

Ordinance No. 729

AN ORDINANCE GRANTING A FRANCHISE TO COMMUNITY COMMUNICATIONS COMPANY TO OPERATE AND MAINTAIN A COMMUNITY ANTENNA TELEVISION SYSTEM IN THE CITY: SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OF FRANCHISE; PROVIDING FOR THE CITY SYSTEM; PRESCRIBING PENALTIES FOR VIOLATIONS OF THE FRANCHISE PROVISIONS; AND FOR OTHER PURPOSES.

**Cable Television
Renewal Franchise**

**Granted To
Community Communications Company**

**The City Council
The City of Monticello, Arkansas**

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Agreement

This Cable Television Renewal Franchise is entered into this _____ day of _____, 2003. It is entered by and between The City of Monticello, Arkansas ("Franchise Authority") and Community Communications Company ("Franchisee" or "the Company"), for the renewal of a cable television franchise. Franchisee is a corporation duly organized and validly existing under the laws of the State of Arkansas whose principle place of business is located at 1920 Highway 425 North, Monticello, AR.

Recitals

WHEREAS, the Franchising Authority of the City of Monticello Arkansas has determined that the Franchisee has the financial, legal, and technical ability which is reasonably sufficient to provide services, facilities, and equipment necessary to meet the future cable-related needs of the City of Monticello community;

NOW, THEREFORE, in consideration of the terms and conditions set forth herein, and it being the intention of the parties to be legally bound hereby, the Franchising Authority and the Franchisee agree as follows:

Article 1: Definitions

Section 1.1 - Definitions

For the purpose of this Renewal Franchise, the following words, terms, phrases and their derivations shall have the meaning given herein, unless the context requires otherwise. The masculine pronoun includes the feminine pronoun. Words used in the present tense shall mean present tense, and words used in the future tense shall mean future tense. Words used in the plural number include the singular number, and words used in the singular number include plural number. The word "shall" is always mandatory and not merely directory.

- (1) Affiliate or Affiliated Person: Any Person who or which directly or indirectly controls and owns an interest in the Franchisee; any Person which the Franchisee directly or indirectly controls and in which the Franchisee owns an interest; and any Person directly or indirectly subject to control and owned in whole or part by a Person who or which directly or indirectly controls and owns an interest in the Franchisee.

- (2) Area Outage: Any event in which Cable System equipment is damaged, fails, or otherwise malfunctions (collectively called "malfunctions") and eight (8) or more Subscribers receiving service from that section of cable or such equipment receive unsatisfactory (pursuant to applicable FCC standards), unusable, or no service as a result of such malfunction.
- (3) Basic Service: Any Service tier that includes the retransmission of local broadcast signals.
- (4) Broadcast: Over-the-air transmission by a radio or television station.
- (5) Cable Act: Public Law No. 98-549, 98 Stat. 2779 (1984) (the Cable Communications Policy Act of 1984), as amended by Public Law No. 102-385, 106 Stat. 1460 (1992) (the Cable Television Consumer Protection and Competition Act of 1992), and as further amended by Public Law no. 104-458, 110 Stat. 110 (1996) (the Telecommunications Act of 1996).
- (6) Cable Service: The one-way transmission to Subscribers of Video Programming or other Programming service, and Subscriber interaction, if any which is required for the selection of such Video Programming or other Programming service.
- (7) Cable Television System or Cable System or System: 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 City.
- (8) Channel: Bandwidth sufficient to carry Signals over the Cable System.
- (9) City: The City of Monticello, its' municipal officers, agents and employees unless otherwise specifically designated; the area within the territorial City limits including all subsequent additions thereto.
- (10) City Council: The City Council of the City of Monticello, Arkansas.
- (11) Converter: An electronic device which converts Signals to a frequency within the television receiver of a subscriber and any channel selector which permits a Subscriber to view all Signals delivered at designated Converter dial locations at the television set or by remote control.
- (12) Drop: A connection from the feeder cable to the Subscriber/User television set.

- (13) Effective Date of renewal Franchise: The date upon which the Franchisee accepts this franchise after the Franchise Authority has approved it.
- (14) FCC: The Federal Communications Commission, or any successor governmental entity thereto.
- (15) Franchise: The non-exclusive, initial authorization, or renewal thereof, issued by the Franchise Authority, whether such authorization is designated as a franchise, permit, license, resolution, contract, certificate, or otherwise, which authorizes construction and operation of the Cable System for the purpose of offering Cable Service or other service to customers.
- (16) Franchise Area: The entire corporate limits of the City, including territory thereafter annexed to the City.
- (17) Franchisee: Community Communications Company, or any successor or transferee in accordance with the terms and conditions in this Renewal Franchise.
- (18) Franchising Authority: The City Council of the City of Monticello, or its' lawful successor thereto.
- (19) Franchise Fee: the payments made to by the Franchisee to the City, which shall have the meaning as set forth in section 622(g) of the Cable Act.
- (20) Gross Annual Revenues: All revenues derived by the Franchisee from the operation of the Cable System to provide Basic Service. The term Gross Revenues shall not include (I) revenues from Pay Cable or Pay Cable Services; (II) revenues from any service other than Basic Cable Services; (III) amounts not recorded as revenues under Generally Accepted Accounting Principles; (IV) sales tax or franchise fees collected from the Subscribers; (V) amounts received from programming suppliers to reimburse marketing expenses; (VI) bad debt; or (VII) amounts which may be excluded pursuant to applicable law.
- (21) Headend: the electronic center through which Broadcast and cablecast Signals are electronically received and processed for the distribution over the Cable System.
- (22) Installation: The connection of the Subscriber Network from the feeder cable to Subscribers' terminals.
- (23) Outlet: An interior receptacle(s) through which a Subscriber's or User's television set can be connected to the System.

- (24) Pay Cable or Pay Cable Services: Programming delivered for a fee or charge to Subscribers on a per-channel basis; in addition to the fee or charge to Subscribers for Basic Service.
- (25) Person: Any corporation, partnership, limited partnership, association, trust, organization, other business entity, individual, or group of individuals acting in concert.
- (26) Public Way: The surface of, and the space above and below, any public street, highway, freeway, bridge, land path, alley, court, boulevard, sidewalk, parkway, way, lane, public way, drive, circle, or other public right-of-way, including but not limited to, public utility easements (except those owned by the City), dedicated utility strips or rights-of-way dedicated for compatible uses and any temporary or permanent fixtures or improvements located thereon now or hereafter held by the Franchising Authority, for the purpose of installing, operating, repairing, and maintaining the Cable System. Public Way shall also mean any Area for the purpose of public travel, or for the compatible uses, and shall include other easements or rights-of-way and shall, within their proper use and meaning, entitle the Franchising Authority and the Franchisee to the use thereof for the purpose of installing or transmitting of Franchisee's Cable Services over poles, wires, cable, conductors, ducts, conduits, vaults, manholes, amplifiers, attachments, and other property as may be ordinarily necessary and pertinent to the Cable System.
- (27) Renewal Franchise: The non-exclusive Cable Television Franchise granted to the Franchisee by this instrument.
- (28) Service: Any Basic Service, any Pay Cable Service, or any other Cable Service or Service Tier, whether or not originated by the Franchisee, which is offered to any Subscriber in conjunction with, or which is distributed over, the System.
- (29) Service Related Activity: Any activity or function for which the Franchisee receives revenue from any other Person and which is directly associated with the operation of the System for the Provision of Cable Service or the production or distribution of any service over the System by any Person other than the Franchisee, including, without limitation, operation of studio or any other facilities or equipment, billing, audience promotion, or installation or lease of equipment.
- (30) Service Tier: A category of Cable Service or other Service(s) provided by the Franchisee and for which a separate charge is made by the Franchisee.
- (31) Signal: Any transmission of electrical, electromagnetic, or optical energy from any one location to another.

- (32) State: The State of Arkansas.
- (33) Subscriber: Any Person, firm, company, municipality, corporation, or association lawfully receiving Service from the Franchisee.
- (34) Subscriber Network: The BI-directional-capable cable network operated by the Franchisee, over which Signals can be transmitted to Subscribers.
- (35) Transfer: The disposal by the Franchisee, directly or indirectly, by gift, assignment, sale, merger, consolidation, or otherwise, of the ownership of the system or this Renewal Franchise, to a Person, or a group of Persons acting in concert.
- (36) Trunk and Distribution System: That portion of the Cable System for the delivery of Signals, but not including Drops to the Subscribers' residences.
- (37) Upstream Channel: A Channel over which Signals travel from an authorized location to the Cable System Headend.
- (38) User: A Person utilizing the Cable Television System, including all related facilities for the purpose of production and/or transmission of electronic or other Signals as opposed to utilization solely as a subscriber.
- (39) Video Programming or Programming: Programming provided by, or generally considered comparable to Programming provided by, a television Broadcast station.
- (40) VCR: The acronym for videocassette recorder.

Article 2: Grant of Renewal Franchise

Section 2.1 - Grant of Renewal Franchise

Pursuant to Section 626 of the Cable Act, and subject to the terms and conditions set forth herein, the City Council of the City of Monticello, Arkansas, as the FRANCHISING AUTHORITY of the City, hereby grants a non-exclusive television renewal franchise to the Franchisee, authorizing and permitting the Franchisee to construct, upgrade, install, operate, and maintain a Cable Television System within the corporate limits of the City of Monticello.

This Renewal Franchise is subject to the terms and conditions contained in the Cable Act, all City, State, and federal statutes and by-laws of general application, and the regulations of the FCC.

Subject to the terms and conditions herein, the Franchising Authority hereby grants to the Franchisee, the right to construct, upgrade, install, operate, and maintain a Cable Television System in, under, over, along, across, or upon the streets, lanes, avenues, alleys, sidewalks, bridges, highways, and other public places under the jurisdiction of the City of Monticello within the municipal boundaries and subsequent additions thereto. This includes property over which the City has an easement or right-of-way, for the purpose of reception, transmission, collection, amplification, origination, distribution, and/or redistribution of signals, in accordance with the laws of the United States of America, the State of Arkansas, and the City of Monticello. In exercising rights pursuant to this Renewal Franchise, the Franchisee shall not endanger or interfere with the lives of persons, interfere with any installations of the City, any public utility serving the City, or any other Persons permitted to use Public Ways and places.

Grant of this Renewal Franchise does not establish priority for use over other present or future holders or the City's own use of Public Ways and places. Any references herein to "Public Ways" or "Street" shall not be construed to be a representation or guarantee by the City that its' property rights are sufficient to permit its' use for any purpose, or that the Franchisee shall gain or be permitted to exercise any rights to use property in the City greater than those already possessed by the City.

Section 2.2 - Term of Renewal Franchise

The term of this Renewal Franchise shall commence on the Effective Date and shall expire in fifteen (15) years from the effective date; unless sooner terminated as provided herein, surrendered, or extended for an additional fifteen (15) year period upon satisfactory negotiations and agreement by the Franchise Authority and Franchisee during the tenure of this Renewal Franchise.

Section 2.3 - Police and Regulatory Powers

In executing this Franchise Agreement, Franchisee acknowledges that its' rights are subject to the powers of the City to adopt and enforce general by-laws and regulations necessary to the safety and welfare of the public. The Franchisee shall comply with all applicable laws, by-laws, and regulations now in effect or that may be enacted by the City pursuant to any such power, but only to the extent that such an enactment is lawful and does not impair Franchisee's rights under this Franchise Agreement. Any conflict between the terms of this Renewal Franchise and any present or future lawful exercise of such powers by the City shall be resolved in the favor of the latter.

Section 2.4 - Non-Exclusivity of Renewal Franchise

This Renewal Franchise shall not affect the right of the Franchising Authority to grant to any other Person a Franchise or the right to occupy or use the streets, or portions thereof, for the construction, installation, operation, or maintenance of a cable television system within the City of Monticello, or the right of Franchising Authority to permit the use of the Public Ways and places of the City for any purpose whatsoever. The Franchisee hereby acknowledges the Franchising Authority's right to make such grants and permit such uses. Any grant of a subsequent franchise by the City shall be on terms and conditions, which are not more favorable or less burdensome than those imposed on the Franchisee hereunder.

Section 2.5 - Removal or Abandonment

Unless (1) the Franchisee renews/extends this Renewal Franchise for another term, or (2) the Franchisee transfers the Cable Television System to a transferee approved by the Franchising Authority; upon termination of this Renewal Franchise, the Franchisee shall remove all of its supporting structures, poles, transmission/distribution systems, and all other appurtenances from the Public Ways and places. Franchisee shall restore all of the areas used to their original condition. If such removal is not complete within six (6) months after such termination, the Franchising Authority may deem any property not removed as having been abandoned and may dispose of any such property in any way or manner it deems appropriate.

Article 3: Transfer and Assignment of Renewal Franchise

Section 3.1 - Assignment and Transfers

This Renewal Franchise, and any rights or obligations of the Franchisee in or pursuant to this Renewal Franchise or the Cable System, may be transferred in part or as a whole, by assignment, trust, lease, sublease, pledge, or any other hypothecation, and may be sold, transferred, leased, assigned, or disposed of in part or as a whole, either by forced sale, merger, consolidation, or otherwise, and title thereto, either legal or equitable, or any right or interest therein, may pass to or vest in any Person, and any change in control of the Franchisee or the Cable System may occur, either by act of the Franchisee or by a parent company of the Franchisee, by operation of law or otherwise, with the prior approval of the Franchising Authority as the financial and technical ability of such transferee to operate the Cable System, which approval shall not be unreasonably withheld or delayed, and which shall be expressed in writing, under such conditions as may be

therein reasonably prescribed by the Franchising Authority; provided, however, that nothing in this Section 3.1 would prohibit (i) commercial transactions in the normal course of business or (ii) the provision of security interests in assets for the purpose of securing financing.

Section 3.2 - Bankruptcy

Subject to applicable bankruptcy law(s), if there shall be filed against the Franchisee in any court, pursuant to any statute either of United States or of any state, a petition in bankruptcy or insolvency or for reorganization or for the appointment of a receiver or trustee of all or a portion of Franchisee's property, and if, within sixty (60) days thereof, the Franchisee fails to secure a discharge thereof, or if the Franchisee shall voluntarily file any such petition or make an assignment for the benefit of creditors, or petition for or enter into an arrangement, the Franchisee shall notify the City of such fact within five (5) days of its occurrence, and any subsequent sale of the Cable Television System, or cable property or facilities, or this Renewal Franchise, shall be treated as a change in control of the Franchisee, and the provisions of this Section governing approval of the City to change shall apply. The term "bankruptcy" as used herein shall include an assignment for the benefit of creditors and a petition for rearrangement or other similar procedure.

Section 3.3 - Approval Procedure

- (a) The Franchisee shall promptly notify the Franchising Authority of any action or proposed action requiring the consent of the Franchising Authority pursuant to Article 3.
- (b) The Franchisee shall submit to the Franchising Authority an original and ten (10) copies unless otherwise directed, of its petition requesting Transfer or assignment consent, which petition shall fully describe the action or proposed action and clearly state the basis on which the petition should be approved. The petition shall also contain all reasonably appropriate documentation and such additional information as the Franchising Authority may require. The petition shall be signed by the Franchisee and by the proposed transferee or by its representative, evidence of whose authority shall be submitted with such petition.
- (c) The consent of the Franchising Authority shall be given only after a public hearing, if such a hearing is deemed necessary by either the Franchising Authority or the transferee, to consider a written petition for transfer and make a decision thereon no later than one hundred twenty (120) days after receipt of the request for transfer. If the Franchising Authority fails to render a final decision on such a request within the said 120 days, said request shall be deemed granted unless the requesting party and the Franchising Authority agree to an extension of time.

- (d) For the purpose of determining whether it shall consent to any such change of control and ownership, the Franchising Authority shall inquire into the legal, financial, character, and technical qualifications of the prospective controlling or owning Person, and including, but not limited to, such Person's cable-related experience, if any, in other communities, and any and all matters relative to whether such Person is likely to adhere to all of the terms and conditions of the Renewal Franchise.
- (e) At any time during the City's review process, the Franchising Authority reserves the right to require additional supporting documentation, reasonably related to the criteria set forth in paragraph (d) above, from the Franchisee or any other Person involved in the action or proposed action. The Franchisee shall provide all requested assistance to the Franchise Authority in accordance with any such inquiry and, as appropriate, shall secure the cooperation and assistance of all other Persons involved in such action. Failure to provide all transfer related information reasonably requested by the Franchising Authority as part of said review process may be grounds for a denial of the proposed Transfer or change of control.

Section 3.4 - Conditions Related to Transfer

- (a) As a condition to the granting of any consent required by this Article 3, the City may require that each Person involved in any such action described in Section 3.1 herein shall execute an agreement specifying that said Person assumes and agrees to be bound by all applicable provisions of this Renewal Franchise.
- (b) Any proposed controlling or owning Person or transferee approved by the City shall be subject to all of the terms and conditions contained in this Renewal Franchise; provided, however, that any such Person or transferee shall provide additional information, in order to reasonably assure the City that such Person or transferee shall adhere to all of the terms and conditions contained in this Renewal Franchise.
- (c) The consent of the Franchising Authority to a Transfer of this Renewal Franchise shall not be given if there is reasonable evidence from either the Transfer petition or subsequent investigation that the proposed transferee will adhere to all the terms and conditions of the Renewal Franchise.

Section 3.5 - Effect of Unauthorized Action

- (a) The Transfer of this Renewal Franchise without the prior written consent of the Franchising Authority, except for the thirty (30) day period as provided in Section 3.3 (f) above, shall be null and void, and shall:

(i) be deemed a material breach of this Renewal Franchise; and
(ii) among other remedies available to the City, be subject to a liquidated damages assessment of One Hundred Dollars (\$100) per day until the taking of an action described in section 3.3 supra is approved, or if not approved until prior ownership, control, or other status quo ante is restored to a condition satisfactory to the Franchising Authority.

Section 3.6 - No Waiver of Rights

The consent or approval of the Franchising Authority to any assignment, lease, Transfer, sublease, or mortgage of the Renewal Franchise granted to the Franchisee shall not constitute a waiver or release of the rights of the City in and to the streets and Public Ways or any other rights of the City under this Renewal Franchise; nor shall such consent render unnecessary any subsequent consent(s). Any such Transfer shall, by its terms, be expressly subordinate to the terms and conditions of the Renewal Franchise.

Section 3.6 - Renewal Franchise Signatory

Any approval by the Franchising Authority of Transfer of ownership or control of the Cable System shall be contingent upon the prospective transferee and/or controlling Person or party becoming a signatory to the Renewal Franchise.

Article 4: Extension Policy

Section 4.1 - Line Extension

- (a) The Franchisee shall be required to construct aerial extensions of its Subscriber Network to make Cable Service available in any area in the City where there is an average dwelling unit and/or potential subscriber (collectively called "units") density of either twenty (40) units per mile or fractional proportion thereof, in either case measured from the nearest active feeder plant of the Cable System.
- (i) The Franchisee shall in no case externalize, pass-through, and/or itemize any line extension costs pursuant to this Section 4.1 (a).
- (b) Installation charges shall be non-discriminatory. A standard Installation charge shall be established by the Franchisee, which shall apply to any drop of not more than two hundred feet (200'). If a drop of more than 200 feet is required, there shall be an additional charge based on the actual cost for the extra footage above 200'. Any underground installation shall be provided at the

Franchisee's actual Cost, and the work thereon shall be performed only after the Franchisee has provided the affected party with a cost estimate of any such costs and has obtained the party's acceptance thereof.

Article 5: Cable System Design

Section 5.1 - System Requirements

For the entire term of this Renewal Franchise, the Franchisee shall construct, operate, maintain, and upgrade the Cable System as provided in this Franchise Agreement. From the Effective Date of this Franchise Agreement through its termination, surrender, or renewal, the Cable System shall have a minimum bandwidth capacity of 550 MHz and shall provide digital services. Said Cable System shall have two-way capability and shall utilize a fiber-optic backbone.

Section 5.2 - Parental Control Capability

The Franchisee shall provide, upon request, Subscribers with the capability to control the reception of Channels carrying obscene or indecent Programming. Said capability shall be provided at a rate consistent with the applicable federal law.

Section 5.3 - Subscriber Antennae

The Cable System shall be so designed that the provision of Cable Service shall not require, or result in, the physical removal of Subscriber's existing antennae and/or down leads to receivers, in order that Subscribers may utilize such antennae and down leads in place of Cable System Reception. The Franchisee shall furnish to each requesting Subscriber, at a rate consistent with applicable federal law, a switch permitting the Subscriber to change from Cable System reception to home antennae reception, and back, at the option of the Subscriber.

Section 5.4 - Emergency Power

The Cable Television System shall incorporate equipment designed to be capable of providing standby powering of the Headend for a minimum of four (4) hours upon failure of the power furnished by the utility company.

Section 5.5 - Drops

- (a) In areas of the City where the Cable System is required to be located underground, Drops to the Subscriber's structure shall be underground. In other areas of the City, Drops shall be aerial

unless Subscriber requests underground Installation and elects to pay the cost(s) thereof.

- (b) The Franchisee shall adhere to the Subscriber's preference regarding point of entry of the Drop into the structure. In the event that such preference results in a non-standard Installation, any incremental costs thereof shall be paid by said Subscriber.
- (c) Within the Subscriber's structure, Drop and/or cable runs shall be installed in a professional manner.

Article 6: Construction, Installation, and Maintenance Standards

Section 6.1 - Conditions of Street Occupancy

All transmission and distribution structures, poles, other lines, and equipment installed or erected by the Franchisee pursuant to the terms hereof shall be so located so as to cause a minimum of interference with the proper use of Public Ways and with the rights and reasonable convenience of Persons who own property that abuts any of said Public Ways.

Section 6.2 - Underground Facilities

In the areas of the City having telephone lines and electric utility lines underground, whether required by law or not, all the Franchisee's lines, cables, and wires shall be underground. At such time as these facilities are placed underground by the telephone and electric utility companies or are required to be placed underground by the City, the Franchisee shall likewise place its facilities underground at no direct cost to the Subscribers unless otherwise permitted by applicable law, other than an extension from existing Trunk and Distribution System which exceeds two hundred fifty feet (250'). Underground cable lines shall be placed beneath the pavement sub-grade. It is policy of the City that existing poles for electric and communication purposes are utilized wherever possible and that underground installation is preferable to placement of additional poles.

Section 6.3 - Restoration of Public Ways

If the Franchisee causes any disturbance or alteration of any Public Way, the Franchisee shall, at its own cost and expense and in a manner approved in advance in writing by the Franchising Authority, replace and restore such Public Way to a condition reasonably comparable to the condition before such disturbance or alteration occurred.

Section 6.4 - Cable System Monitoring

The Franchisee shall monitor the Cable System on a yearly basis. Problems detected through such monitoring shall be addressed promptly.

Section 6.5 - Safety Standards

The Franchisee shall construct, upgrade, install, operate, maintain, and remove the Cable Television System in conformance with Occupational Safety and Health Administration regulations, the National Electric Code, the National Electric Safety Code, Bell Telephone Systems Code of Pole Line Construction (when applicable), the rules and regulations of the City and the FCC, all building and zoning codes, and all land use restrictions as the same exist or may be amended hereafter. Enforcement and compliance with the foregoing codes, rules, and regulations shall be the responsibility of the appropriate code and/or regulatory enforcement authority.

Section 6.6 - Right to Inspection of Construction

Upon reasonable notice, the Franchising Authority or its designee shall have the right to inspect all facilities, construction, installation, and/or upgrade work performed subject to the provisions of this Renewal Franchise and to make such tests as it shall deem necessary to ensure compliance with the terms and conditions of this Renewal Franchise and all applicable law. Any such inspection shall not interfere with the Franchisee's operations.

Section 6.7 - Equipment

The Franchisee shall install equipment that shall enable it to operate the Cable System in full compliance with the applicable FCC Technical Standard.

Section 6.8 - Service Interruptions

Except where there exists an emergency situation necessitating a more expeditious procedure, the Franchisee may interrupt Service for the purpose of repairing, upgrading, or testing the Cable Television System, only during periods of lesser use and, if practical, only after a minimum of forty-eight (48) hours notice to all affected subscribers.

Section 6.9 - Temporary Relocations

The Franchisee shall temporarily raise or lower its wires or other equipment upon request of any Person holding building moving permits issued by the City. The party requesting said move shall pay the expense of such raising or lowering. The Franchisee shall be given reasonable notice necessary to maintain continuity of service.

Section 6.10 - Disconnection and Relocation

The Franchisee shall, at its sole cost and expense, protect, support, temporarily disconnect, relocate in the same street, or other Public Way or place, or remove from any street or any other Public Ways and places, any of its property as required by the Franchising Authority or its designee by reason of traffic conditions, public safety, street construction, change or establishment of street grade, or the construction of any public improvement or structure by any City department acting in a governmental capacity.

Section 6.11 - Construction Maps

At the request of the Franchising Authority the Franchisee shall make available for review at the System Office by the Franchising Authority or its designee accurate maps of all existing and newly constructed plant.

Section 6.12 - Pedestals

In any cases in which pedestals housing electronic devices are to be utilized, in City Public Ways or within the City Public lay-out, such equipment must be installed in accordance with applicable regulations, provided, however that the Franchisee may place active devices (amplifiers, line extenders, power supplies, etc) in a low profile electronic control box, at City approved locations to be specified by the Franchisee when the Franchisee applies for an underground permit, which shall not be unreasonably denied. All such equipment shall be shown on the construction maps, made available to the City in accordance with Section 6.12 supra.

Section 6.13 - Tree Trimming

In the installation of amplifiers, poles, other appliances, or equipment, and in stringing of cables and/or wires as authorized herein, the Franchisee shall avoid unnecessary damage and/or injury to any and all shade trees in and along the streets, alleys, Public Ways and places, and private property in the City. All tree and/or root trimming and/or pruning provided for herewith shall be done pursuant to appropriate regulations of the City.

Section 6.14 - Emergency Removal of Plant

If, at any time, in case of fire or disaster in the City, it shall become necessary in the reasonable judgement of the Franchising Authority or its designee, to cut or move any of the wires, cables, amplifiers, appliances, or appurtenances of the Cable Television System, the City shall have the right to do so at the sole cost and expense of the Franchisee. If practical, the City shall notify the Franchisee and

require it to cut or move any such wires, cables, amplifiers, appliances, or appurtenances of the Cable Television System.

Section 6.15 - Removal and Relocation

The Franchising Authority shall have the authority at any time to order and require the Franchisee to remove or relocate any pole, wire, cable, or other structure owned by the Franchisee that is dangerous to life or property. In the event that the Franchisee, after reasonable, advance notice, fails or refuses to act within a reasonable time, the Franchising Authority shall have the authority to remove or relocate the same, at the sole cost and expense of the Franchisee.

Section 6.16 - Commercial Establishments

The Franchisee shall be required to make Cable Service(s) available to any commercial establishment in the City, upon the parties being able to reach a reasonable agreement regarding the terms and costs of initial installation and service. The Franchisee has informed the Franchising Authority that certain Cable Services may not be available to commercial establishments pursuant to the Franchisee's contractual obligations with program suppliers.

Article 7: Services and Programming

Section 7.1 - Basic Service

To the extent required by applicable law, the Franchisee shall provide Basic Service, which shall include at least 1) all broadcast television signals in the Monticello, Arkansas area which are required to be carried by a cable television system serving the City pursuant to statute or regulation; and 2) in the Franchisee's editorial discretion, such additional Programming as the Franchisee may choose to include in its Basic Service offered to Subscribers.

Section 7.2 - Programming

The Franchisee shall use its best efforts to provide diverse Programming, including Programming in the broad categories of sports Programming, news Programming, children's Programming, and optional premium movie Programming.

Section 7.3 - Two-Way Capability

The Franchisee shall construct and maintain a System capable of being adapted for two-way use, available to all Subscribers.

Section 7.4 - VCR/Cable Compatibility

- (a) The Franchisee shall provide to any subscriber, upon request, an A/B switch that will allow VCR owners to tape and view any Channel capable of being tuned by such owner's television set and/or VCR, except in instances involving two (2) scrambled Signals.
- (b) The Franchisee shall not Scramble or otherwise encode, in any manner or form, for the entire term of this Renewal Franchise, any Signals carried on its Basic Service.

Section 7.5 - Continuity of Service

The Franchisee shall provide all Subscribers with continuous, uninterrupted Service, except for necessary Service interruptions, subject to Force Majeure. All individual service complaints lodged directly with Cablevision will be responded to in no more than two (2) working days. The Franchise Authority shall have the right to investigate any individual service complaint not responded to within three (3) days. When necessary Service interruptions can be anticipated, the Franchisee shall notify Subscribers in advance, pursuant to Section 6.9 supra. 24/7 access, to Service Personnel on-call, will be afforded to the City of Monticello with regard to catastrophic plant damage, catastrophic system failure, or any other situation or circumstance that should qualify as an imminent safety hazard to the general public.

Article 8: Franchisee Fees

Section 8.1 - Franchise Fee Entitlement

- (a) The Franchisee shall pay to the City, throughout the term of this Renewal Franchise, a Franchise Fee. Through the termination, surrender or renewal, from the effective date of this Renewal Franchise, said Franchise Fee will equal 3% of gross revenues through the end of FY2003. Beginning January 1 2004, Franchise Fee entitlement shall be 4.25% of gross revenues. Pursuant to Section 622(f) of the Cable Act, the Franchisee may designate that portion of a Subscriber's bill attributable to the Franchise Fee as a separate item.
- (b) Franchise Fees shall be paid to the City on a quarterly basis, and paid the following year by the 60th day of the same physical quarter.

Section 8.2 - Late Payment

In the event the Franchise Fees herein required, are not tendered within ten (10) business days of the dates fixed in Section 8.1(c) above, interest due on such Franchise Fee(s) shall accrue from the due date at

a rate of one percent (1%) above prime rate. The City and the Franchisee agree that this interest charge represents a fair and reasonable estimate of the damages, which the City might suffer from such failure and further agree that the actual damages, which the City might suffer in such event, are incapable of ascertainment or reliable estimate. Any interest because of late payment to the City pursuant to this Section 8.2 shall not be deemed to be part of the Franchise Fees to be paid to the City pursuant to Section 8.1 hereof and shall be within the exclusion to the term "franchise fee" for requirements incidental to enforcing the Franchise pursuant to Section 622(g)(2)(D) of the Cable Act.

Section 8.3 - Recalculation of Franchise Fees Paid

Tender or acceptance of any payment shall not be construed as an accord that the amount paid is correct, nor shall such acceptance of payment be construed as a release of any claim that the City may have for additional sums including interest payable under this Section 8.2. All amounts shall be subject to audit and recalculation by the City, which shall be based on a calendar year and shall occur in no event later than one (1) year after the Franchise Fees are Tendered with respect to such calendar year. If, after audit and recalculation, an additional payment is owed to the City, such payment shall be paid within thirty (30) days after such audit and recalculation. The interest on such additional payment shall be charged from the due date at the rate of one percent (1%) above Prime Rate during the period that such additional amount is owed.

Section 8.4 - Other Payment Obligations and Exclusions

- (a) The Franchise Fee payments shall be in addition to and shall not constitute an offset or credit against any and all taxes or other fees or charges of general applicability which the Franchisee or any Affiliated Person shall be required to pay to the City, or to any State or federal agency or authority, as required herein or by law; the payment of said taxes, fees, or charges shall not constitute a credit or offset against the Franchise Fee payments all of which shall be separate and distinct obligations of the Franchisee and each Affiliated Person. The Franchisee herein agrees that no such taxes, fees, or charges shall be used as offsets or credits against Franchise Fee payments.
- (b) Consistent with Section 622(h) of the Cable Act, any Person, including a Leased Access User that distributes any Service over the Cable System for which charges are assessed to Subscribers but not received by the Franchisee shall pay the City a fee equal to the percentage assessed to the Franchisee of its Gross Annual Revenues. If the Franchisee collects revenues for said Person, then the Franchisee shall collect said percentage based fee on the Gross Annual Revenues of said Person and shall pay said amounts to the City along with the Franchisee's Franchise Fee payments pursuant to

Section 8.1(a) (b) (c), Section 8.2, and Section 8.3 herein. If the Franchisee does not collect the revenues for a Person that distributes any service over the system, then the Franchisee shall notify said Person of this percentage based fee requirement, which requirement shall be a provision of any agreement between Franchisee and said Person, and shall notify the Franchising Authority of such use of the Cable System by any such Person(s) and the Franchisee shall then have no further responsibility to the City, with respect to any such fee for such Person(s).

Section 8.5 - Affiliates' Use of System

The Franchisee shall not permit the use of the Cable System by Affiliates in connection with the operation of other cable television systems on terms which result in a diversion of revenues from operation of the Cable System to the detriment of the City and/or the Access Provider under this Renewal Franchise. If requested by the Franchising Authority, the Franchisee shall be required to demonstrate that use or operation of the Cable System by the Franchisee and/or an Affiliate is fair and competitive compared to such use by other third parties. Should the Franchising Authority subsequently determine otherwise, the Franchisee shall enter into good faith negotiations to resolve any dispute(s) regarding such gross revenue discrepancies on account of such a relationship.

Section 8.6 - Acceptance by the City; No Release

No acceptance of any payment by the City shall be construed as a release or as an accord and satisfaction of any claim the City may have for further or additional sums payable as a Franchise Fee pursuant to this Article 8 or for the performance of any other obligation of the Franchisee.

Article 9: Administration

Section 9.1 - Regulatory Authority

The Franchising Authority and/or its designee(s) shall be responsible for the day to day regulation of the Cable Television System. The Franchising Authority and/or its designee(s) shall monitor and enforce the Licensee's compliance with the terms and conditions of this Renewal Franchise. The Issuing Authority shall notify the Licensee in writing of any instance of non-compliance pursuant to Section 13.1 infra.

Section 9.2 - Jurisdiction

Unless otherwise required by applicable law, jurisdiction and venue over any dispute, action or suit shall be in any court of appropriate venue and subject matter jurisdiction located in the State of Arkansas and the parties by this instrument subject themselves to the personal jurisdiction of said court for the entry of judgement and the resolution of any dispute, action, or suit.

Article 10: Rates and Charges

Section 10.1 - Rate Regulation

The City reserves the right to regulate the Franchisee's rates and charges to the extent allowable under applicable federal law and regulation, including but not limited to, the Cable Act.

Section 10.2 - Notification of Rates and Charges

The Franchisee shall file with the City schedules which shall describe all Services offered by the Franchisee, all rates and charges of any kind, and all terms and conditions relating thereto. No rates or charges shall be effective except as they appear on a schedule so filed. Any changes in rates and charges by the Franchisee shall be preceded by a thirty (30) day notice of the proposed change to the Franchising Authority and all Subscribers, except where other notice may be permitted under applicable law or regulation. The requirements of this section shall apply to all rates and charges associated with the delivery of cable television Services in Monticello, including those charges authorized in Section 11.3.

Section 10.3 - Rights of Individuals; Special Classifications

The Franchisee shall not deny Service, access or otherwise discriminate against Subscribers, Channel Users, or general citizens on the basis of age, race, religion, sex, physical handicap, or country of natural origin. Nothing herein shall prohibit the Franchisee from offering reduced rates for senior citizens, handicapped Persons, and/or charitable institutions.

Section 10.4 - Termination of Pro-Rated Service

In the event Subscriber's Service is terminated, monthly charges for such Service shall be pro-rated on a daily basis and, where advance payment has been made by a Subscriber, the appropriate refund shall be

made by the Franchisee to said Subscriber within thirty (30) days of such termination or the next billing cycle, whichever is later, after the Subscriber has returned any of the Franchisee's equipment.

Article 11: Insurance, Indemnification, & Other Surety

Section 11.1 - Insurance Requirements

At all times during the term of the Renewal License, including the time for removal of facilities provided for herein, the Franchisee shall obtain, pay all premiums for, and file with the Franchising Authority, on an annual basis, copies of the certificates of insurance for the following policies:

- (1) A general commercial liability policy naming the City, its officers, boards, commissions, agents, committees, and/or employees as additional insured on all claims on account of injury to or death of a Person or Persons occasioned by the construction, Installation, maintenance, or operation of the Cable System or alleged to have been so occasioned, with a minimum liability of Five Hundred Thousand Dollars (\$500,000) for injury or death to any one (1) Person in any one occurrence and One Million Dollars (\$1,000,000) for injury or death to two (2) Persons in any one occurrence.
- (2) A property damage insurance policy naming the City, its officers, boards, commissions, agents, committees, and/or employees as additional insured and save them harmless from any and all claims of property damage, real or personal, occasioned or alleged to have been so occasioned by the construction, Installation, maintenance, or operation of the Cable Television System, with a minimum liability of Five Hundred Thousand Dollars (\$500,000) for damage to the property of any one Person in any one occurrence and One Million Dollars (\$1,000,000) for damage to the property of two (2) or more Persons in any one occurrence.
- (3) Automobile liability insurance for owned automobiles, non-owned automobiles and/or rented automobiles in the amount of:
 - (a) One Million Dollars (\$1,000,000) for bodily injury and consequent death per occurrence;
 - (b) One million Dollars (\$1,000,000) for bodily injury and consequent death to any one Person; and
 - (c) Five Hundred Thousand Dollars (\$500,000) for property damage per occurrence.

- (4) Worker's Compensation in the minimum amount of the statutory limit, and One Hundred Thousand Dollars (\$100,000) for Employer's liability.
- (5) The following conditions shall apply to the insurance policies required herein:
 - (a) Such insurance shall commence no later than the Effective Date of this Renewal License.
 - (b) Such insurance shall be primary with respect to any insurance maintained by the City and shall not call on the City's insurance for contributions.
 - (c) Such insurance shall be obtained from brokers or carriers authorized to transact insurance business in Arkansas.
 - (d) The Franchisee's failure to obtain, to procure, or maintain the required insurance shall constitute a material breach of this Renewal License.

Section 11.2 - Indemnification

- (a) The Franchisee shall, at its sole cost and expense, indemnify and hold harmless the City, its officials, boards, commissions, committees, agents, and/or employees against all claims for damage due to the actions of the Franchisee, its employees, officers, or agents arising out of the construction, Installation, maintenance, operation, and/or removal of the Cable Television System under this Renewal Franchise, including without limitation, damage to Persons or property, both real and personal, caused by the construction, Installation, operation, maintenance, and/or removal of any structure, equipment, wire, or cable installed. Indemnified expenses shall include, without limitation, all out-of-pocket expenses, such as attorney's fees.
- (b) The Franchisee's obligation to indemnify the City as aforesaid, the City agrees that it will, on request, surrender to the Franchisee, the defense of any claim for damages for which the City claims a right to indemnification hereunder. The Franchisee shall then have the duty to defend such claim and may employ attorneys of its own selection, at its own expense, to investigate, negotiate, settle, or litigate any such claim or suit.

Section 11.3

The insurance policies and performance bond required herein shall each contain explicit endorsement stating that such insurance policies and performance bond are intended to cover the liability assumed by the Franchisee under the terms of the Renewal Franchise and shall contain the following endorsement:

It is hereby understood and agreed that this policy (or bond) shall not be canceled, materially changed, or the amount of coverage thereof reduced until forty-five (45) days after receipt by the Issuing Authority by certified mail of one (1) copy of a written notice of such intent to cancel, materially change, or reduce the coverage required herein.

Article 12: Determination of Breach Liquidated Damage- Franchise Revocation

Section 12.1 - Determination of Breach

- (A) It is the intent of the parties hereto to attempt to resolve disputes arising under this Renewal Franchise informally. In the event that such efforts are not successful, the Franchising Authority and the Franchisee shall follow the procedures set forth in this Article 12.
- (B) In the event that the Franchising Authority has reason to believe that the Franchisee has defaulted in the performance of any or several provisions of this Renewal Franchise, except as excused by Force Majeure, the Franchising Authority shall notify the Franchisee in writing, by certified mail, of the provision or provisions which the Franchising Authority believes may have been in default and the details relating thereto. The Franchisee shall have thirty (30) days from the receipt of such notice to:
- (a) respond to the Franchising Authority in writing, contesting the Franchising Authority's assertion of default and providing such information or documentation as may be necessary to support Franchisee's position; or
 - (b) cure any such default (and provide written evidence of same) or, in the event that by nature of the default, such default cannot be cured within such thirty (30) day period, to take reasonable steps to cure said default and diligently continue such efforts until said default is cured. The Franchisee shall report to the Franchising Authority, in writing, by certified mail, at fourteen (14) day intervals as to Franchisee's efforts, indicating the steps taken by the Franchisee to cure said default and reporting the Franchisee's progress until such default is cured.
 - (c) In the event that (i) Franchisee fails to respond to such notice of default; (ii) the Franchisee fails to cure the default or to take reasonable steps to cure the default within the required thirty (30) day period; or (iii) the Franchising Authority is not satisfied with (1) the Franchisee's response (pursuant to paragraph {a} above) or (2) the Franchisee's efforts to cure (pursuant to paragraph {b} above), the Franchising Authority shall promptly schedule a public hearing no sooner than fourteen (14) days after written notice, by certified mail, to

the Franchisee. The Franchisee shall be provided a full and fair opportunity to offer evidence, question any Person(s) offering testimony and be heard at such public hearing.

- (d) Within thirty (30) days after said public hearing, the Franchising Authority shall determine whether or not the Franchisee is in default of any provision of the Renewal Franchise. In the event that the Franchising Authority, after such hearings, determines that the Franchisee is in such default, the Franchising Authority (i) shall issue a written decision containing its findings and (ii) may determine to pursue any of the following remedies:
- (i) assess liquidated damages in accordance with the schedule set forth in section 12.2 below;
 - (ii) seek specific performance of any provision of the Renewal Franchise which reasonable lends itself to such remedy as an alternative to damage;
 - (iii) commence an action at law for monetary damages;
 - (iv) foreclose on all or any appropriate part of the security provided pursuant to 12.2 herein;
 - (v) declare the Renewal Franchise to be revoked subject to Section 12.3 and applicable law;
 - (vi) invoke any other lawful remedy available to the City;

Section 12.2 - Liquidated Damages

- (a) For the violation of any of the following provisions of this Renewal Franchise; liquidated damage shall be paid by the Franchisee to the Franchising Authority, subject to Section 12.1 above. Any such liquidated damages shall be assessed as of the date that the Franchisee receives written notice, by certified mail, of provision or provisions, which the Franchising Authority believes, are in default.
- (1) For failure to fully extend, install, operate, and maintain the Cable Television System in accordance with Section 5.1 herein, One Hundred Fifty Dollars (\$150) per day that such extension, installation, operation, and maintenance has not occurred.
 - (2) For failure to obtain the advance, written approval of the Franchising Authority for any transfer of the Renewal Franchise in accordance with Article 3 herein, One Hundred Dollars (\$100) per day, for each day that such non-compliance continues.
 - (3) For failure to comply with the FCC's Customer Service Obligations in accordance with Section 12.2 herein, One Hundred Dollars (\$100) per day, for each day that such non-compliance continues.
 - (4) For failure to comply with any of the obligations in accordance with Article 12 herein, Seventy-Five Dollars (\$75) per day, for each day that such non-compliance continues.
 - (5) For Failure to submit (i) reports, pursuant to Article 13 herein, and/or (ii) schedules and notices pursuant to Section

10.2 herein, Fifty Dollars (\$50) per day that said reports and/or schedules and notices are not submitted as required.

- (a) Such liquidated damages shall be in addition to, and not a limitation upon, any other provision of this Renewal Franchise and applicable law, including penalties or revocation, or any other provisions of this Renewal Franchise and applicable law, including penalties or revocation or any other statutorily or judicially imposed penalties or remedies.

Section 12.3 - Revocation of the Renewal Franchise

In the event that the Franchisee fails to comply with any material provision of this Renewal Franchise, the Franchising Authority may revoke the Renewal Franchise granted herein, subject to the procedures of Section 12.1 above.

Section 12.4 - Termination

The termination of this Renewal Franchise and the Franchisee's rights herein shall become effective upon the earliest to occur of: {i} the revocation of the Renewal Franchise by action of the Franchising Authority, pursuant to Section 12.1 and 12.2 above; {ii} the abandonment of the Cable system, in whole or material part, by the Franchisee without express, prior approval of the Franchising Authority; or {iii} the expiration of the term of this Renewal Franchise. In the event of any termination, the City shall have all of the rights provided in this Renewal Franchise.

Section 12.5 - Notice to Other Party of Legal Action

Except for (i) enforcing any damages pursuant to Section 12.2 herein and/or (ii) in any case where the Franchising Authority, the Franchisee and/or the City may lose any right(s) that such party may otherwise have, including, but not limited to, injunctive relief, in the event that such party to this Renewal Franchise intends to take legal action against the other for any reason, such moving party shall first (i) give the other party reasonable notice that such an action may be filed, (ii) meet with the other party, if practical, before it files any such action, and (iii) negotiate the issue, which is the subject of any proposed legal action, in good faith with the other party. Nothing in Article 12 shall be deemed to limit the Franchising Authority's, the Franchisee's, or the City's right to seek appropriate relief in a court of competent jurisdiction.

Section 12.6 - Non-Exclusivity of Remedy

No decision by the Franchising Authority, the Franchisee and/or the City to invoke any remedy under the Renewal Franchise or under any

statute, law, or ordinance shall preclude the availability of any other such remedy.

Article 13: Reports, Audits, and Performance Tests

Section 13.1 - General

- (a) In any instance where the Franchising Authority reasonably believes that the Franchisee may not be in compliance with its obligations under this Renewal Franchise, upon request of the Franchising Authority, the Franchisee shall promptly submit to the City any relevant information regarding the Franchisee, its business and operations, or any Affiliated Person, with respect to the Cable System, any Service or any Service Related Activity, in such form and containing such detail as may be specified by the Franchising Authority pertaining to the subject matter of this Renewal Franchise which may be reasonably required to establish the Franchisee's compliance with its obligations pursuant to this Renewal Franchise.
- (b) If the Franchisee believes that the documentation requested by the Franchising Authority involves proprietary information or private personal information, then the Franchisee shall submit the information to its counsel, who shall confer with the City Council for a determination of the validity of the Franchisee's claim of proprietary interest. If the City Council agrees that the material is of a proprietary nature or involves private personal information, the information furnished shall not be a public record, but the Franchisee shall make it available, on its premises, to the Franchising Authority, at times convenient to both parties. If the City Council does not agree that the material is of a proprietary nature or involves private personal information, the Franchising Authority may proceed according to the procedures in Section 13.1 supra.

Section 13.2 - In-house Telephone Reports

If requested, the Franchisee shall provide copies of all in-house telephone reports, if any, that tracks the activity and effectiveness of the Franchisee's telephone system.

Section 13.2 - Complaint Log

The Franchisee shall keep a record or log of all written complaints received regarding quality of Service, equipment malfunctions, billing procedures, employee relations with subscribers, and similar matters. Such records shall be maintained by the Franchisee for a period of two (2) years.

Such record(s) shall contain the following information for each complaint received:

- (a) Date, time, and nature of the complaint;
- (b) Name, address, and telephone number of complainant;
- (c) Investigation of the complaint; and
- (d) Manner and time of resolution of the complaint.
- (e) If the complaint regards equipment malfunction or quality of reception, the Franchisee shall file a report indicating the corrective steps it has taken, with the nature of the problem stated. The Franchisee shall make its logs or records available to any authorized agent of the Franchising Authority upon request during normal business hours for on-sight review.

Section 13.4 - Individual Complaint Log

To the extent that applicable law permits the release of such information, the Franchisee shall, within twenty (20) business days after receiving a request from the City, send a written report to the Franchising Authority with respect to any complaint. Such report shall provide a full explanation of the investigation, finding(s), and corrective steps taken, as allowed by applicable law.

Section 13.5 - Outage Log

The Franchisee shall maintain an outage log showing the date, approximate time, duration, type, and probable cause of all Headend, Trunk, or Distribution Service outages, known to affect eight (8) or more Subscribers, due to causes other than routine testing or maintenance at reasonable times. Said logs shall be made available to the Franchising Authority, or its designee, for inspection, at a convenient location, and maintained by the Franchisee for a period of not less than four (4) years.

Section 13.6 - Annual Performance Tests

The Franchisee shall provide copies of performance tests to the Franchising Authority, upon request, in accordance with FCC regulations, and as set out in 47 CFR Section 76.601, et. Seq.

Section 13.7 - Quality of Service

Where there exists evidence, which, in reasonable judgement of the Franchising Authority, casts doubt upon the reliability or technical quality of Cable Service(s), the Franchising Authority shall cite specific facts, which casts such doubts in a notice to the Franchisee. The Franchisee shall submit a written report to the Franchising Authority, within thirty (30) days of a request thereof; setting forth in detail its explanation of the problems and proposing measures for resolution of such problems.

Section 13.8 - Dual Filings

- (a) If requested, the Franchisee shall make available to the City and copying at the Franchisee's expense, copies of any petitions or communications with any State or federal agency or commission pertaining to any material aspect of the Cable System operation hereunder.
- (b) In the event that either the Franchising Authority of the Franchisee requests from any State or federal agency or commission a waiver or advisory opinion relating to the Cable System, it shall immediately notify the other party in writing of said request, petition, or waiver.

Section 13.9 - Additional Information

The Franchisee and any Affiliated Person(s) shall cooperate fully and faithfully with any lawful investigation, audit, annual review, or any other inquiry conducted by a City governmental agency.

Article 14: Miscellaneous Provisions

Section 14.1 - Entire Agreement

This instrument contains the entire agreement between the parties, supersedes all prior agreements or proposals except as specifically incorporated herein, and cannot be changed orally but only by an instrument in writing executed by the parties.

Section 14.2 - Captions

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

Section 14.3 - Separability

If any section, sentence, paragraph, term, or provision of this Renewal Franchise is determined to be illegal, invalid, or unconstitutional, by any court of competent jurisdiction, or by any state or federal regulatory agency having jurisdiction thereof, such determination shall have no effect on the validity of any other section, sentence, paragraph, term, or provision hereof, all of which shall remain in full force and effect for the term of this Renewal Franchise.

Section 14.4 - Acts or Omissions of Affiliates

During the term of this Renewal Franchise, the Franchisee shall be liable for the acts or omission of its Affiliates while such Affiliates are involved directly or indirectly in the construction, Installation, maintenance, or operation of the Cable System as if the acts or omissions of such Affiliates were the acts or omissions of the Franchisee.

Section 14.5 - Cable Act Changes

This Renewal Franchise is subject to the terms and conditions contained in the regulations of the FCC, the Cable Act, and all City, State, and federal statutes and by-laws of general application, as all may be amended from time to time.

Section 14.6 - Warranties

(a) The Franchisee warrants, represents, acknowledges, and agrees that, on or before the Effective Date of this Renewal Franchise, the Franchisee shall submit to the Franchising Authority, in a form reasonably acceptable to the City's Counsel, an appropriate document evidencing its warranties, as of the Effective Date of this Renewal Franchise.

(i) The Franchisee is duly organized, validly existing, and in good standing under the laws of the State of Arkansas.

(ii) The Franchisee has the requisite power and authority under applicable law and its by-laws and articles of incorporation and/or other organizational documents, is authorized by resolutions of its Board of Directors or other governing body, and has secured all consent required to be obtained as of the Effective Date of this Renewal Franchise, to enter into and legally bind the Franchisee to this Renewal Franchise and to take all actions necessary to perform all of its obligations pursuant to this Renewal Franchise.

(iii) To the best of the Franchisee's knowledge, there is no action or proceedings pending or threatened against the Franchisee, which would interfere with performance of this Renewal Franchise.

(a) The Franchising Authority warrants, represents, and acknowledges that, as of the Effective Date of this Renewal License:

(i) The Franchising Authority is the duly authorized Franchising Authority; and

(ii) The Franchising Authority has duly voted to grant this Renewal Franchise.

Section 14.7 - Force Majeure

If by reason of Force Majeure either party is unable in whole or in part to carry out its obligations hereunder, said party shall not be deemed in violation or default during continuance of such inability. The term "Force Majeure" as used herein shall mean the following: acts of God, acts of public enemies, orders of any kind of government of the United States of America or the State of Arkansas or any of their departments, agencies, political subdivision, or officials, or any civil or military authority, insurrections; riots; epidemics; landslides, lightning, earthquakes; fires; hurricanes; volcanic activity; storms; floods; washout; droughts; civil disturbances; explosions; strikes; and unavailability of essential equipment, and/or materials beyond the control of the Franchisee; and other matters beyond the reasonable control of the Franchisee.

Section 14.8 - Applicability of Renewal Franchise

All of the provisions in this Renewal Franchise shall apply to, and are enforceable against, the City, the Franchisee, and their respective successors and assignees.

Section 14.9 - Notices

- (a) Every notice to be served upon the Franchising Authority shall be delivered or sent by certified mail to the City Council, City of Monticello, PO Box 505, Monticello, AR 71657-0505, or such other address as the Franchising Authority may specify in writing to the Franchisee.

Every notice served upon the Franchisee shall be delivered or sent certified mail to Community Communications Company, 1920 HWY 425 North, Monticello, AR 71655-4463, or such address as the Franchisee may specify in writing to the Franchising Authority. The delivery shall be equivalent to direct personal notice, direction or order, and shall be deemed to have been given at the time of receipt of such notice(s).

- (b) Whenever notice of any public meeting relating to the Cable System is required by law, regulation of this Renewal Franchise, upon notice by the City, the City shall publish or cause to be published notice of same, sufficient to identify its time, place, and purpose, in a Monticello area newspaper of general circulation once in each of two (2) successive weeks, the first publication not less than fourteen (14) days before the day of any such hearing.
- (c) Subject to subsection (b) above, all required notices shall be in writing.

Section 14.10 - No Recourse Against Franchising Authority

In any court proceeding involving any claim against Franchising Authority, or any official, member, employee, or agent of the Franchising Authority, 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 extent such relief is required by any other provision of federal, State, or local law, shall be limited to injunctive relief and declaratory relief.

Section 14.11 - Non-Discrimination

The Franchisee shall not discriminate against any Person in its solicitation or Service on a basis of race, color, creed, religion, ancestry, national origin, geographical location within the City, sex, affectional preference, disability, age, marital status, or status with regard to public assistance. The Franchisee shall be subject to all other requirements of federal and State laws or regulations, relating to non-discrimination through the term of the Renewal Franchise.

Section 14.12 - Term


All obligations of the Franchisee and the Franchising Authority set forth in the Renewal Franchise, except as set forth herein differently, shall commence upon the execution of this Renewal Franchise and shall continue for the term of the Renewal Franchise except as expressly provided for herein.

Section 14.13 - Grant of Information Channel Access to Franchise Authority

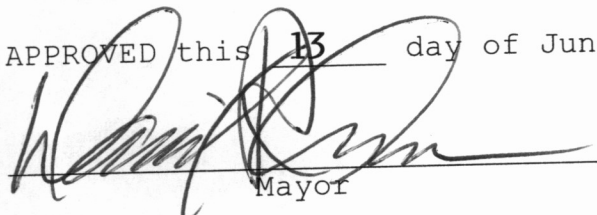
For the purpose of distributing information, regarding government, education, and public services, that is not for commercial gain and deemed to be in the public interest, the Franchisee shall provide to the Franchise Authority, free access to at least one channel of local origination, with minimum text capability.

SO ORDAINED this 13 day of ~~XXXX~~, 2003.

November,


City Clerk- Treasurer

APPROVED this 13 day of June, 2003:


Mayor