

**ORDINANCE NO. 1067**

An Ordinance granting a franchise to Cumberland County Cable TV, to build, construct, operate and maintain a cable television system in the City of Crossville, Tennessee and setting forth conditions accompanying the granting of this franchise.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CROSSVILLE, TENNESSEE, as follows:

SECTION 1. Title. This Ordinance shall be known and may be cited as the Terms and Conditions of the Cable Television Franchise.

SECTION 2. Definitions. For the purpose of this Ordinance, and when not inconsistent with the context, words used herein in the present tense include the future; words in plural include the singular, and vice versa. The word "shall" is always mandatory. The captions supplied herein for each section are for convenience only. Said captions have no force of law, are not part of the section, and are not to be used in construing the language of the section. The following terms and phrases, as used herein, shall be given the meaning set forth below:

- (a) "City" or "Grantor" is the City of Crossville, a municipal corporation under the laws of the State of Tennessee, or any successor to the Legislative powers of the present city.
- (b) "Grantee" or "Company" is Cumberland County Cable TV. It is the grantee of rights under this franchise.
- (c) "Franchise" is the rights granted to any person by the City of Crossville under the terms of this or any agreement entered into, by and between the City of Crossville, Tennessee, and such person according to the terms of this Code.
- (d) "City Council" is the governing legislative body of the City of Crossville, Tennessee.
- (e) "Person" is any person, firm, partnership, association, corporation, company or organization of any kind.
- (f) "Cable System" or "Cable Television System" means a facility consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Television Service to multiple subscribers within a community, not including a facility or combination of facilities that serves only to retransmit the television signals of one or more television broadcast stations; or a facility or combination of facilities that serves only subscribers in one or more multiple unit dwellings under common ownership, control or management, unless such facility or facilities use any public right-of-way or public utility easement.
- (g) "Cable Television Service" means the provision of television reception for director indirect compensation, or as otherwise provided in this Ordinance, and distributing the same of a Cable Television System.
- (h) "CATV System" shall mean cable system.
- (i) "Corporate Limits" shall include all areas lying within the limits of the City of Crossville, Tennessee, as from time to time changed by annexation or other legal methods.
- (j) "Federal Communications Commission" or "FCC" is the Federal Commission or Agency created pursuant to the Communications Act of 1934 or its successor agency.
- (k) "Channels" shall mean a group of frequencies in the electromagnetic spectrum capable of carrying an audio-data or an audio-video television signal. Each channel is a block of frequencies containing a six MHz band width.
- (l) "Basic Cable Service" means any service tier which includes the re-transmission of local television broadcast signals, and which tier also meets the definition of Basic Service contained in 47 U.S.C. 543(b)(7).
- (m) "Gross Annual Receipts" shall mean all revenue derived directly by the Grantee and its subsidiaries, from or in connection with the delivery of the Cable Television System pursuant to this Ordinance; including, but not limited to, gross annual basic cable service receipts, gross annual premium channels receipts, all other service receipts, gross annual advertising receipts, gross annual receipts from use of commercial channels, installation and reconnection fees, and converter and other equipment rentals; provided, however, that this shall not include any franchise fees, copyright fees and/or

any taxes on services furnished by the grantee herein, imposed directly upon any subscriber or user by the state, city or other governmental entity and collected by the grantee on behalf of said governmental unit.

- (n) "City of Crossville" means the present municipal corporation of Crossville, together with any future annexation made pursuant to law. Also referred to as "City".
- (o) "Ordinance" or "Franchise Ordinance" means this Ordinance which grants a franchise and defines the specific rights and obligations of each party pursuant to the general authority, powers and restrictions of this Ordinance.
- (p) "Streets" shall mean the surface of and all rights-of-way and the space above and below any public street, road, highway, bridge, freeway, lane, public way or place, sidewalk, alley, court, boulevard, parkway, drive, waterway, dock, wharf, pier, or easement now or hereafter held by the City for the purpose of public travel and shall include other easements or rights of way as shall be now held or hereafter held by the City which shall, within their proper use and meaning, entitle the franchisee to the use thereof for the purposes of installing or transmitting cable television service transmissions over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments, and other property as may be ordinarily necessary and pertinent to a cable television system.
- (q) "Year" means the remaining portion of any calendar year in which a franchise is granted. Thereafter, "Year" means a full calendar year.

### SECTION 3. Grant of Authority.

- (a) The City warrants it has a right to issue a franchise and the Grantee, by acceptance, acknowledges and accepts the right of the city to issue the same.
- (b) The City hereby grants to grantee, subject to the right of amendment as hereinafter provided, the right and privilege to construct, erect, operate, and maintain, in, upon, along, across, above, over and under the streets, alleys, public ways and public places not laid out or dedicated, and all extensions thereof, and additions thereto, in the City, poles, wires, cables, underground conduits, manholes, and other conductors and fixtures necessary for the maintenance and operation in the City of a cable system for the interception, retransmission, sale, and distribution of television signals, radio, as may be deemed appropriate by the Grantee, upon the limitations, terms, and conditions in this ordinance contained, as the same may be from time to time amended.
- (c) This franchise award shall not be sublet, assigned or leased, nor shall any of the rights or privileges therein granted or authorized be transferred or assigned, either in whole or in part nor shall title thereto, either legal or equitable, or any right, title, interest or property therein pass to or vest in any person except the Grantee, either by act of the Grantee or by operation of law, without the prior consent of the City expressed by ordinance, which consent will not be unreasonably withheld. The City shall take such consent or denial action within the limits prescribed in 47 U.S.C. 537(e)
- (d) The right to use and occupy said streets, alleys, public ways and places for the purposes herein set forth shall not be exclusive when grant by the City.

### SECTION 4. Compliance with Applicable Laws.

- (a) Grantee, at all times during the life of its franchise, shall be subject to all lawful exercise of the police power by the City. Unless otherwise prohibited by State or Federal law, or where jurisdiction has been or shall be conferred upon a State or Federal commission, board or body, the City reserves a right by ordinance or resolution to regulate such cable system as to installation fees, if any; rates and charges to be paid by the subscribers for the service; the quality of service to be provided subscribers; the rate of construction of facilities so as to serve the territorial area referred to hereinafter; to promulgate rules and regulations and other necessary supervisory procedures to assure prompt completion of the system; to provide service for all citizens of the City and its police jurisdiction wherever located; to set a schedule of construction that will attain the said completion of such system as hereinabove last stated; and to adopt such other rules and regulations it may now or hereafter lawfully impose in keeping with and not in conflict with applicable State or Federal law, or the lawful rules and regulations heretofore or

- hereafter adopted by any Federal commission, board or body and/or any lawful State rules and/or regulations lawfully adopted by any State commission, board, or body.
- (b) Grantee, its successors and assigns granted a franchise hereunder, shall be subject to lawful regulations heretofore or hereafter adopted by the Federal Communications commission and, should it now be or hereafter become subject to the jurisdiction of any other commission, then also to the lawful rules and regulations adopted by such commission and also to the lawful rules and regulations adopted by any similar Federal commission or State regulatory body, having jurisdiction. If the Grantee, its successor or assigns, shall fail to comply with any material Federal and/or State statute, rules, regulations, orders or conditions lawfully vested under Federal law in any Federal regulatory body and/or rules, regulations, orders and conditions lawfully vested in any State regulatory body and/or rules, regulations, orders and conditions lawfully vested in the City, the City shall have the right to terminate or cancel any franchise granted hereunder after written notice to the Grantee to correct such failure or default and such failure or default shall continue for a period of time specified in such notice, not less than ninety (90) days. In the event such failure or default cannot reasonably be corrected within the period of time specified in such notice, Grantee shall request a time extension from City noting reasons for requesting an extension and a project completion date. City shall not unduly withhold approval of reasonable requests.

SECTION 5. Franchise and Area. Any franchise granted hereunder relates to the present City limits of the City and to any area hereafter added thereto during the term of any franchise granted hereunder.

SECTION 6. Services. The cable television system provided by the Grantee shall be capable of delivering seventy (70) channels to all customers.

SECTION 7. Customer Service and Signal Quality Requirements. The Grantee shall:

- (a) Comply with the technical standards provided by the Federal Communications Commission at 47 C.F.R. 76.601 through 76.609, as from time to time amended.
- (b) Limit failures which leave 5 or more subscribers with no cable service to a minimum by responding to such malfunctions properly and promptly, but in no event longer than twenty-four (24) hours after notice, unless prevented by an act of God. Any repairs or corrections which shall take over twenty-four (24) hours shall be reported to City with a projected timetable for completion.
- (c) Upon request of a subscriber, Grantee shall demonstrate, by instruments or otherwise, to subscribers that a signal meeting or exceeding those standards in 47 C.F.R., Part 76, sub-Part K, Section 76.601-76.610 are being delivered.
- (d) In the case of any outage, other than an outage beyond the control of the Grantee, in which one or more customers are completely without cable service for 24 hours or more, upon the request of a subscriber Grantee shall calculate a pro rata reduction in the charge for cable service, to be included in such subscriber's next regular bill after the resolution of the request for credit. In the case of a system-wide failure, reduction of bill shall be made automatically by Grantee for all affected customers. For substantial outages, Grantee will notify the public via a public service announcement that customers may contact Grantee for a reduction of their bill.
- (e) Comply with the Customer Service and Consumer Protection Standards at 47 C.F.R. 76-309, as from time to time amended by the Federal Communications Commission.
- (f) Franchisee agrees to maintain a local business office within the corporate limits of the city, and further agrees that said office will be staffed at all times during normal business hours, Monday through Friday. Franchisee further agrees to provide a messaging or telephone answering service during all times outside of normal business hours, which will be available toll-free to city telephone customers. Franchisee agrees that any calls received outside of normal business hours will be returned by an authorized employee or agent of the Franchisee within the first half (4 hours) of the next business day.

SECTION 8. Public, Educational & Governmental Access Channels and Emergency Broadcast Services Required.

- (a) The Grantee shall provide, subject to the rules and regulations of the Federal Communications Commission, public emergency broadcast capabilities whereby the City can designate channels and interrupt service in order to make such public emergency communications as are reasonable and necessary.
- (b) Grantee shall reserve a minimum of one channel for public, educational and governmental (PEG) access use. With prior approval of the city, such channel(s) may be used by Grantee for other purposes when not required by PEG users. The City shall assume all responsibility for regulation and/or scheduling the use of PEG channels by any and all users.

SECTION 9. Indemnification. Grantee shall save the City harmless from all loss sustained by the City on account of any suit, judgment, execution, claim or demand whatsoever against the City resulting from negligence on the part of Grantee in the construction, operation or maintenance of its cable television system in the City; and for this purpose Grantee shall carry property damage and personal injury insurance with some responsible insurance company of companies qualified to do business in the State of Tennessee. The amounts of such insurance to be carried for liability due to property damage shall be \$100,000 as to any one occurrence; and against liability due to injury to or death of person, \$250,000 as to any one person and \$500,000 as to any one occurrence. The City shall notify Grantee, in writing, within ten (10) days after the presentation of any claim or demand, either by suit or otherwise, made against the City on account of any negligence as aforesaid on the part of Grantee. Where any such claim or demand against the City is made by suit or legal action, written notice thereof shall be given by the City to Grantee not less than five (5) days prior to the date upon which an answer to such legal action is due or within ten (10) days after the claim or demand is made upon the City, whichever notice period yields Grantee the larger amount of time within which to prepare an answer. The foregoing liability and indemnity obligations of the Grantee pursuant to this section shall not apply to damages occasioned by acts of the City, its agents or employees, nor shall not be deemed a waiver of any defense of contributory negligence which the Grantee may assert against the City, its agents or employees.

SECTION 10. Construction & Maintenance.

- (a) All structures, lines and equipment erected by Grantee within the City shall be so located as to cause minimum interference with the proper use of streets, alleys, public ways and places and to cause minimum interference with the rights or reasonable convenience of property owners.

Existing poles, posts, conduits, and other such structures of any electric power system, telephone company, or other public utility located in the City shall be used to the extent practicable in order to minimize interference with travel and avoid unnecessary duplication of facilities. The City shall actively assist Grantee to the fullest extent necessary in obtaining reasonable joint pole or conduit use agreements from the owners of existing poles or conduits. To the extent that existing poles, posts, conduits, and other such structures are not available, or are not available under reasonable terms and conditions, including excessive cost or unreasonable limitation upon the use of Grantee's cable television system, Grantee shall have the right to purchase, lease, or in any other manner acquire land, rights-of way, or public utility easements upon or under which to erect and maintain its own poles, conduits, and other such structures as may be necessary for the construction and maintenance of its cable television system. Where all other existing utilities are underground, Grantee shall locate its facilities underground.

- (b) In case of any disturbance by Grantee of pavement, sidewalk, driveway or other surfacing, Grantee shall, at its own cost and expense and in a manner approved by the City, replace and restore all paving, sidewalk, driveway or surface so disturbed in a condition as good as before said work was commenced.
- (c) Grantee shall, upon a minimum of seventy-two (72) hours prior notice, on the request of any person holding a building moving permit issued by the City, temporarily raise or lower its lines to permit the moving of the building. The expense of such temporary

removal shall be paid by the person requesting the same, and Grantee shall have the authority to require such payment in advance.

- (d) All poles, lines, structures and other facilities of Grantee in, on, over and under the streets, sidewalks, alleys, public utility easements and public grounds or place of the City shall be kept by Grantee at all times in a safe condition.
- (e) When the City undertakes any reconstruction, realignment or any other work on City streets which would require relocation or modification of Grantee's poles, wires or other facilities, City shall notify Grantee a minimum of seventy-two (72) hours in advance, and Grantee shall be responsible for such relocations of Grantee's facilities.

SECTION 11. Service Extension. Subject to the provisions of this Section, the Grantee shall offer Cable Television Service to all potential residential subscribers located within the City Limits as of the effective date of the Franchise. Within ten (10) months of the effective date of annexation by the city of any new territory, or new residential home development in the City, Grantee agrees to extend its cable to provide additional service within the corporate limits of the City of Crossville so as to make the service available to all potential residential subscribers which can be connected to Grantee's existing Cable System using a drop of two hundred twelve (212) feet or less and provided there exists a minimum density of twenty-five (25) homes per cable mile in such area. The Grantee may elect, but has no obligation, to offer Cable Television Service to areas not meeting the minimum standards.

SECTION 12. Amendments & Supplemental Agreements. It shall be the policy of the City to amend the Franchise, upon application of the Grantee, when necessary, to enable the Grantee to take advantage of any opportunities or developments in the field of transmission of television and radio signals or communications and/or entertainment services which will afford it an opportunity to more efficiently, effectively, or economically serve its customers. Provided, however, that this section shall not be construed to require the City to make any amendment.

SECTION 13. Filings & Communications with Regulatory Agencies. Upon request of the City, copies of all petitions, applications, registrations and responses to complaints submitted by the Grantee to the Federal Communications Commission shall also be submitted simultaneously to the City.

SECTION 14. Maps, Plats & Reports.

- (a) The Grantee shall file with the City Clerk a true and accurate map or plat of all existing and proposed installations. Such map or plat shall be updated at least annually.
- (b) The Grantee shall file annually with the City, or its designee, not later than ninety (90) days after the end of the company's fiscal year, an audited Gross Annual Receipts statement applicable to the operations within the city during the preceding twelve month period. There shall be submitted along with them such other reasonable information as the City shall request with respect to the company's properties and expenses related to its CATV operations within the City.
- (c) The Grantee shall at all times keep on file with the City Clerk a current list of its partners and stockholders with an interest of 50% or greater, its officers and directors and bond holders.

SECTION 15. Franchise Term. This franchise shall take effect and be in full force from September 12, 2004 and, after acceptance by grantee as provided in Section 21, the same shall continue in full force and effect for a term of ten (10) years. To the extent deemed necessary, the City shall have the right to require a public hearing to conduct a "performance and compliance review". Such public hearing shall be conducted in accordance with local public hearing regulations and general due process procedures.

SECTION 16. Forfeiture. If Grantee should violate any material terms, conditions, or provisions of this franchise or if Grantee should fail to comply with any material provisions of any ordinance of the City regulating the use by Grantee of the streets, alleys, public utility easements or public ways of the City, and should Grantee further continue to violate or fail to comply with the same for a period of ninety (90) days after grantee shall have been notified in writing by the City to cease and desist from any such violation or failure to comply so specified, then Grantee may be deemed to have forfeited and annulled and shall thereby forfeit and annul

all the rights and privileges granted by this franchise; provided, however, that such forfeiture shall be declared only by written decision of the City Council containing its findings of fact and stating the specific grounds for forfeiture after an appropriate public proceeding held after the end of such ninety (90) day period before the City Council affording Grantee due process and full opportunity to be heard and to respond to any such notice of violations or failure to comply; and provided further that the City Council may, by agreement with Grantee and upon a finding of violation or failure to comply, impose a lesser penalty than forfeiture of this franchise or excuse the violation or failure to comply upon a showing by Grantee of mitigating circumstances. Grantee shall have the right to appeal any finding of violation or failure to comply with any resultant penalty to any court of competent jurisdiction, as provided in 47 U.S.C. 555. In the event that forfeiture is imposed upon Grantee, it shall be afforded a period of six (6) months within which to sell, transfer, or convey this cable television system to a qualified purchaser at fair market value. During this six (6) month period, which shall run from the effective date of the final order or decision imposing forfeiture, including any appeal, Grantee shall have the right to operate this cable television system pursuant to the provisions of this franchise.

Grantee shall not be declared in default or be subject to forfeiture or any sanction under any provision of this Ordinance in any case where the action justifying such default, forfeiture or sanction is without the Grantee's knowledge or authorization or outside its control.

SECTION 17. Surrender Right. Grantee may surrender this franchise at any time upon filing with the City Clerk of the City a written notice of its intention to do so at least six (6) months before the surrender date. On the surrender date specified in the notice, all of the rights and privileges and all of the obligations, duties and liabilities of Grantee in connection with this franchise shall terminate. Further, should the Grantee, his and/or its successors and assigns discontinue the business for which this franchise is granted, all poles, wires, cables and other devices shall be removed without expense to the City, within ninety (90) days after demand for such removal is made by the City.

SECTION 18. Transfers. All of the rights and privileges and all of the obligations, duties, and liabilities created by this franchise shall pass to and be binding upon the successors of the City and the successors and assigns of Grantee; and the same shall not be assigned or transferred without the written approval of the City Council, which approval shall not be unreasonably withheld, in compliance with the requirements of 47 U.S.C. 537(e); provided, however, that this Section shall not prevent the assignments or hypothecation of the franchise by Grantee as security for debt without such approval; and provided further that transfers or assignments of this franchise to a partnership with the same general partner as Grantee, between any parent and subsidiary corporation or between entities of which at least fifty percent (50%) of the beneficial ownership is held by the same person, persons, or entities shall be permitted without the prior approval of the City Council.

SECTION 19. Franchise Fee. In consideration of the terms of this franchise, and in conformity with 47 U.S.C. 542, Grantee agrees to pay the City a sum of money equal to five percent (5%), or the highest percentage allowed by Federal law, of Grantee's gross annual receipts per year. Such sum shall be payable quarterly, no later than thirty (30) days following the end of the quarter. This payment shall be in addition to any other tax or payment owed to the City by Grantee, including ad valorem or business taxes.

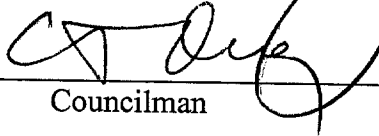
SECTION 20. Franchise Required. Consistent with Tennessee state law at time of execution of this document, all franchises granted by the City shall contain the same substantive terms and conditions.

SECTION 21. Effective Date and Acceptance. This Ordinance shall become effective on June 14, 2005, and, after acceptance by Grantee, shall then be and become a valid and binding contract between the City and Grantee; provided, however, that this Ordinance shall be void unless Grantee shall, within ninety (90) days after the final passage of this Ordinance as provided in Section 23, file with the City Clerk of the City a written acceptance of this Ordinance and the franchise herein granted, agreeing that it will comply with all of the provisions and conditions hereof and that it will refrain from doing all of the things prohibited by this Ordinance.

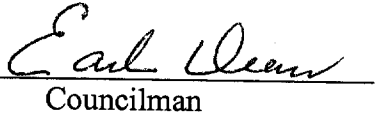
SECTION 22. Severability. If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any Federal or State court of administrative or governmental agency of competent jurisdiction, specifically including the Federal Communications Commission, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions hereof.

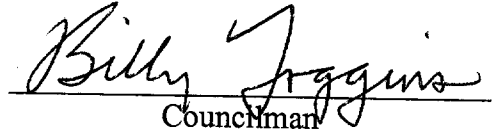
SECTION 23. Passage and Effective Date. For purposes of becoming a law, this ordinance shall be effective fifteen (15) days from and after its first passage, the public welfare requiring it. For all other purposes, it shall be effective as provided for in Section 21 above.

  
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Mayor

  
\_\_\_\_\_  
Councilman

  
\_\_\_\_\_  
Councilman

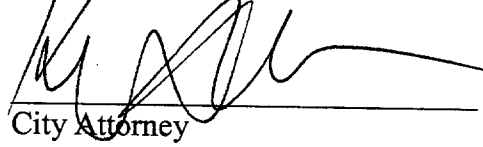
  
\_\_\_\_\_  
Councilman

  
\_\_\_\_\_  
Councilman

ATTEST:

  
\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
City Attorney

Passed 1<sup>st</sup> Reading: June 14, 2005  
Passed 2<sup>nd</sup> Reading: July 12, 2005  
Passed 3<sup>rd</sup> Reading: August 9, 2005