Audit

8.4.1 Right of Inspection -- General. Upon reasonable prior notice to the Company, the Franchising Authority or its designated representatives shall have the right to examine, in the Franchise Area, all books and records pertaining to the Company's or any Affiliated Person's ownership or operation of the System or to the Company's or Affiliated Person's provision of Services over the System. Further, during normal business hours and upon reasonable prior notice to the Company, the Franchising Authority or its designated representatives may inspect and examine any other aspect of the System, including facilities and equipment thereof.

8.4.2 Treatment of Proprietary Information. Access by the Franchising Authority to any of the documents, records, maps, plats or other information requested by the Franchising Authority, as permitted by this Agreement, shall not be denied by the Company on grounds that such documents, records, maps, plats or information are reasonably alleged by the Company to contain proprietary information. If the Company indicates in writing that such documents, records, maps, plats or other

information are proprietary and requests confidential treatment in writing, the Franchising Authority agrees to take reasonable steps to protect the confidentiality of such information to third parties, to the extent permitted by law, and to restrict access to such information to those employees, officials, agents and consultants of the Franchising Authority who, in the course of their official duties or consultation to the Franchising Authority, have a need to review the information; provided, however, that the Company acknowledges that the Franchising Authority is bound by applicable law concerning public information and public records and will be obligated to comply with any applicable law, legal demand, order or subpoena for the disclosure of production of such data, records or information. The Franchising Authority agrees to provide the Company with prompt notice of any request for disclosure or production of such documents, records, maps, plats or other information.

8.4.3 Franchising Authority May Conduct Compliance Audit and Hearings. The Franchising Authority may hold public hearings regarding the Company or the System at any time during the term of the Franchise. The Franchising Authority may conduct full compliance audits of the Company's compliance with all terms and conditions of the Agreement as it reasonably deems necessary at any time during the term of the Franchise, provided that such full compliance audits may not be conducted more frequently than once every two (2) years. The Franchising Authority shall give the Company written notice of a full compliance audit at least thirty (30) business days in advance of the commencement of such audit. Nothing herein shall be interpreted to prohibit the Franchising Authority from requiring the Company to demonstrate compliance with any particular term(s) or condition(s) of the Franchise at any time during the term of the Franchise.

8.5 Citizen Cable Advisory Committee. Within eighteen (18) months after the Effective Date, the Franchising Authority shall create a Citizen Cable Advisory Committee (the "Advisory Committee") containing up to nine (9) members. The Advisory Committee shall continue in existence throughout the term of the Franchise unless the Mayor and the City Council determine that it is in the best interest of the City of Macon to dissolve or reconstitute the Advisory Committee sooner. The members of the Advisory Committee shall have staggered terms up to four (4) years and shall be appointed by the Mayor and confirmed by the City Council. A representative of the Company shall be invited to attend and participate on an *ex officio*, nonvoting basis at all meetings of the Advisory Committee. The Advisory Committee shall: (i) advise the Mayor and the City Council on cable and public, educational and governmental ("PEG") access-related issues; (ii) monitor the performance of the Company under the Agreement; (iii) hold an annual public meeting to solicit public comment on the activities and performance of the Company under the Agreement; and (iv) submit a written report annually to the Mayor and the City Council on the activities and performance of the Company under the Agreement. The Advisory Committee shall utilize staff that shall be provided by the Mayor's office. Nothing in this Section 8.5 shall prohibit the Franchising Authority from holding public hearings or conducting compliance audits as permitted by Section 8.4.3 hereof.

**SECTION 9
RESTRICTIONS AGAINST ASSIGNMENTS
AND OTHER TRANSFERS**

9.1 Transfer of Franchise or Interest Therein. Neither the Company nor any other Person may transfer the Franchise or any of the Company's rights or obligations in or regarding the System or the Franchise without the prior written consent of the Franchising Authority, which consent shall not be unreasonably withheld nor unreasonably delayed. Notwithstanding the foregoing, the prior consent of the Franchising Authority shall not be required with respect to solely intracorporate reorganizations between or among entities wholly owned and wholly Controlled by the Company to the extent such transaction does not involve a change in Control covered by Section 9.2 hereof, or a change in the management, day-to-day operations or financial condition of the Company, provided the Franchising Authority shall receive thirty (30) days advance written notice of such intracorporate reorganization and the Company shall provide to the Franchising Authority such information as may be reasonably requested by the Franchising Authority.

9.2 Transfer of Control. No change in Control of the Company, the System or the Franchise shall occur after the Effective Date, by act of the Company or any Affiliated Person, by act of any Person holding Control of the Company, the System or the Franchise, by operation of law or otherwise, without the prior written consent of the Franchising Authority. The Franchising Authority's consent shall not be unreasonably withheld nor unreasonably delayed.

9.3 Procedures. Any request for approval shall be handled by the Franchising Authority in accordance with its customary rules and procedures. Consistent with Section 617 of the Cable Act and with regulations of the FCC, in connection with any request for approval, the Company shall submit to the Franchising Authority a completed FCC Form 394, Application For Franchising Authority Consent to Assignment or Transfer of Control of Cable Television Franchise, and such other evidence of the proposed transferee's legal, technical and financial qualifications as may be in accordance with the regulations of the FCC and such other information as the Franchising Authority may reasonably request. The Franchising Authority shall have one hundred twenty (120) days to act upon any request for approval of such sale or transfer that contains or is accompanied by such information as is required in accordance with FCC regulations and any other information as the Franchising Authority may reasonably request, so long as such request(s) are made within the first sixty (60) days of the one hundred twenty (120) day period.

**SECTION 10
SPECIFIC RIGHTS AND REMEDIES**

10.1 Not Exclusive. The Company agrees that the Franchising Authority shall have the specific rights and remedies set forth in this Section 10. These rights and remedies are in addition to any and all other rights or remedies, now or hereafter available to the Franchising Authority to enforce the provisions of this Agreement, and

will not be deemed waived by the exercise of any other right or remedy. The exercise of any such right or remedy by the Franchising Authority shall not release the Company from its obligations or any liability under this Agreement, except as expressly provided for in this Agreement or as necessary to avoid duplicative recovery from or payments by the Company.

10.2 Performance Bond. Within thirty (30) days after the Effective Date of this Agreement, the Company shall deposit with the Franchising Authority a Performance Bond from a surety acceptable to the Franchising Authority in the minimum amount of Fifty Thousand Dollars (\$50,000.00). The form and content of such Performance Bond shall be approved by the Franchising Authority and shall contain a provision that the issuer of such Performance Bond can rely absolutely on the demand of the Franchising Authority upon said Performance Bond. The Performance Bond shall be used to ensure the faithful performance by the Company of all provisions of this Agreement; compliance with all orders, permits and directions of any agency, commission, board, department, division or office of the Franchising Authority having jurisdiction over its acts or defaults under this Franchise; and the payment by the Company of any claims, liens and taxes due the Franchising Authority which arise by reason of the construction, operation or maintenance of the System. In the alternative, and under the same provisions as above, the Company may furnish a letter of credit in the aforesaid amount, in a form issued by a financial institution approved by the Franchising Authority.

(ii) The Performance Bond shall be maintained at the minimum amount of Fifty Thousand Dollars (\$50,000.00) during the entire term of this Franchise, even if amounts have to be withdrawn pursuant to subsections (i), (iii) or (iv) of this Section.

(iii) If the Company fails to pay the Franchising Authority any compensation within the time fixed herein, and fails after thirty (30) days' written notice to pay to the Franchising Authority any fees due and unpaid, or fails to repay the Franchising Authority within such thirty (30) days any damages, costs or expenses which the Franchising Authority is compelled to pay by reason of the acts or default of the Company in connection with the Franchise, and fails after receipt of thirty (30) days' written notice of such failure by the Franchising Authority to comply with any provision of this Franchise which the Franchising Authority reasonably determines can be remedied by demand on the Performance Bond, the Franchising Authority may, subject to Section 10 herein, demand payment of the amount thereof, with interest and any penalties, from the Performance Bond. Upon such demand for payment, the Franchising Authority shall notify Company of the amount and date thereof.

(iv) Notwithstanding subsection (iii) above, in the case of a bona fide dispute regarding compliance, the Company may request a hearing before the Franchising Authority within thirty (30) days after written notification of noncompliance and penalty by the Franchising Authority. At such hearing, all parties may give evidence, and the merits of the dispute will be decided. The Franchising Authority shall make its decision public along with a statement reciting the basis therefor. Within thirty (30) days, the Company may appeal to the Franchising Authority, in

writing, the decision rendered. At the appeal hearing, the Company may contest the findings of fact or interpretation of controlling law, at which time the Franchising Authority may affirm, reject or modify the decision. The affirmation, rejection or modification of said decision by the Franchising Authority shall be final. The Company shall have full rights for appeal to a court of appropriate jurisdiction.

(v) The rights reserved to the Franchising Authority with respect to the Performance Bond are in addition to all other rights by the Franchising Authority, whether reserved by negotiation with the Company or authorized by law, and no action, proceeding or exercise of a right with respect to such Performance Bond shall affect any other right the Franchising Authority may have.

(vi) The Performance Bond shall contain the following endorsement: "It is hereby understood and agreed that this Performance Bond may not be canceled by the issuer hereof nor the intention not to renew be stated by the issuer hereof until thirty (30) days after receipt by the Franchising Authority, by registered mail of a written notice of such intention to cancel or not to renew."

10.3 Liquidated Damages. The Company shall be liable to the Franchising Authority for the amounts specified in this Section 10.3 for any of the following failures by the Company to comply with the provisions of this Agreement, unless, within twenty (20) business days after receipt of notice by the Company from the Franchising Authority, or such longer period as the Franchising Authority shall specify, the Company has cured the alleged failure, presented facts and arguments in refutation or excuse of each such alleged failure that satisfies the Franchising Authority, or provided a cure plan and schedule that reasonably satisfies the Franchising Authority. At the option of the Franchising Authority, such amounts may be withdrawn from the Performance Bond and paid to the Franchising Authority or shall be paid to the Franchising Authority for:

(i) Willful or persistent failure to provide data, documents, records, reports or information to the Franchising Authority, pursuant to the terms of this Agreement: in the Franchising Authority's discretion, up to One Hundred Dollars (\$100.00) per day for each day that such failure continues;

(ii) Substantial failure to construct, operate, maintain and upgrade the System offering the full range of Services, facilities and equipment provided for in accordance with this Agreement: in the Franchising Authority's discretion, up to Five Hundred Dollars (\$500.00) per day for each day that such delay continues;

(iii) Failure to provide all or substantially all the capital grants, equipment and other support for the PEG Channels pursuant to this Agreement: in the Franchising Authority's discretion, up to One Hundred Dollars (\$100.00) per day for each day that such failure occurs or continues;

(iv) Failure to provide all or substantially the discount for Advanced Services pursuant to this Agreement: in the Franchising Authority's

discretion, up to One Hundred Dollars (\$100.00) per day for each day that such failure occurs or continues; and

(v) Failure to substantially comply with a material requirement of this Agreement: in the Franchising Authority's discretion, up to One Hundred Dollars (\$100.00) per day for each day that such failure occurs or continues.

The Company agrees that each of the foregoing failures set forth in this Section 10.3 shall result in injuries to the Franchising Authority and the residents, businesses and institutions of the Franchise Area, the compensation for which will be difficult to ascertain and to prove. Accordingly, the Company agrees that the liquidated damages in the amounts set forth above are fair and reasonable compensation for such injuries. Such liquidated damages shall be without prejudice to any other remedies available to the Franchising Authority to the extent permitted by law. The Company agrees that the foregoing amounts are liquidated damages and not a penalty or forfeiture.

10.4 Events of Default

10.4.1 Grounds. The Company agrees that an Event of Default shall include, but shall not be limited to, any of the following acts or failures to act by the Company or any Affiliated Person:

(i) Any substantial failure to comply with any material provision of this Agreement that is not cured within thirty (30) days after notice pursuant to this Section 10.4;

(ii) The Company files a petition for relief under any state or federal bankruptcy reorganization, insolvency or similar law (or any such petition is filed against Company and is not dismissed within sixty (60) days), or the Company is adjudged as bankrupt or all or a substantial part of the Company's assets are sold at foreclosure or other similar judicial or nonjudicial sale;

(iii) The condemnation by a public authority other than the Franchising Authority, or sale or dedication under threat or in lieu of condemnation, of all or any part of the System, the effect of which would materially frustrate or impede the ability of the Company to carry out its obligations, and the purposes of this Agreement;

(iv) In the event that the Company shall suspend or discontinue its business;

(v) If there shall occur any denial, forfeiture or revocation by any federal, state or local governmental authority of any authorization required by law or the expiration without renewal of any such authorization, and such events either individually or in the aggregate, materially jeopardize the System or its operation;

(vi) A persistent failure by the Company, its Affiliated Persons or its Guarantor(s), as applicable, to comply with any of the provisions, terms or conditions of this Agreement or with any rules, regulations, orders or other directives of the Franchising Authority after having received notice of a failure to comply; or

(vii) The Company fails to comply with any of the actions described in Sections 9.1 and 9.2, which require prior express written consent of the Franchising Authority.

10.4.2 Franchising Authority Action Upon Occurrence of Event of Default. Upon the occurrence of an Event of Default, then, in accordance with the procedures provided in Section 10.4.3, the Franchising Authority may, at any time during the term of this Agreement:

(i) Require the Company to take such actions as the Franchising Authority deems reasonably appropriate in the circumstances; and/or

(ii) Seek money damages from the Company as compensation for such Event of Default; and/or

(iii) Seek to obtain the appointment of a court-appointed trustee or similar Person to take any actions which the Franchising Authority deems appropriate in the circumstances; and/or

(iv) Revoke the Franchise by termination of this Agreement pursuant to Section 10.4.3.

10.4.3 Breach Procedures. The Franchising Authority shall exercise the rights provided in Section 10.4.2 in accordance with the procedures set forth below:

(i) The Responsible Franchising Official shall notify the Company, in writing, of an alleged Event of Default, which notice shall specify the alleged Event of Default with reasonable particularity. The Company shall, within thirty (30) days after receipt of such notice or such longer period of time as the Responsible Franchising Official may specify in such notice, either cure such alleged Event of Default or, in a written response to the Responsible Franchising Official, either present facts and arguments in refutation or excuse of such alleged Event of Default or state that such alleged Event of Default will be cured and set forth the method and time schedule for accomplishing such cure.

(ii) The Responsible Franchising Official shall determine (A) whether an Event of Default has occurred; (B) whether such Event of Default is excusable; and (C) whether such Event of Default has been cured or will be cured by the Company.

(iii) If the Responsible Franchising Official determines that an Event of Default has occurred and that such Event of Default is not excusable and

has not been or will not be cured by the Company in a manner and in accordance with a schedule reasonably satisfactory to the Responsible Franchising Official, then the Responsible Franchising Official shall prepare a written report which may recommend the action to be taken by the Franchising Authority's governing body. The Franchising Authority shall provide notice and a copy of such report to the Company, and the Company shall have a reasonable opportunity to present a response to the report to the Franchising Authority. In the event that the Franchising Authority's governing body determines that such Event of Default has not occurred, or that such Event of Default either has been or will be cured in a manner and in accordance with a schedule reasonably satisfactory to the Franchising Authority's governing body, or that such Event of Default is excusable, such determination shall conclude the investigation.

(iv) If the Franchising Authority's governing body determines that such Event of Default has occurred, and that such Event of Default has not been and will not be cured in a manner and in accordance with a schedule reasonably satisfactory to the Franchising Authority's governing body, and that such Event of Default is not excusable, then the Franchising Authority may take any of the actions provided in Section 10.4.2.

10.5 Termination. In the event of any termination of this Agreement, whether by expiration, revocation or otherwise, the Franchising Authority may: (i) direct the Company to cooperate with the Franchising Authority or third party in maintaining continuity in the distribution of Services to Subscribers over the System for a period of up to three (3) months; or (ii) order the Company to cease all construction and operational activities in a prompt and workmanlike manner.

10.6 Franchising Authority's Right To Order Removal or To Acquire or Effect a Transfer of the System

10.6.1 Removal. In addition to its rights under Section 10.5, upon any termination, the Franchising Authority may issue a removal order directing the Company to remove, at the Company's sole cost and expense, all or any portion of the System from all Streets and other public or nonpublic property within the Franchise Area, subject to the following:

(i) in removing the System, or any part thereof, the Company shall, at its own expense, refill and compact any excavation it makes and shall leave the Streets and other property, including utility cables, wires and attachments, in as good condition as that prevailing prior to the Company's removal of the System;

(ii) the liability insurance and indemnity provisions of this Agreement shall remain in full force and effect during the period in which the System is being removed and the associated repairs to the Streets and other property are being made; and

(iii) if in the reasonable judgment of the Franchising Authority, the Company fails to substantially complete removal, including repair of the

Streets and other property within twelve (12) months of the Franchising Authority's issuance of a removal order, the Franchising Authority shall have the right to: (A) authorize removal of the System, at the Company's cost, by another Person; and (B) declare that all rights, title and interest to the System belong to the Franchising Authority, including any portion of the System not designated for removal, without compensation to the Company. The Company shall execute and deliver such documents as the Franchising Authority may request to evidence such ownership by the Franchising Authority.

Notwithstanding the foregoing, the Company may dispose of any portion of the System not designated by the Franchising Authority for removal during such twelve (12) month period; provided, however, that if the Company fails to complete the removal of the portion(s) of the System designated for removal by the Franchising Authority within such period, then all such portion(s) of the System not disposed of and all amounts collected for any portion(s) of the System disposed of by the Company during such period shall belong to the Franchising Authority, with no price due to the Company.

10.6.2 Acquisition or Transfer. Upon any termination and as an alternative to ordering removal of the System, the Franchising Authority may acquire ownership of the System or effect a transfer of ownership to a third party.

10.6.3 Price. The price to be paid to the Company upon an acquisition or transfer by the Franchising Authority shall be pursuant to Section 627 of the Cable Act.

10.7 Company's Obligations. In the event of any acquisition, transfer or Abandonment pursuant to Section 10.5, the Company shall promptly supply the Franchising Authority or third Person with all records necessary to reflect the change in ownership and to operate and maintain the System.

SECTION 11 INSURANCE AND INDEMNITY

11.1 Insurance

11.1.1 Specifications. (a) Liability Insurance. Throughout the term of this Agreement, the Company shall, at its own cost and expense, maintain a liability insurance policy or policies that are in an acceptable form to the Franchising Authority, together with evidence acceptable to the Franchising Authority demonstrating that the premiums for said policy or policies have been paid. Such policy or policies shall be issued by companies duly licensed to do business in the State of Georgia and acceptable to the Franchising Authority. Such companies must carry a rating by A.M. Best of not less than "A". Such policy or policies shall insure (i) the Company and (ii) the Franchising Authority and its officers, boards, commissions, councils, elected officials, agents and employees (through appropriate endorsements if necessary) against each and every form of liability of the Company referred to in this Agreement in the minimum combined amount of Three Million Dollars (\$3,000,000.00) for bodily injury

and property damage. The foregoing minimum limitation shall not prohibit the Company from obtaining a liability insurance policy or policies in excess of such limitations, provided that the Franchising Authority, its officers, boards, commissions, councils, elected officials, agents and employees shall be named as additional insureds to the full extent of any limitation contained in any such policy or policies obtained by the Company.

(b) Workers' Compensation. The Company shall ensure its compliance with the Georgia Workers' Compensation Act and in that regard shall secure insurance to cover its obligations with respect to workers' compensation claims, or take other appropriate steps, which insurance and steps shall be in form and substance reasonably satisfactory to the Franchising Authority. The Company shall indemnify and hold harmless the Franchising Authority from any workers' compensation claims to which the Company may become subject during the term of this Agreement.

11.1.2 Maintenance. The liability insurance policies required by Section 11.1.1 shall be maintained by the Company throughout the term of this Agreement and such other period of time during which the Company operates or is engaged in the removal of the System. Each such liability insurance policy shall contain the following endorsement: "It is hereby understood and agreed that this policy may not be canceled nor the intention not to renew be stated until thirty (30) days after receipt by the Franchising Authority, by registered mail, of a written notice of such intent to cancel or not to renew." Within thirty (30) days after receipt by the Franchising Authority of said notice, the Company shall obtain and furnish to the Franchising Authority replacement insurance policies in a form reasonably acceptable to the Franchising Authority.

11.1.3 Increased Insurance Coverage. In the event of any changed circumstances following the Effective Date, if the Franchising Authority wishes to alter the minimum limitation of the liability insurance policy or policies required in Section 11.1, then the Franchising Authority and the Company shall negotiate such alteration in good faith.

11.1.4 Liability Not Limited. The legal liability of the Company and any Affiliated Person to the Franchising Authority and any Person for any of the matters which are the subject of the liability insurance policies required by this Section 11.1, including, without limitation, the Company's indemnification obligations set forth in this Agreement, shall not be limited by such insurance policies nor by the recovery of any amounts thereunder, except to the extent necessary to avoid duplicative recovery from or payment by the Company.

11.2 Liability and Indemnity

11.2.1 No Liability for Damages. In accordance with Section 635A of the Cable Act (47 U.S.C. § 555a), the Franchising Authority, its officers, employees, agents, attorneys, consultants and independent contractors shall have no liability to the Company, 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.

11.2.2 Indemnification of the Franchising Authority. The Company and each Affiliated Person shall: (i) defend, indemnify and hold harmless the Franchising Authority, its officers, employees, agents, attorneys, consultants and independent contractors from and against all liabilities, special, incidental, consequential, punitive and all other damage, cost and expense (including reasonable attorneys' fees) arising out of or in connection with: (a) the award of this Franchise, except to the extent that a claim may be based on the intentional malfeasance of the Franchising Authority in the award of this Franchise; (b) the construction, operation, maintenance, repair, upgrade or removal of, or any other action or event with respect to, the System or any activity or function associated with the production or distribution of any Service over the System; or (c) the distribution of any Service over the System; and (ii) cooperate with the Franchising Authority, by providing such nonfinancial assistance as may be reasonably requested by the Franchising Authority, in connection with any claim arising out of or in connection with the selection of franchisees for, or the negotiation or award of, this Agreement.

SECTION 12 MISCELLANEOUS

12.1 Controlling Authorities. This Agreement is made with the understanding that its provisions are controlled by the Cable Act, other federal laws, state laws and all applicable local laws, ordinances and regulations.

12.2 Appendices. The Appendices to this Agreement, attached hereto, and all portions thereof and exhibits thereto, are, except as otherwise specified in such Appendices, incorporated herein by reference and expressly made a part of this Agreement.

12.3 Nonexclusive Franchise. The Franchise is nonexclusive. Nothing in this Agreement shall affect the right of the Franchising Authority to grant to any Person, or to itself, a franchise, consent or right to occupy and use the Streets, or any part thereof, for the construction, operation or maintenance of all or any part of a Communications System within the Franchise Area or for any other purpose.

12.4 Failure of the Franchising Authority to Enforce this Franchise. The Company shall not be excused from complying with any of the terms or conditions of this Franchise resulting from the failure of the Franchising Authority upon one or more occasions to insist upon or to seek compliance with any such terms or conditions.

12.5 Enforceability of Agreement; No Opposition. By execution of this Agreement, the Company acknowledges the validity of the terms and conditions of this Agreement under applicable law in existence on the Effective Date, and pledges it will not assert in any manner at any time or in any forum that this Agreement, the Franchise,

or the processes and procedures pursuant to which this Agreement was entered into and the Franchise was granted are not consistent with the applicable law in existence on the Effective Date.

12.6 Entire Agreement. This Agreement, including all Appendices, embodies the entire understanding and agreement of the Franchising Authority and the Company with respect to the subject matter hereof and merges and supersedes all prior representations, agreements and understandings, whether oral or written, between the Franchising Authority and the Company with respect to the subject matter hereof, including, without limitation, all prior drafts of this Agreement and any Appendix to this Agreement and any and all written or oral statements or representations by any official, employee, agent, attorney, consultant or independent contractor of the Franchising Authority or the Company. All ordinances or parts of ordinances or other agreements between the Company and the Franchising Authority that are in conflict with the provisions of this Agreement are hereby declared invalid and superseded.

12.7 Notices. All notices shall be in writing and shall be sufficiently given and served upon the other party by first class mail, registered or certified, return receipt requested, postage prepaid, and addressed as follows:

THE FRANCHISING AUTHORITY:

City of Macon
700 Poplar Street
Macon, GA 31202
Att'n: Mayor, City of Macon

With Copy to:

City Attorney
City of Macon
700 Poplar Street
Macon, GA 31202

COMPANY:

Cox Communications
6601 Hawkinsville Road
Macon, Georgia 31206
Att'n: General Manager

With Copy to:

Cox Communications, Inc.
1400 Lake Heam Drive
Atlanta, GA 30319
Att'n: Legal Department

12.8 Delays and Failure Beyond the Control of the Company. Notwithstanding any other provision of this Agreement, the Company shall not be liable for delay in performance of, or failure to perform, in whole or in part, its obligations pursuant to this Agreement due to, including but not limited to, strike, war or act of war (whether an actual declaration of war is made or not), insurrection, riot, act of public enemy, accident, fire, flood or other act of God, technical failure, sabotage or other events, where the Company has exercised all due care in the prevention thereof to the extent that such causes or other events are beyond the control of the Company and such causes or events are without the fault of negligence of the Company. In the event that such delay in performance or failure to perform affects only part of the Company's capacity to perform, the Company shall perform to the maximum extent it is able to do so and shall take all such steps within its power to correct such causes(s). The Company agrees that in correcting such cause(s), it shall take reasonable steps to do so in as expeditious a manner as possible. The Company shall notify the Franchising Authority in writing of the occurrence of an event known to the Company, its employees, subcontractors, affiliates or agents, covered by this Section as soon as practicable.

12.9 Additional Representations and Warranties. In addition to the representations, warranties and covenants of the Company to the Franchising Authority set forth elsewhere herein, the Company represents and warrants to the Franchising Authority and covenants and agrees (which representations, warranties, covenants and agreements shall not be affected or waived by any inspection or examination made by or on behalf of the Franchising Authority) that, as of the Effective Date:

12.9.1 Organization, Standing and Authorization. The Company is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware and is duly authorized to do business in the State of Georgia and in the Franchise Area.

12.9.2 Compliance with Law. The Company is in substantial compliance with all laws, ordinances, decrees and governmental rules and regulations applicable to the System and has obtained all government licenses, permits and authorizations necessary for the operation and maintenance of the System.

12.10 Maintenance of System in Good Working Order. Until the termination of this Agreement and the satisfaction in full by the Company of its obligations under this Agreement, in consideration of the Franchise, the Company agrees that it will maintain all of the material properties, assets and equipment of the System, and all such items added in connection with any upgrade, in good repair and proper working order and condition throughout the term of this Agreement.

12.11 Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted transferees and assigns. All of the provisions of this Agreement apply to the Company, its successors and assigns.

12.12 No Waiver; Cumulative Remedies. No failure on the part of the Franchising Authority or the Company to exercise, and no delay in exercising, any right or remedy hereunder including, without limitation, the rights and remedies set forth in Section 10 of this Agreement, shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or remedy preclude any other right or remedy, all subject to the conditions and limitations established in this Agreement. The rights and remedies provided herein including, without limitation, the rights and remedies set forth in Section 10 of this Agreement, are cumulative and not exclusive of any remedies provided by law, and nothing contained in this Agreement shall impair any of the rights or remedies of the Franchising Authority under applicable law, subject in each case to the terms and conditions of this Agreement.

12.13 Severability. If any section, subsection, sentence, clause, phrase or other portion of this Agreement is, for any reason, declared invalid, in whole or in part, by any court, agency, commission, legislative body or other authority of competent jurisdiction, such portion shall be deemed a separate, distinct and independent portion. Such declaration shall not affect the validity of the remaining portions hereof, which other portions shall continue in full force and effect.

12.14 No Agency. The Company shall conduct the work to be performed pursuant to this Agreement as an independent contractor and not as an agent of the Franchising Authority.

12.15 Governing Law. This Agreement shall be deemed to be executed in Macon, Georgia, and shall be governed in all respects, including validity, interpretation and effect, and construed in accordance with, the laws of the State of Georgia, as applicable to contracts entered into and to be performed entirely within that State.

12.16 Survival. All representations and warranties contained in this Agreement shall survive the term of the Agreement.

12.17 Claims Under Agreement. The Franchising Authority and the Company agree that, except to the extent inconsistent with Section 635 of the Cable Act (47 U.S.C. § 555), any and all claims asserted by or against the Franchising Authority arising under this Agreement or related thereto shall be heard and determined either in a court of the United States ("Federal Court") located in Georgia or in a court of the State of Georgia of appropriate jurisdiction. To effectuate this Agreement and intent, the Company agrees that if the Franchising Authority initiates any action against the Company in Federal Court or in a Georgia court, service of process may be made on the Company either in person, wherever such Company may be found, or by registered mail addressed to the Company at its office in the Franchise Area as required by this Agreement, or to such other address as the Company may provide to the Franchising Authority in writing.

12.18 Modification. Except as otherwise provided in this Agreement, any Appendix to this Agreement or applicable law, no provision of this Agreement nor any Appendix to this Agreement shall be amended or otherwise modified, in whole or in part, except by an instrument, in writing, duly executed by the Franchising Authority and the

Company, which amendment shall be authorized on behalf of the Franchising Authority through the adoption of an appropriate resolution or order by the Franchising Authority, as required by applicable law.

IN WITNESS WHEREOF, the party of the first part, by the Mayor, thereunto duly authorized by the Mayor and Council of said Franchising Authority, has caused the corporate name of said Franchising Authority to be hereunto signed and the corporate seal of said Franchising Authority to be hereunto affixed and the Company, the party of the second part, by its officers thereunto duly authorized, has caused its name to be hereunto signed and its seal to be hereunto affixed as of the date and year first above written.

CITY OF MACON

By 

Name: C. Jack Ellis
Title: Mayor, City of Macon

(Seal)

Attest:


John Patton
Acting City Clerk

COX COMMUNICATIONS, INC.

By 

Name: James Michael Dyer
Title: Vice President & General Manager,
Cox Communications Middle Georgia

(Seal)

Attest:



MARIE A. THOMPSON
Notary Public, Houston County, Georgia
My Commission Expires February 7, 2006

APPENDIX A

DEFINED TERMS

For purposes of the Agreement to which this Appendix A is appended, the following terms, phrases, words and their derivations shall have the meanings set forth herein, unless the context clearly indicates that another meaning is intended.

“Abandonment” means: (i) the cessation, by act or failure to act of the Company of the provision of all, or substantially all, of the Services then being provided over the System to Subscribers or the Franchising Authority for forty-eight (48) or more consecutive hours, except if due to an event beyond the control of the Company; or (ii) the breach of the provisions described in Sections 9.1, 9.2 or 9.3 of the Agreement.

“Affiliated Person” means each Person who falls into one or more of the following categories: (i) each Person having, directly or indirectly, a Controlling Interest in the Company; (ii) each Person in which the Company has, directly or indirectly, a Controlling Interest; (iii) each officer, director, general partner, limited partner holding an interest of twenty-five percent (25%) or more, joint venturer or joint venture partner, of the Company; and (iv) each Person, directly or indirectly, Controlling, Controlled by, or under common Control with, the Company; provided that “Affiliated Person” shall in no event mean the Franchising Authority, the entity, if any, administering some or all of the Access Channels, any limited partner holding an interest of less than twenty-five percent (25%) of the Company, or any creditor of the Company solely by virtue of its status as a creditor and which is not otherwise an Affiliated Person by reason of owning a Controlling Interest in, being owned by, or being under common ownership, common management or common Control with, the Company.

“Agreement” means the Agreement to which this Appendix A is appended, together with all Appendices attached thereto and all amendments or modifications thereto.

“Basic Service” means basic cable service as defined under the Cable Act.

“Cable Act” means Title VI of the Communications Act of 1934, as amended, 47 U.S.C. §§ 521 et seq.

“Cable Service” means: (i) the one-way transmission to Subscribers of video programming or other programming Service, and (ii) Subscriber interaction, if any, which

is required for the selection or use of such video programming or other programming Service.

“Channel” means a “channel” or “cablechannel” as defined in the Cable Act.

“Cable System” means a “cable system” as defined in the Cable Act.

“Company” means Cox Communications, Inc., a corporation duly organized and validly existing under the laws of the State of Delaware, doing business as Cox Communications Middle Georgia, whose principal place of business is located at 6601 Hawkinsville Road, Macon, Georgia 31216.

“Control” or “Controlling Interest” means actual working control in whatever manner exercised, including, without limitation, working control through ownership, management, debt instruments or negative control, as the case may be, of the System, the Franchise or the Company.

“FCC” means the Federal Communications Commission, its designee, or any successor thereto.

“Franchise Area” means the incorporated limits of the City of Macon, Georgia.

“Franchising Authority” means the City of Macon, Georgia, or, as appropriate in the case of specific provisions of this Agreement, any board, bureau, authority, agency, commission, department of, or any other entity specifically designated by the Franchising Authority to act on behalf of, the City of Macon, Georgia, or any officer, official, employee or agent thereof, or any successor thereto.

“Gross Revenue” means all revenue, including advertising revenue, which is received, directly or indirectly, by the Company, by any Affiliated Person, and any other Person from or in connection with the operation of the System to provide Cable Service. Gross Revenue shall not include: (i) the revenue of a supplier of programming to the Company to the extent that said revenue is also included in the Gross Revenue of the Company; (ii) bad debt write-offs of Company; and (iii) taxes imposed by law on Subscribers which the Company is obligated to collect (it being acknowledged that franchise fees under this Agreement are not considered taxes).

“Pay Service” means any Cable Service offered on a per-Channel, per view or per-program basis.

“Person” means any natural person or any association, firm, partnership, joint venture, corporation or other legally recognized entity, whether for-profit or not-for-profit, but shall not mean the Franchising Authority.

“Responsible Franchising Official” means the body, organization or official to whom the applicable rights or obligations have been delegated by the Franchising Authority pursuant to applicable law.

“Service” means any Cable Service only, including any Basic Service, including the provision of any equipment and any installation of equipment or facilities and monthly use thereof, whether originated by the Company or any other Person, which is offered to any Person in conjunction with, or distributed over, the System, but does not include services other than Cable Service.

“Signal” means any transmission of radio frequency energy or of optical information.

“Streets” means the surface of, and the space above and below, any and all streets, avenues, highways, boulevards, concourses, driveways, bridges, tunnels, parks, parkways, waterways, docks, bulkheads, wharves, piers, public grounds and public places or waters within and belonging to the Franchising Authority and any other property within the Franchise Area to the extent to which there exist public easements or public rights of way.

“Subscriber” means any Person lawfully receiving any Service provided by the Company by means of or in connection with the System, whether or not a fee is paid for such Service.

“Subscriber Network” means that portion of the System over which Services are provided primarily to residential Subscribers.

“System” means the Cable System which is to be constructed, operated, maintained and upgraded, as necessary, by the Company pursuant to this Agreement.

APPENDIX B

SYSTEM CHARACTERISTICS

Upon completion of the upgrade, the Company's System shall be a 750 MHz hybrid fiber-coaxial cable network. The System shall be two-way capable and is designed to provide a wide range of communications services, including analog video, digital video and high speed data. The System includes a redundant backbone to ensure a high level of reliability. The System passes approximately 115,000 homes and businesses within the Macon, Georgia metropolitan area. On average, the System serves less than 1,000 homes per node within the Macon, Georgia metropolitan area. The Company shall complete the upgrade of the System not later than December 31, 2001.

APPENDIX C

GENERAL REQUIREMENTS FOR WORK ON THE SYSTEM

Licenses and Permits

The Company shall have the sole responsibility for diligently obtaining, at its own cost and expense, all permits, licenses or other forms of approval or authorization necessary to construct, operate, maintain, repair or upgrade the System, or any part thereof, prior to commencement of any such activity.

New Grades or Lines

If the grades or lines of any Street within the Franchise Area are changed at any time during the term of the Agreement, then the Company shall, at its own cost and expense and upon the request of the Franchising Authority, after reasonable prior notice to the Company, protect or promptly alter or relocate the System, or any part thereof, so as to conform with such new grades or lines. In the event that the Company refuses or neglects to so protect, alter or relocate all or part of the System, the Franchising Authority shall have the right to break through, remove, alter or relocate all or any part of the System without any liability to the Company and the Company shall pay to the Franchising Authority the costs incurred in connection with such breaking through, removal, alteration or relocation.

Protect Structures

In connection with the construction, operation, maintenance, repair, upgrade or removal of the System, the Company shall, at its own cost and expense, protect any and all existing structures belonging to the Franchising Authority and all designated landmarks. The Company shall obtain the prior approval of the Franchising Authority before altering any water main, sewerage or drainage system, or any other municipal structure in the Streets required because of the presence of the System in the Streets. Any such alteration shall be made by the Company, at its sole cost and expense, and in a manner prescribed by the Franchising Authority. The Company agrees that it shall be liable, at its own cost and expense, to replace or repair and restore to serviceable condition, in a manner as may be specified by the Franchising Authority, any Street or any municipal structure involved in the construction, operation, maintenance, repair, upgrade or removal of the System that may become disturbed or damaged as a result of any work thereon by or on behalf of the Company pursuant to the Agreement.

No Obstruction

In connection with the construction, operation, maintenance, repair, upgrade or removal of the System, the Company shall not obstruct the Streets, subways, railways, passenger travel, river navigation or other traffic to, from or within the Franchise Area without the prior consent of the appropriate authorities.

Movement of Wires

The Company shall, upon at least fourteen (14) days prior written notice by the Franchising Authority or any Person holding a permit to move any structure, temporarily move its wires to permit the moving of said structure. The Company may impose a reasonable charge on any Person other than the Franchising Authority for any such movement of its wires and may require payment in advance from such Person.

Safety Precautions

The Company shall, at its own cost and expense, undertake all necessary and appropriate efforts to prevent accidents at its work sites, including the placing and maintenance of proper guards, fences, barricades, watchmen and suitable and sufficient lighting.

Moving Wires

The Franchising Authority may, at any time, in case of fire, disaster or other emergency, as reasonably determined by the Franchising Authority, in its sole discretion, cut or move any of the wires, cables, amplifiers, appliances or other parts of the System, in which event the Franchising Authority shall not incur any liability to the Company, any Affiliated Person or any other Person. When possible, the Company shall be consulted prior to any such cutting or movement of its wires and be given the opportunity to perform such work itself. All costs to repair or replace such wires, cables, amplifiers, appliances or other parts of the System shall be borne by the Company.

APPENDIX D

PUBLIC, EDUCATIONAL AND GOVERNMENTAL SERVICES

Section I. List of Locations for Temporary Origination of Programming on the Educational and Governmental Channels.

A. Public Schools

1. Central District

Lanier A

Lanier B

Miller 7th

Miller 8th

2. Northeast District

ML King Elem.

Appling

Lasseter

Smith

3. Southeast District

Ballard Hudson

Southeast

4. Southwest District

McEvoy A

McEvoy B

Willingham A

Willingham B

5. Other

Butler TMR Center

B. Colleges & Universities

Macon College

Central Georgia Technical College

C. Government Buildings

Bibb County Courthouse

Fire Department Headquarters on First Street

Washington Library

Section II. List of Permanent Locations for Origination of Programming on the PEG Channels

Bibb County Board of Education

City Auditorium

City Hall

Douglass Theatre

Macon Centreplex

APPENDIX E

RATES, TERMS AND CONDITIONS

Basic Service

[to be inserted; could be satisfied by rate card]

Pay Service

[to be inserted; could be satisfied by rate card]

Equipment and Installation

[to be inserted; could be satisfied by rate card]

APPENDIX F

CUSTOMER SERVICE STANDARDS

The Company ("cable operator") shall be subject to the following customer Service standards. Nothing herein shall be interpreted to preclude the Company from adopting customer Service standards that exceed the requirements set forth below in this Appendix E.

SECTION 1 -- OFFICE HOURS AND TELEPHONE AVAILABILITY

1.0 Cable System Office Hours and Telephone Availability.

1.1 The cable operator will maintain a local, toll-free or collect call telephone access line which will be available to its Subscribers twenty-four (24) hours a day, seven (7) days a week.

(a) Trained Company representatives will be available to respond to customer telephone inquiries during normal business hours.

(b) After normal business hours, the access line may be answered by a service or an automated response system, including an answering machine. Inquiries received after normal business hours must be responded to by a trained Company representative on the next business day.

1.2 Under normal operating conditions, telephone answer time by a customer representative, including wait time, shall not exceed thirty (30) seconds when the connection is made. 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 a quarterly basis.

1.3 The operator will not be required to acquire equipment or perform surveys to measure compliance with the telephone answering standards above unless an historical record of complaints indicates a clear failure to comply.

1.4 Under normal operating conditions, the customer will receive a busy signal less than three percent (3%) of the time.

1.5 Customer service center and bill payment locations will be open at least during normal business hours and will be conveniently located in the Franchise Area in which the Franchising Authority is located.

SECTION 2 -- INSTALLATIONS, OUTAGE CORRECTION AND
CUSTOMER SERVICE CALLS

2.0 Installations, Outages and Service Calls. Under normal operating conditions, each of the following four standards will be met no less than ninety five percent (95%) of the time measured on a quarterly basis:

2.1 Standard installations will be performed within seven (7) business days after an order has been placed. "Standard" installations are those that are located up to one hundred twenty-five (125) feet from the existing distribution System.

2.2 Excluding conditions beyond the control of the operator, the cable operator will begin working on "Service interruptions" promptly and in no event later than twenty-four (24) hours after the interruption becomes known. The cable operator must begin actions to correct other Service problems the next business day after notification of the Service problem.

2.3 The "appointment window" alternatives for installations, Service calls and other installation activities will be either a specific time or, at maximum, a four-hour time block during normal business hours. (The operator may schedule service calls and other installation activities outside of normal business hours for the express convenience of the customer.)

2.4 An operator may not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment.

2.5 If a cable operator representative is running late for an appointment with a customer and will not be able to keep the appointment as scheduled, the customer will be contacted. The appointment will be rescheduled, as necessary, at a time which is convenient for the customer.

2.6 The cable operator's failure to correct outages or to make repairs within the stated time periods shall be excused in the following circumstances:

(a) if the cable operator could not obtain access to the customer's premises; or

(b) if the Franchising Authority, acting reasonably, agrees with the cable operator that correcting such outages or making such repairs was not reasonably possible within the allotted time period.

SECTION 3 -- CUSTOMER COMMUNICATIONS, NOTICES AND BILLING

3.0 Communications Between Cable Operators and Cable Subscribers.

3.1 Notifications to Subscribers.

(a) The cable operator shall provide written information on each of the following areas at the time of installation of Service, at least annually to all Subscribers, and at any time upon request:

- (1) Products and Services offered;
- (2) Prices and options for programming Services and conditions of subscription to programming and other Services;
- (3) Installation and Service maintenance policies;
- (4) Instructions on how to use the Cable Service;
- (5) Channel positions programming carried on the System; and
- (6) Billing and complaint procedures, including the address and telephone number of the local Franchise Authority's cable office.

(b) Customers will be notified of any changes in rates, programming Services or Channel positions as soon as possible using any reasonable means at the Company's sole discretion. Notice must be given to Subscribers a minimum of thirty (30) days in advance of such changes if the change is within the control of the cable operator. In addition, the cable operator shall notify Subscribers thirty (30) days in advance of any significant changes in the other information required by the preceding paragraph. The Company shall not be required to provide prior notice of any rate change that is the result of a regulatory fee, Franchise fee or any other fee, tax, assessment or charge of any kind imposed by any Federal agency, State or Franchising Authority, on the transaction between the operator and the Subscriber. Notice shall not be required pursuant to this subsection (b) if such notice is prohibited by applicable law or regulation.

3.2 Billing.

(a) Bills will be clear, concise and understandable. Bills must be fully itemized, with itemizations including, but not limited to, basic and premium Service charges and equipment charges. Bills will also clearly delineate all activity during the billing period, including optional charges, rebates and credits.

(b) In case of a billing dispute, the cable operator must respond to a written complaint from a Subscriber within 30 days.

3.3 Refunds. Refund checks will be issued promptly, but no later than either:

(a) The customer's next billing cycle following resolution of the request or thirty (30) days, whichever is earlier, or

(b) The return of the equipment supplied by the cable operator if Service is terminated.

3.4 Credits. Credits for Service will be issued no later than the customer's next billing cycle following the determination that a credit is warranted.

SECTION 4 -- CUSTOMER COMPLAINTS

4.0 Complaints.

4.1 Complaints for purposes of this Agreement, "complaint" shall mean any written communication by a Subscriber or oral communication by a Subscriber reduced to writing, including to a computer form, expressing dissatisfaction with any nonprogramming aspect of the cable operator's business or operation of the System.

4.2 Referral of Complaints from the Franchising Authority to the Company.

(a) If the Franchising Authority is contacted directly about a complaint concerning the cable operator, the Franchising Authority shall notify the Company.

(b) Within ten (10) business days after being notified about the complaint, the Company shall issue to the Franchising Authority a report detailing the investigation thoroughly, describing the findings, explaining any corrective steps which are being taken and indicating that the Person who registered the complaint has been notified of the resolution.

4.3 Complaint Records. The cable operator shall maintain complaint records, which shall record the date a complaint is received, the name and address of the affected Subscriber, a description of the complaint, the date of the resolution, a description of the resolution and an indication of whether the resolution was appealed

SECTION 5 -- CREDITS

5.0 The Company shall maintain a policy of providing credits to Subscribers, upon request, for a "Service interruption," as defined in this Appendix and not caused by the Subscriber, which remains unrepaired for more than forty-eight (48) hours after either the cable operator receives from the Subscriber a request for repair service (provided that, to the extent access to the Subscriber's premises is required to effect such

repair, the Subscriber has granted the cable operator such access) or the cable operator learns of such problem.

SECTION 6 -- FAILURE TO COMPLY WITH THESE REQUIREMENTS

6.0 Material Requirements

6.1 Subject to the due process procedures set forth in Section 10 of this Agreement, the Company agrees that substantial failure to comply with any material requirement set forth in these customer Service standards shall constitute a failure to comply with a material provision of this Agreement.

6.2 Liability for Contractors'/Subcontractors' Failure to Comply. If the Company fails to take reasonable steps to ensure that its contractors, subcontractors or agents abide by these customer Service standards, the Company shall be liable for any breach of these customer Service standards committed by its contractors, subcontractors or agents just as if the Company itself had committed the breach.

SECTION 7 -- DEFINITIONS

7.0 Definitions.

7.1 Normal Business Hours. The term "normal business hours" means those hours during which most similar businesses in the community are open to serve customers. In all cases, "normal business hours" must include some evening hours at least one night per week and/or some weekend hours.

7.2 Normal Operating Conditions. The term "normal operating conditions" means those service conditions which are within the control of the cable operator. Those conditions which are not within the control of the cable operator include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Those conditions which are ordinarily within the control of the cable operator include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of the Communications System.

7.3 Service Interruption. The term "Service interruption" means the loss of picture or sound on one or more cable Channels.

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF MACON, GEORGIA, AUTHORIZING THE CITY TO FILE IN SUPPORT OF A PETITION PENDING BEFORE THE FEDERAL COMMUNICATIONS COMMISSION REQUESTING THAT THE COMMISSION PROHIBIT CABLE COMPANIES FROM REMOVING GOVERNMENTAL CHANNELS FROM THE BASIC, ANALOG TIER OF CABLE TELEVISION SERVICE; AND FOR OTHER PURPOSES.

Purpose: file in support of a Petition for Declaratory Judgment before the Federal Communications Commission (“FCC”) to protest the removal of governmental (“PEG”) channels from basic analog channels available to all cable television consumers

WHEREAS, Cox provides cable television service in Macon, Georgia, originally pursuant to a franchise agreement with the City, but more recently pursuant to a franchise with the state; and

WHEREAS, state law provides that local franchise provisions related to provision of support for PEG channels remain in effect through the end of the term of the local franchise, which is December 31, 2017, despite the granting of the state franchise; and

WHEREAS, Cox has moved its PEG channels from the original analog channels to digital channels to make room for commercial channels, so that many viewers of such analog channels (those who do not have the newer, digital compatible, televisions) can no longer access these PEG channels without a special tuner box that Cox has only committed to providing until January 1, 2012 and, for certain other viewers, the channels have been moved to different, less accessible locations; and

WHEREAS, the franchise agreement with the city required Cox to obtain city approval prior to changing the location of any of the PEG channels but Cox contends that provision is no longer in force; and

WHEREAS, the location changes of the PEG channels by Cox have deprived many viewers, especially lower income viewers with older televisions and less expensive cable service, of ready access to the PEG channels; and

WHEREAS, the information provided on the PEG channels is helpful to all citizens and allows for broader awareness of and participation in governmental programs and services and public issues; and

WHEREAS, the FCC regulates, among other things, cable television providers, and a petition ("Petition For Declaratory Ruling Regarding Public, Educational And Governmental Programming- MB 09-13) is pending before the Commission to prohibit cable providers from removing PEG channels from the basic, analog tier.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Council of the City of Macon and it is hereby so resolved by the authority of the same that the City shall file comments in support of the pending petition before the Federal Communications Commission that seeks an FCC declaration to prohibit the removal of the governmental (PEG) channels from the basic, analog tier of cable television service, including a visit to the FCC by a member of Council, and shall retain counsel to assist with the same.

SO RESOLVED this 1st day of February, 2011.

James E. Dunbar
President, City Council

SO APPROVED this 2nd day of February, 2011.

Robert A. B. Recheat
Mayor

Res Ellington cox cable petition before FCC

City of Macon, GA
I do hereby certify that the above and foregoing Resolution was duly passed at the Regular Meeting of the Council of the City of Macon, held 2-1-2011 Witness my hand and seal of the City of Macon this 2-2-2011
Joseph R. Humphrey
Clerk of Council

SUBMITTED TO MAYOR'S OFFICE
February 2, 2011

RETURNED FROM MAYOR'S OFFICE
February 3, 2011 12:15 pm

SPONSORED BY
Council Members Tom Ellington and Lonnie Miley

Tom Ellington
Lonnie Miley

R-11-0005



A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF MACON, GEORGIA, AUTHORIZING THE CITY TO JOIN A PETITION PENDING BEFORE THE FEDERAL COMMUNICATIONS COMMISSION REQUESTING THAT THE COMMISSION PROHIBIT CABLE COMPANIES FROM REMOVING GOVERNMENTAL CHANNELS FROM THE BASIC, ANALOG TIER OF CABLE TELEVISION SERVICE; AND FOR OTHER PURPOSES.

ACTION TAKEN AND DATE: *Approved 1-31-11*

O AND R COMMITTEE

James D. Lindsey

APPROVED AS TO LEGAL FORM BY CITY ATTORNEY

J. Pope Kundstaff
J. Pope Kundstaff

REPORT

Read first time *January 18, 2011*
And referred to the Committee on *Utilities and Regulations*

Rendered *February 4, 2011*
and *Adopted*

VOTE

	Yes	No	Abstain	Absent
Hutto	✓			
Miley	✓			
Lucas	✓			
Timley	✓			
Cranford	✓			
DeFore	✓			
Schlesinger	✓			
Paris				✓
Ficklin	✓			
Ellington	✓			
Jones				✓
Watkins				✓
Benedict	✓			
White	✓			
Erickson				✓
Total:	11	0		4