

## **ORDINANCE NO. 2468**

**AN ORDINANCE GRANTING A NON-EXCLUSIVE FRANCHISE TO COX COMMUNICATIONS CENTRAL II, INC., TO CONSTRUCT, OPERATE, REBUILD, UPGRADE AND MAINTAIN A CABLE SYSTEM IN THE PUBLIC WAYS OF BROKEN ARROW, OKLAHOMA FOR A TERM OF TWENTY-FIVE (25) YEARS, AND ESTABLISHING TERMS AND CONDITIONS FOR THAT FRANCHISE.**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BROKEN ARROW, OKLAHOMA:**

### **SECTION 1. DEFINITIONS**

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

a.     **Affiliate.** Any entity controlling, controlled by or under common control with the entity in question.

b.     **Basic Cable Service.** Any service tier, which includes the retransmission of local television broadcast signals and includes educational and government access channels.

c.     **Cable Act.** Title VI of the Communications Act of 1934, as amended, by the Cable Communications Policy Act of 1984, by the Cable Television Consumer Protection and Competition Act of 1992, and by the Telecommunications Act of 1996, and as the same may be further amended from time to time.

d.     **Cable Service or Cable Services.** The one-way transmission to subscribers of (i) video programming or (ii) other programming service and subscriber interaction, if any or (iii) other lawful service by the Cable System. It includes such other services determined by federal statute, regulation, or final federal court determination to be Cable Services.

e.     **Cable System or Systems.** A facility consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes video programming and which is provided to multiple subscribers within the Service Area, but such term does not include (i) a facility that serves only to re-transmit the television signals of one or more television

broadcast stations; (ii) a facility that serves subscribers without using any public right of way; (iii) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Communications Act of 1934, as amended, except that such a facility shall be considered a Cable System (other than for purposes of Section 621(c) of the Cable Act) to the extent such facility is used in the transmission of video programming directly to subscribers, unless the extent of such use is solely to provide interactive on-demand services; (iv) an open video system that complies with Section 653 of the Cable Act, as amended; or (v) any facilities of any electric utility used solely for operating its electric utility system.

f. Cable Television Business. The provision by the Grantee of Cable Services solely by means of the Cable System.

g. Capital Contribution. A charge as allowed by the Cable Act for educational and governmental access facilities as set forth in Section 10.

h. Channel. A portion of the electromagnetic frequency spectrum which is used in a Cable System and which is capable of transmitting a television channel as defined by the FCC.

i. City. The City of Broken Arrow, Oklahoma, a municipal corporation in its present form or in any other reorganized or changed form.

j. Council. The City Council of the City or any body constituting in the future the legislative body of the City.

k. Drop. The cable or wire that connects the distribution portion of the Cable System to a Subscriber's premises.

l. FCC. The Federal Communications Commission or its successor.

m. Franchise. This Ordinance, containing the rights and privileges granted by City to Grantee to construct, operate, maintain, rebuild and upgrade a Cable System utilizing Public Ways within the corporate limits of the City, including any extension or renewal thereof.

n. Franchise Fee. The fee set forth in Section 10.

o. Grantee. Cox Communications Central II, Inc., or its lawful successor, transferee or assignee.

p. Gross Revenues. All of the amounts derived directly or indirectly by Grantee, or an entity in any way affiliated with the Grantee, in whatever form and from all

sources, which are in connection with or attributable to the operation of the Cable System within the City's municipal boundaries or Grantee's provision of Cable Services within City's municipal boundaries.

Gross Revenues shall include, but not be limited to, all subscriber and customer revenues derived directly or indirectly, including revenues for basic cable services; additional tiers; premium services; pay per view; program guides; installation, disconnection or service call fees; fees for the provision, rental, or lease of converters, remote controls, additional outlets and other customer premises equipment; Franchise Fees paid by subscribers; revenues from the use of leased access channels; advertising revenues from the System; revenues and compensation from home shopping programming; and revenues from the provision of cable modem internet access service, unless such service is determined not to be a "Cable Service" under applicable federal law.

Advertising revenues and other revenues whose source cannot be identified with a specific subscriber shall be allocated to City based upon the percentage of subscribers residing in City compared to that percentage of subscribers served from the head-end serving City.

Gross Revenues shall not include:

- (1) The amount of any refunds, discounts, corrective billing credits or other repayments made to Subscribers;
- (2) Any taxes on service furnished by Grantee, imposed directly or indirectly on any Subscriber or user by any municipal corporation, political subdivision, state or other governmental unit and collected by Grantee for the governmental unit;
- (3) Receipts for the sale or transfer of the Cable System; or
- (4) Net unrecovered bad debt.
- (5) Charges, credits, compensation, or payments on a commercially reasonable basis to an affiliate, subsidiary, or parent for services rendered to Grantee.

The definition of Gross Revenues shall be as inclusive as possible consistent with applicable law.

q. Person. An individual, corporation, partnership, association, joint stock, trust, or governmental entity.

r. Public Way. The surface of and the space above and below any public street, highway, freeway, bridge, alley, court, boulevard, sidewalk, parkway, way, lane,

drive, circle or other public right-of-way, including but not limited to, public utility and communication easements, dedicated utility strips or rights-of-way dedicated for compatible public uses, and any temporary or permanent fixtures or improvements located within or held by City in the Service Area which entitles City or Grantee to its use for the purpose of installing, operating, repairing and maintaining the Cable System.

s. Service Area. The present corporate limits of the City and any additions by annexation or other lawful means.

t. Standard Installation. One hundred twenty five feet (125') from the nearest Cable System tap to the Subscriber's terminal.

u. Subscriber. Any Person lawfully receiving Cable Service from the Cable System.

v. System Rebuild and/or Upgrades. As required by Section 13 hereof, the reconstruction and upgrade of the Cable System existing in the Service Area utilizing fiber optic cable.

## **SECTION 2. GRANT OF FRANCHISE AND TERM**

a. Subject to all the terms and conditions contained in this Franchise, the laws of Oklahoma, and applicable City Ordinances, City hereby grants to Grantee this Franchise to install, construct, operate, maintain, repair, rebuild and upgrade in, upon, along, across, above and under the Public Ways a Cable System for the purpose of providing Cable Services to Subscribers in the Service Area and to transact a Cable Television Business in such area.

b. This Franchise and the rights and privileges granted herein to the Grantee shall extend and be in force for a term of twenty-five (25) years from and after the acceptance of this Franchise by the Grantee subject, however, to the right to the City to declare a forfeiture of the Franchise for cause as provided in Section 19 hereof.

## **SECTION 3. NON-EXCLUSIVE GRANT**

This Franchise and all rights granted hereunder are nonexclusive. City reserves the right to grant such other and future franchises as it deems appropriate. This Franchise does not establish any priority for the use of the public rights of way by Grantee or by any present or future franchisees or other permit holders. In the event of any dispute as to the priority of use of the public rights of way the first priority shall be to the public generally, the second priority to City in the performance of its various functions, and thereafter, as between franchisees and other permit holders, as determined by City in the exercise of its

powers, including the police power and other powers reserved to and conferred on it by the State of Oklahoma.

#### **SECTION 4. RULES OF GRANTEE**

Grantee shall have the authority to promulgate and enforce such reasonable rules, regulations, terms and conditions governing the conduct of its business as it shall deem necessary to enable Grantee to exercise its rights and perform its obligations under this Franchise and to assure uninterrupted Cable Service to each and all of its Subscribers. Such rules, regulations, terms and conditions shall not be in conflict with the provisions of this Franchise, the rules and regulations of the FCC or any other body having lawful jurisdiction. The rules of the Grantee shall become effective only upon or after, if a later effective date is specified therein, the filing of copies of such rules with the City Clerk.

#### **SECTION 5. SERVICE STANDARDS**

In installing, maintaining and operating the Cable System, and in rendering efficient service, Grantee will act in a good and workmanlike manner, observing high standards of engineering and workmanship and using materials, which are of good and durable quality. In doing so, Grantee shall comply in all respects with all applicable codes, including but not limited to all applicable safety codes and electrical codes; the requirements of other utilities whose poles and conduits it uses; the rules and regulations of the FCC; and all applicable federal, state, and local laws.

Wherever it is necessary to interrupt Cable Service for the purpose of rendering repairs, adjustments, or installments, Grantee shall do so at such time as will cause the least inconvenience to Subscribers.

#### **SECTION 6. REGULATION BY CITY**

a. Grantee in the installation, maintenance and operation of the Cable System shall at all times be subject to the terms and provisions of the general ordinances as amended of the City; provided such ordinances do not limit the benefits or expand the obligations of Grantee under this Franchise, unless such ordinances are a lawful exercise of the police power of the City.

b. Grantee shall be subject to the lawful exercise by City of all other powers, functions, rights, privileges and immunities of regulation of the Cable System and Cable Service granted or delegated to City by the Constitution and laws of Oklahoma or the Constitution, laws and regulations of the United States of America.

## **SECTION 7. CONDITIONS ON USE OF PUBLIC WAYS**

a. All transmission and distribution structures, lines and equipment erected by Grantee within the Service Area shall be located so to cause minimum interference with the public use of Public Ways as determined by the City and other public places and the rights of property owners who abut any of the Public Ways and places, and not to interfere with existing public utility installments. Grantee shall not erect, install, construct, repair, replace or maintain its Cable System in such a fashion as to unduly burden the present or future use of the Public Ways. If City in its reasonable judgment determines that any portion of the Cable System is an undue burden, Grantee at its expense shall modify its System or take such other actions as City may determine are in the public interest to remove or alleviate the burden, and Grantee shall do so within a reasonable time period established by City. In all areas of the Service Area where all cables, wires or other like facilities of public utilities are placed underground, Grantee shall place its cables, wires, or other like facilities underground to the maximum extent existing technology reasonably permits, and shall mark such facilities, indicating their locations by a method reasonably approved by City's Department of Public Works. Grantee shall file with City maps, plats and records of the location of all facilities constructed, including underground facilities. Such maps, plats, and permanent records shall be updated as reasonably required by City.

b. If Grantee causes any disturbance of pavement, sidewalk, driveway or other surfacing of a Public Way or private property, Grantee shall, at its own expense, promptly replace and restore such surface in accordance with the generally applicable standards of the City.

c. If at any time during the period of this Franchise the City elects to alter or change the grade or location of any water line, sewer line or Public Way, Grantee shall, upon reasonable notice by City, remove and relocate its poles, wires, cables, conduits, manholes and other fixtures, and in each instance comply with the generally applicable standards and specifications of the City. Grantee shall make such changes at its own expense unless there are funds available to owners of affected facilities, in which case Grantee shall be entitled to reimbursement in the same manner as the other facility owners.

d. Grantee shall not place poles, conduits or other fixtures above or below ground where the same will interfere with any gas, electric, telephone fixtures, water hydrants or other utilities, and all such poles, conduits or other fixtures placed in any Public Way shall be so placed as to comply with all generally applicable requirements of the City. Grantee shall comply with the provisions of the Oklahoma Facilities Damage Prevention Act, Title 63, Oklahoma Statutes, Section 142.1.

e. Grantee shall, on request of any Person holding a house moving permit issued by City, temporarily move its cables, equipment or fixtures to permit the moving of buildings with the expense of such temporary removal to be paid in advance by the Person

requesting the same. Grantee shall be given not less than forty-eight (48) hours advance notice to arrange for such temporary changes.

f. Grantee shall have the authority to trim any trees upon and overhanging the Public Ways of City so as to prevent the branches of trees from coming in contact with the Cable System of Grantee. However, at the option of the City, such trimming may be done by the City, or under its supervision and direction. No trimming shall be performed in Public Ways without first notifying the City and the City Horticulturalist. All trimming of trees, except in an emergency, on public property shall have the prior approval of City and except in an emergency all trimming of trees on private property shall require notice to the occupant of the property.

g. City shall not be liable to Grantee for any damage to Grantee's Cable System caused by any City employee while performing emergency repairs within the Public Ways. In all other circumstances when City employees negligently injure Grantee's Cable System, City shall only be liable to Grantee for the Grantee's actual cost of materials, equipment and labor necessary to effect repairs, with no allowance for interruptions to service or loss of revenues, subject to any applicable limits of liability established by the Oklahoma Governmental Tort Liability Act.

h. Whenever Grantee must place the Cable System or other facilities beneath the traveled or paved portion of the streets or Public Ways, unless otherwise approved in advance by City. Grantee shall do so by directional boring and not by excavation of a trench in which to place cable conduit. Directional boring shall be done wherever possible so that the excavations necessary for it are not in the paved portion of the right-of-way.

If Grantee does a directional bore underneath a street or Public Way, then Grantee will notify City in advance of same. If City so desires, and if Grantee's boring equipment allows, Grantee will then increase the size of the directional bore with City to pay only the incremental cost of making the directional bore larger. City may then use any additional space or capacity created by increasing the size of the directional bore without additional charge or expense.

i. Upon the revocation, termination, or expiration of this Franchise, unless an extension is granted, all rights of Grantee to use the Public Ways shall cease. Grantee, at the direction of City, shall remove its Cable System, including all supporting structures, poles, transmission and distribution system and other appurtenances, fixtures or property from the Public Ways, in, over, under, along, or through which they are installed within six (6) months of the revocation, termination, or expiration of this Franchise. Grantee shall also restore any property, public or private, to the condition in which it existed prior to the installation, erection or construction of its Cable System, including any improvements made to such property subsequent to the construction of its Cable System. Restoration of municipal property including but not limited to the Public Ways shall be in accordance

with the directions and specifications of City, and all applicable laws, ordinances and regulations, at Grantee's sole expense. If such removal and restoration is not completed within six (6) months after the revocation, termination, or expiration of this Franchise, all of Grantee's property remaining in the affected Public Ways shall, at the option of City, be deemed abandoned and shall, at the option of City, become its property or City may obtain a court order compelling Grantee to remove same. In the event Grantee fails or refuses to remove its Cable System or to satisfactorily restore all areas to the condition in which they existed prior to the original construction of the Cable System, City, at its option, may perform such work and collect the costs thereof from Grantee.

#### **SECTION 8. USE OF SYSTEM BY CITY**

a. City shall have the right, at no cost, to locate equipment upon and make attachments to the Cable System owned by Grantee in connection with City systems. Attachments shall be installed and maintained in accordance with the requirements of the Electrical Code of City and only after written notice to Grantee. Upon request by City, Grantee agrees to construct attachments to the Cable System for exclusive use by the City, its departments, boards, authorities, commissions and agencies for governmental purposes, at the incremental cost of such attachments at the time of construction. Grantee shall assume no liability or expense in connection with any City attachment to or use of the Cable System. City use shall be in such manner as not to interfere with the use and maintenance of the Cable System by the Grantee.

b. City, in its use and maintenance of such equipment and fixtures, shall at all times comply with the rules and regulations of Grantee in order that there be a minimum danger of contact or conflict between the equipment and fixtures of Grantee and the equipment and fixtures used by City.

c. City shall be solely responsible and save Grantee harmless for all claims and demands for damages to persons or property arising out of the use by the City of the Cable System under this Section.

#### **SECTION 9. ERECTION, REMOVAL AND JOINT USE OF POLES**

a. No poles, conduits or other structures shall be erected or installed by Grantee without prior approval of City with regard to location, height, type and other pertinent aspects. Grantee shall not have a vested right to retain the location of any pole, conduit or structure installed by Grantee.

b. Where poles, conduits or other structures of any public utility company are available for use by Grantee, City may require Grantee to use such poles, conduits and structures if the permission and consent of such public utility company may be obtained by Grantee and if the terms of the use available to Grantee are just and reasonable.



c. Where a public utility serving City desires to make use of the poles, conduits or other structures of Grantee but an agreement with Grantee cannot be reached, City may require Grantee to permit such use for such consideration and upon such terms as the Council shall determine to be just and reasonable if the use would not unduly interfere with the current or future use of the Cable System.

d. Where City owned utility poles are available for use by Grantee, Grantee shall pay City the same pole rental per annum as paid by Grantee for the use of pole owned by a public utility.

#### **SECTION 10. FRANCHISE FEE AND CAPITAL CONTRIBUTION**

a. Grantee shall pay to City as compensation for the rights and privileges enjoyed under this Franchise a Franchise Fee equal to three percent (3%) of Gross Revenues. City may, at any time during the term of this Franchise by ordinance, duly enacted by a majority of the governing body of the City, increase the Franchise Fee to no more than five percent (5%) of Gross Revenues. In the event of an increase in the Franchise Fee and upon sixty (60) days written notice given by City to Grantee, Grantee shall immediately begin collecting such increased Franchise Fee on the next regular monthly billing cycle.

b. In addition to the Franchise Fee payable hereunder, City may, at any time during the term of this Franchise by ordinance duly enacted by a majority of the governing body of the City, establish a Capital Contribution for educational, and governmental access channels and facilities. The Capital Contribution shall not exceed fifty cents (\$.50) per month per subscriber, except that multiple dwelling units billed on a bulk-billing basis shall be billed on an equivalent billing basis. The Capital Contribution shall be added as a separate line item on each regular bill of each subscriber. City shall provide Grantee with written notice not less than thirty (30) days prior to the date the Council first considers an ordinance to establish a Capital Contribution. Upon sixty (60) days written notice by City of the effective date of an ordinance establishing a Capital Contribution and Grantee shall immediately begin collecting such Capital Contribution on the next regular monthly billing cycle.

c. The Franchise Fee and the Capital Contribution, if any, fee shall be paid monthly, on or before the 45th day after the end of each month. Grantee's payments shall be accompanied by a verified report showing the basis for the computation, including all Gross Revenues received during the period for which the payment is made. In the event any payment due monthly is not received when due, Grantee shall pay interest on the amount due, at an annual rate equal to one and one-half percent (1½%) interest per month, calculated from the date the payment was originally due until the date the City receives the payment.

d. If it is determined as a result of an audit that the Grantee has paid less than ninety-five percent (95%) of the Franchise Fee or Capital Contribution due to the City, then the City's expenses related to such audit shall be paid by the Grantee. Any additional payments due to the City as a result of the audit shall be paid within thirty (30) days following written notice to the Grantee by the City of the underpayment, which shall include a copy of the audit report. If recomputation results in additional revenue to be paid to the City, such amount shall be subject to the interest charge and penalty stated hereinabove. If the audit determines that there has been an overpayment by the Grantee, the City shall credit any overpayment against the next quarterly payment.

e. The period of limitation for recovery of any fee payable hereunder shall be five (5) years from the date on which payment by the Grantee is due.

#### **SECTION 11. RATES AND REGULATION**

a. Grantee's rates and charges for the provision of Cable Service (and for related services, such as equipment rental and deposits) shall be subject to regulation by City as expressly permitted by federal or state law.

b. City reserves the right to regulate Grantee, the Cable System, and the provision of Cable Service as expressly permitted by either federal or state.

#### **SECTION 12. DISCLAIMER OF LIABILITY, LIABILITY OF GRANTEE, INSURANCE AND INDEMNIFICATION**

a. Except as provided in Section 7.g., City shall not at any time be liable for injury or damage occurring to any person or property from any cause whatsoever arising out of the construction, maintenance, repair, use, operation, condition or dismantling of Grantee's Cable System or Grantee's provision of Cable Service.

b. Grantee shall defend, at the option of the City, indemnify, and hold City, its officers, employees, and agents, harmless from all loss, damages, penalties, charges, costs, and expenses (including without limitation, reasonable fees and expenses of attorneys) sustained by City, its officers, employees, and agents, by reason of any suit, judgment, execution, claim, liability, obligation, or demand resulting from Grantee's construction, operation or maintenance of the Cable System in the Service Area.

c. Grantee shall maintain in full force and effect for the term of this Franchise, at Grantee's sole expense, a general comprehensive liability insurance policy, issued by a company authorized to do business in the State of Oklahoma, naming the City, its officers, employees, and agents, as additional insured, in the amount of two and a half million dollars (\$2,500,000) combined single limit for bodily injury and property damage. The

insurance coverage required hereunder shall provide thirty (30) days notice to the City in the event of material alternation or cancellation of any coverage afforded in said policies prior to the date said material alteration or cancellation shall become effective. Grantee shall provide the City with a certificate evidencing the insurance required hereunder upon request.

### **SECTION 13. SYSTEM CAPACITY AND UPGRADES**

The Cable System shall maintain at least 860 MHZ capacity.

The Cable System shall be capable of delivering no less than one hundred sixty (160) analog and/or digital video and audio programming channels, to Subscribers.

Grantee shall not charge a Subscriber any direct fee or assessment for the System Capacity and Upgrade, including the upgrade of drops that may be required for service to a Subscriber.

### **SECTION 14. SYSTEM EXTENSIONS**

The Cable System shall be extended and Cable Service provided upon request to any part of the Service Area where there are then existing twenty-five (25) homes within one (1) mile of the existing Cable System or seven (7) homes within one-quarter (1/4) mile of the existing Cable System. Such extensions shall be at Grantee's cost, except for the published Standard/non-Standard Installation fees charged to all Subscribers. For purposes of this section, the distance shall be measured from the point of the Cable System, which can be technically extended to the point at which a Standard Installation can be provided, following the route along which the extension would be constructed. In areas, which do not meet this density requirement, Grantee may charge for extension of the Cable System based upon the cost of labor and materials. Notwithstanding the foregoing, Grantee shall have the right, but not the obligation, to extend the Cable System into any portion of the Service Area where another operator is providing Cable Service, into any annexed area which is not contiguous to the present Service Area of the Grantee, or into any area which is financially or technically infeasible due to extraordinary circumstances, such as a runway or freeway crossing.

### **SECTION 15. OPERATIONAL STANDARDS**

a. Grantee shall construct, rebuild, upgrade, maintain, and operate the Cable System so as to provide video, audio and other signals authorized under this Franchise Ordinance to be delivered with signal strength and quality levels which meet the

parameters specified by the FCC and other normally accepted industry standards. Grantee shall construct, rebuild, upgrade, operate and maintain the Cable System in a manner consistent with all ordinary care and all applicable laws, ordinances, construction standards, and FCC technical standards. Upon request, Grantee shall provide City a copy of the results of the most recent FCC required proof of performance test conducted by Grantee within the Service Area.

b. Grantee shall provide standby power generating capacity at the Cable System headend capable of providing at least twelve (12) hours of emergency operation. Grantee shall maintain standby power system supplies, rated for at least two (2) hours duration, throughout the trunk and distribution network.

c. Grantee may interconnect the Cable System within the Service Area with cable television systems owned or operated by Grantee within adjacent cities.

d. Upon request, Grantee shall provide Subscribers with a parental control locking device or digital code capable of blocking or otherwise preventing a television set from receiving a Channel or audio signal. The charge for any such devices if any, shall be in conformance with applicable law.

e. Grantee will comply with the more stringent of the customer service standards and consumer protection provisions of this Franchise; those from time to time adopted by Grantee; or those from time to time adopted by the FCC.

f. City reserves the right by Ordinance to alter or amend the consumer protection matters set forth in this Franchise, including adopting ordinances stricter than or covering items not presently set forth in this Franchise. City agrees to meet with Grantee on the matters in question prior to taking such action and to provide Grantee with at least ninety (90) days notice of such action.

g. Grantee shall establish procedures for receiving, acting upon and resolving Subscriber complaints, which shall be subject to the reasonable approval of the City Manager of the City.

h. City shall notify Grantee in writing of any complaint it receives from Subscribers or of any failure of Grantee to comply with the terms and conditions of this Franchise. Grantee, upon receipt of such notice, shall promptly investigate the complaint and take such action as necessary to provide Cable Service to Subscribers and to operate the Cable System as required. Grantee shall advise the City in writing of the actions taken on complaints received by the City.

i. Grantee shall at all times comply with the Subscriber privacy protections set forth in Section 631 of the Communication Act of 1934 (47 USC § 551).

## **SECTION 16. GOVERNMENTAL AND EDUCATIONAL USES**

a. Except as provided hereinafter, Grantee will provide without any installation charge or monthly charge for Basic Cable services one (1) free outlet in each public library and in one building at each state accredited public and private elementary and secondary school, public technological and vocational schools and at each college and university in the Service Area excluding any dormitories or residential facilities, as well as at occupied City offices and City administrative buildings, including but not limited to: City Hall, City Hall Annex, Police Stations, Fire Department administrative office, Fire Stations, Recreation and Community Centers, Parks and Recreation department office, Public Works building and Maintenance Facilities. The Cable Service provided shall not be distributed beyond the originally installed outlet without authorization from Grantee. The Cable Service provided shall not be used for commercial purposes. With respect to City buildings, the City shall take reasonable precautions to prevent any use of the Grantee's Cable System in any manner that results in the inappropriate use thereof or any loss or damage to the Cable System. The Grantee shall not be required to provide an outlet to such buildings where a non-Standard Installation is required, unless the building owner/occupant agrees to pay the incremental cost of any necessary Cable System extension and/or non-Standard Installation. If additional outlets of Basic Cable Service are provided to such buildings, the building owner/occupant shall pay the usual installation and service fees associated therewith.

b. Grantee shall provide a downstream Channel on the Cable System for non-commercial governmental use. The City shall determine the specific use of the governmental Channel.

c. Upon ninety (90) days written request therefore, Grantee shall provide a downstream Channel for joint non-commercial educational use only by the Broken Arrow Public School System (Independent School District No. 3 of Tulsa County, Oklahoma), the Union Public School District (Independent School District No. 9 of Tulsa County, Oklahoma), Northeastern State University at Broken Arrow and other state accredited public and private elementary and secondary schools within the Service Area and Service Areas of other Cable Televisions Systems owned by the Grantee and interconnected with the Cable System within the City which develop, staff and operate facilities and equipment to provide educational programming on a continuing basis.

The use of the educational Channel shall be coordinated by the Broken Arrow Public School System. If the users of the educational Channel are unable to agree upon the allocation of time on the educational Channel, the Council may promulgate rules, regulations and procedures governing the allocation of time on the educational channel. The Council shall resolve any disputes between any of the users of the educational

Channel and, if necessary, establish the allocation of time among the users of the educational Channel.

d. Grantee shall have the right to temporarily use any portion of the governmental or educational Channel allocated under Subsection b or c, which is not being fully utilized, provided such use shall not interfere with any educational or governmental use.

e. Grantee shall provide, at no cost to the user, return lines to provide for video and audio governmental programming origination on the governmental Channel from a City facility within the Service Area designated by City and, upon provision of the educational Channel required by Section 12(c) of this Franchise to provide for video and audio educational programming origination on the educational Channel, from one point within the Service Area designated by the Broken Arrow Public Schools and from one point within the Service Area designated by Northeastern State University. Upon request from a governmental or educational user, Grantee shall provide, at the direct cost to the user of labor and materials, additional connections for video origination from other points.

f. All Channels allocated for governmental and educational use shall be of the same technical quality as the Channels on the Cable System for other Cable Services. Grantee shall maintain, at no cost to the user, the equipment, which is a part of the Cable System and the Channels used for governmental and educational use. All Channels allocated for governmental and educational use shall be available to all Subscribers in the Service Area as a part of Basic Cable Service and shall be carried on a channel between Channel 2 and Channel 24 unless such location would violate a FCC rule or regulation.

#### **SECTION 17. EMERGENCY ALERT SYSTEM**

Grantee shall meet the equipment requirements of and be operated in accord with the Emergency Alert System rules and regulations of the Federal Communications Commission (47 C.F.R. Part 11).

## **SECTION 18. MONITORING**

a. Grantee shall at all times comply with the technical standards established by the FCC for the operation of a Cable System and shall perform all tests in accordance with FCC regulations. Copies of Grantee's test results shall be made available to the City as part of Grantee's public file.

b. At or before the first City Council meeting in May of each year, a representative of the Grantee shall appear before and present to the City Council an annual report concerning the services provided and the operation of the Cable System.

c. On or after five years from the effective date of this Franchise and every five (5) years thereafter, Council may commence proceedings, which afford public notice, public participation and open meetings, for the purpose of identifying future Cable System community needs and interests, including channel capacity and customer service, and reviewing Grantee's performance during the preceding five (5) years. Upon request by the Council, Grantee shall cause to be conducted a survey, to determine community needs, desires, and ratings of Grantee's performance. The survey shall specifically address, among other items, the demand for new services in relation to the cost of providing such services so as to ascertain the overall need for channel expansion.

d. Upon completion of any five (5) year review provided for in this section, Grantee and City shall meet, confer and, if deemed necessary by either, negotiate in good faith additional or revised terms and conditions to address the community needs, channel capacity and customer service matters raised at the public proceedings.

## **SECTION 19. DEFAULT OF GRANTEE, PENALTIES AND REVOCATION**

a. The rights and privileges granted by the City to Grantee under this Franchise shall continue and remain in full force and effect until revoked by the Council. In the event that City or the City Council believes that Grantee has not complied with the terms of this Franchise, the City shall informally discuss the matter with Grantee. If these discussions do not lead to resolution of the problem, City or the City Council shall notify Grantee in writing of the exact nature of the alleged default.

b. The occurrence at any time during the term of the Franchise, of any one or more of the following events shall constitute an event of default by the Grantee under the Franchise:

(i) The failure of Grantee to pay the Franchise Fee on or before the due dates specified herein provided, however, Grantee shall not be considered in default hereunder for any amounts owed as a result of an audit conducted pursuant to Section 10.d herein.

(ii) Grantee's material breach or violation of any of the terms, covenants, representations or warranties contained herein or Grantee's failure to perform any obligation contained herein.

(iii) Grantee's failure to pay or cause to be paid any State or City imposed taxes of any kind whatsoever, including but not limited to real estate taxes, income taxes, and personal property taxes on or before the due date for same; provided, however, Grantee shall not be in default hereunder with respect to the non-payment of taxes which are being disputed in good faith in accordance with applicable law.

(iv) The entry of any judgment against Grantee in excess of Two Million Five Hundred Thousand Dollars (\$2,500,000.00), which remains unpaid and is not stayed pending rehearing or appeal, for forty-five (45) or more days following entry thereof which may significantly impair Grantee's provision of Cable Service in City.

(v) The dissolution or termination, as a matter of law, of Grantee.

(vi) If Grantee files a voluntary petition in bankruptcy; is adjudicated insolvent; obtains an order for relief under Section 301 of the Bankruptcy Code (11 U.S.C. § 301); files any petition or fails to contest any petition filed against it seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief for itself under any laws relating to bankruptcy, insolvency or other relief for debtors; seeks or consents to or acquiesces in the appointment of any trustee, receiver, master, custodian or liquidator of Grantee, or any of Grantee's property and/or Franchise and/or of any and all of the revenues, issues, earnings, profits or income thereof; makes an assignment for the benefit of creditors; or fails to pay Grantee's debts generally as they become due.

c. Grantee shall have thirty (30) days from receipt of a written notice of default to: (1) respond in writing contesting the alleged assertion of a default, or (2) cure such default or, (3) in the event that, by the nature of default, such default cannot be cured within the thirty (30) day period, initiate reasonable steps to remedy such default and notify City or the Council of the steps being taken and the projected date that they will be completed.

d. In the event that the Grantee fails to respond to the notice described in Subsection 19.a pursuant to the procedures set forth in Subsection 19.c, or in the event that the alleged default is not remedied within thirty (30) days or the date projected pursuant to Subsection 19.c(3) above, if it intends to continue its investigation into the default, then the City shall schedule a public hearing. The City shall provide the Grantee at least ten (10) days prior written notice of such hearing, which specifies the time, place and purpose of such hearing, and provide Grantee a full and fair opportunity to be heard.



e. In the event the Council, after such hearing, determines that Grantee is in default of any provision of this Franchise, the Council may:

(1) Assess liquidated damages to City caused by the default by Grantee as follows:

- (a) For knowingly failing to provide data, documents or information as required in this Franchise, two hundred fifty dollars (\$250.00) per day for each day the failure occurs or continues following finding by the City of the default; and
- (b) For knowingly failing to comply with the service and operational standards of this Franchise, five hundred (\$500.00) per day for each day the failure occurs or continues following finding by the City of the default.

(2) In the case of default of a material provision of this Franchise which is not cured by Grantee or the subject of damages assessed as provided herein, the Council may revoke this Franchise in its entirety; or

(3) Commence an action against Grantee at law for monetary damages; or

(4) Seek specific performance of any provision, which reasonably lends itself to such remedy, or injunctive relief as an alternative to damages or termination of this Franchise.

The rights and remedies of City and Grantee set forth in this Franchise shall be in addition to and not in limitation of any other rights and remedies provided by law or in equity; provided, however, that any monetary judgment shall be offset by any liquidated damages payments made for the same event of default. City and Grantee understand and intend that such remedies shall be cumulative to the maximum extent permitted by law and the exercise by City or Grantee of any one or more of such remedies shall not preclude the exercise by City or Grantee, at the same or different times, of any such other remedies for the same event of default.

In any action commenced by the City or Grantee by reason of City's or Grantee's default, whether legal or equitable, the prevailing party shall be entitled to recover from the other its costs and expenses of such action, including its reasonable attorney fees.

Any decision and/or action taken by the City hereunder shall be delivered to the Grantee promptly and in writing.

Grantee shall not be relieved of any of its obligations to comply promptly with any provision of this Franchise by reason of any failure of City to enforce prompt compliance.

f. The Grantee may appeal any determination of default or revocation by the City to an appropriate court, which shall have the power to review the decision of the City de novo and to modify or reverse such decision as justice may require. Such appeal to the appropriate court must be taken within sixty (60) days of the Grantee's receipt of the determination of the City.

g. Grantee shall not be held in default with the provisions of this Franchise, nor suffer any enforcement or penalty relating thereto, where such alleged default is caused by strikes, acts of God, power outages or other events reasonably beyond the ability of Grantee to control, or where such defaults results from a good faith error that results in no or minimal negative impact on Subscribers.

## **SECTION 20. ASSIGNABILITY**

If Grantee shall at any time assign, sell, lease or otherwise transfer in any manner whatsoever its rights and privileges under this Franchise to any Person, such action shall be in writing and a duly authenticated copy shall be filed with the City Clerk. Such action shall not become effective until the transferee shall have agreed in writing with City to become responsible for the full performance of all the conditions, liabilities, covenants and obligations contained in this Franchise subject to applicable law, and until such action shall have been approved by the Council, provided such approval shall not be unreasonably withheld. The Council may require evidence that the transferee possesses the financial, technical and legal capability to perform all of the conditions, liabilities, covenants and obligations contained in this Franchise. If the Council fails to act upon a proposed transfer within sixty (60) days after the transferee shall have agreed in writing to become responsible for the full performance of all of the conditions, liabilities, covenants and obligations of this Franchise, then such action shall be deemed to have been approved.

A transfer, for purposes of this Section, shall have the meaning given those terms under the rules and regulations of the Federal Communications Commission applicable to transfers and assignments of cable television microwave relay licenses. Provided further, that the transfer of ownership or other interest in the Grantee in connection with an internal reorganization or internal merger to a direct or indirect parent, subsidiary or affiliated entity under common control with Grantee shall not be a transfer for the purpose of this Franchise so long as (i) the City is notified of the proposed transfer no later than thirty (30) days prior to the transfer, (ii) the transferee shall insure that insurance coverage and all other commitments under the Franchise continue in force and without interruption and provide evidence of same to the City no later than thirty (30) days prior to the proposed transfer, and (iii) there is no increased risk of liability to the City or non-performance of the terms of the Franchise.

No approval of City shall be required for a transfer in trust, by mortgage, by other hypothecation, or by assignment of any rights, title or interest of Grantee in this Franchise or the Cable System in order to secure indebtedness of Grantee.

#### **SECTION 21. NON-DISCRIMINATION**

a. Grantee shall not deny any Person or group of potential Subscribers access to Cable Service because of race, color, religion, national origin, age, gender, physical handicap or the income of residents in the local area in which a Person or group resides.

b. Grantee shall not unlawfully discriminate in the rates or charges for Cable Services or in making available Cable Services or facilities of the Cable System. Grantee shall not extend any preference or advantage to any Subscriber or potential Subscriber to the Cable System. Notwithstanding the foregoing, Grantee may conduct promotional campaigns to stimulate subscriptions to Cable Services or other lawful uses of the Cable System and Grantee may establish bulk billing rates and rate schedules for different classes of Subscribers and Cable Service which any Subscriber coming within such bulk billing group, rate or service classification shall be entitled.

c. Grantee shall not discriminate against any employee or applicant for employment because of race, color, religion, age, gender or national origin. Grantee shall comply with all applicable laws and regulations of the United States and of Oklahoma with respect to employment and personnel practices.

#### **SECTION 22. GOVERNING LAW**

This Franchise Agreement shall be construed pursuant to the laws of the State of Oklahoma and the United States of America.

#### **SECTION 23. WAIVER OF COMPLIANCE**

No failure by either party to insist upon the strict performance of any term or condition of this Franchise Ordinance, or to exercise any right, term or remedy consequent upon a breach thereof shall constitute a waiver of any such breach or such covenant, term or condition. No waiver of any breach shall affect or alter this Franchise Ordinance, but each and every term or condition of this Franchise Ordinance shall continue in full force and effect with respect to any other then existing or subsequent breach thereof.

City may waive any obligation of Grantee under this Franchise Ordinance, in whole or in part, at any time. This includes, but is not limited to, instances of a claim or showing by Grantee that the costs associated with the provision being waived would increase the

rates Grantee is legally allowed to charge subscribers, such as a claim that such costs are an external cost, which allow Grantee to increase its rates under the FCC rules.

City grants this Franchise solely for a Cable System and for transaction of a Cable Television Business. Neither the City nor Grantee waives any right either may have to challenge the validity of any statute, rule, regulation or ordinance that affects the rights granted herein or the operation of the Cable System to provide Cable Services hereunder.

#### **SECTION 24. MISCELLANEOUS PROVISIONS**

a. City, after reasonable notice, shall have the right to review the books and records of Grantee during normal business hours as is reasonably necessary to monitor compliance with the terms hereof. Such records shall include, but shall not be limited to, any public records required to be kept by Grantee pursuant to the rules and regulations of the FCC. Grantee shall not be required to maintain any books and records for Franchise compliance purposes longer than five (5) years. Grantee shall not be required to disclose information, which it reasonably deems to be proprietary or confidential in nature; provided this exception shall not be construed to include financial records necessary to enable the City to determine compliance with Grantee's fee payment obligations. Subject to open meeting and record disclosure laws of the State of Oklahoma, City agrees to treat any information disclosed by Grantee to it on a confidential basis and only to disclose it to employees, representatives and agents thereof that have a need to know, or in order to enforce the provisions hereof.

b. Copies of all petitions, applications and communications submitted by Grantee to the FCC, or any other federal or state regulatory commission or agency having jurisdiction in respect to any matters affecting cable television operations authorized pursuant to this Franchise, and which are pertaining to Grantee's operation within the Service Area, shall be submitted to the City upon request.

c. Grantee shall pay the cost of publication of this Franchise.

d. Notices or responses serviced upon City or Grantee shall be in writing, and shall be deemed to have been duly given to the required party five (5) business days after having been posted in a properly sealed and correctly addressed envelope by certified or registered mail, postage prepaid, at the Post Office or branch thereof regularly maintained by the U.S. Postal Service.

All certificates, notices or responses between the City and Grantee shall be addressed and delivered by certified or registered mail as follows: if to the City, City Clerk, City of Broken Arrow, Broken Arrow City Hall, 220 South First Street, Broken Arrow, Oklahoma 74012, with copies to the City Manager, the City Council and the City Attorney at the same address; if to Grantee, Cox Communications Central II, Inc., General

Manager, 8421 East 61st Street, Suite U, Tulsa, Oklahoma 74133 with a copy to Cox Communications, Inc., ATTN: Legal Department, 1400 Lake Hearn Drive, N.E., Atlanta, Georgia 30319.

City and Grantee may designate other addresses or addresses from time to time by giving notice to the other.

**SECTION 25. EFFECTIVE DATE - ELECTION REQUIRED - ACCEPTANCE BY GRANTEE**

This Ordinance and Franchise shall be in full force and effect from and after its acceptance as hereinafter provided, upon its passage and approval by a vote of the majority of the qualified electors residing within the City, who shall vote thereon at an election called under or pursuant to the provisions hereof.

The City shall call such election in the manner and form provided by the laws of the State of Oklahoma for the calling of elections, giving such notice and preparing such proclamation, ballot title and call therefore as provided by law, for the purpose of submission to the qualified electors residing within the City the proposition of approval or refusal of this Ordinance and the Franchise hereby granted; and the proper officers of the City are hereby directed to do all things that may be necessary for the holding of the election and for the submission of the question, and shall, in all things, comply with the laws of the State of Oklahoma. The Grantee shall pay the cost of the election related to the approval of this ordinance.

In the event this Franchise is approved at such election the Grantee shall within twenty (20) days after the result of such election is declared as provided by law, file with the City Clerk of the City of Broken Arrow an acceptance in writing duly executed according to law, accepting this Ordinance and Franchise.

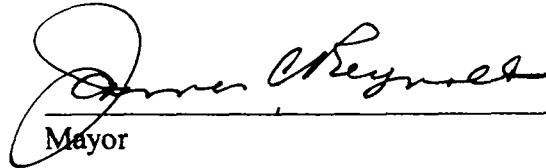
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**SECTION 26. SEVERABILITY**

If any section, sentence, clause or phrase of this Ordinance or any part thereof is for any reason found to be invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remainder of this Franchise of any part thereof.

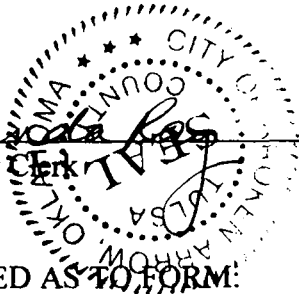
**PASSED AND APPROVED**, this 19<sup>th</sup> day of August, 2002, AD.

CITY OF BROKEN ARROW, OKLAHOMA

  
\_\_\_\_\_  
Mayor

ATTEST:

  
\_\_\_\_\_  
(Seal) City Clerk



APPROVED AS TO FORM:

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