ORDINANCE NO. **BG2025 - 23**

ORDINANCE CREATING CABLE FRANCHISE

ORDINANCE SETTING FORTH THE REQUIREMENTS FOR OBTAINING A FRANCHISE FOR THE OPERATION AND MAINTENANCE OF A CABLE SYSTEM IN THE CITY OF BOWLING GREEN, KENTUCKY, SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OF SAID FRANCHISE, AND PROVIDING FOR THE REGULATION AND USE OF SAID SYSTEM

WHEREAS, pursuant to Kentucky Constitution Sections 163 and 164, the City of Bowling Green (the "City") is authorized and empowered to award cable television franchises, and,

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

WHEREAS, the City has found and determined that the construction, operation, maintenance and utilization of a cable system over, across or under public rights-of-way in the City benefits the citizens it serves; and,

WHEREAS, in order to protect the health, safety and welfare of the citizens of the City, to protect and preserve the City's public rights-of-way and infrastructure and to provide for the orderly administration of the franchise contemplated herein, it is necessary and appropriate to require the successful franchisee to conduct its business and operations in a lawful manner in compliance with the terms and conditions set forth herein below.

NOW, THEREFORE, BE IT ORDAINED by the City of Bowling Green, Kentucky as follows:

SECTION 1. TITLE

This Ordinance is adopted as the "Cable Television Ordinance" for the City of Bowling Green (hereinafter referred to as "Ordinance").

SECTION 2. DEFINITIONS

For the purpose of this Ordinance the following terms, phrases, words and their derivations shall have the meaning given herein. To the extent any definitions differ from or are in conflict with definitions in the federal Cable Act, it is the express intent that the definition in applicable federal law shall take precedence. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is mandatory and "may" is permissive. Words not defined shall be given their common and ordinary meaning.

"Applicant" shall mean a person or party which is applying for a new Franchise.

"Basic Cable Service" shall be defined as that term is defined in the Cable Act and shall, subject to applicable law, specifically include the retransmission of local television broadcast signals and PEG Access Channels.

"Cable Act" means the Cable Communications Policy Act of 1984 (Public Law No. 98-549), and the Cable Television Consumer Protection and Competition Act of 1992 (Public Law No. 102-385) as amended by the Telecommunications Act of 1996 (Public Law No. 104-104), together with current federal legislation governing Cable Television Systems and their operation in the United States and any subsequent amendments thereto.

"Cable Channel" or "Channel" means a portion of the electromagnetic spectrum which is used in a Cable System and which is capable of delivering a television channel.

"Cable System" shall have the meaning set out in federal law, which currently means a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service, which includes video programming, and which is provided to multiple Subscribers within a community, but such term does not include: (1) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (2) a facility that serves Subscribers without using any public right-of-way; (3) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Communications Act, except that such facility shall be considered a Cable System (other than for purposes of 47 U.S.C. § 541(c)) to the extent such facility is used in the transmission of Video Programming directly to Subscribers, unless the extent of such use is solely to provide interactive, on-demand services (as such term is defined in 47 U.S.C. § 522(12); (4) any facilities of any electric utility used solely for operating its electric utility system; or (5) an open video system that complies with 47 U.S.C. § 573.

"City" shall mean the City of Bowling Green, Kentucky.

"FCC" shall mean the Federal Communications Commission and any legally appointed, designated or elected agent or successor.

"Franchise Fee" shall mean any fee that may be imposed by the City of Bowling Green Board of Commissioners as compensation for the Grantee's use of the City rights-of-way pursuant to federal or state law.

"Grantee" is a party to which a Franchise has been granted by the City under this Ordinance.

"Gross Revenues" shall mean any revenue, as determined in accordance with generally accepted accounting principles, received by the Grantee from the operation of the Cable System to provide Cable Services in the City. Gross Revenues include, but are not limited to, revenues received from Subscribers for all levels of Cable Service, including Premium Channels, Pay-Per-View Events, Cable Service installations, all locally-derived advertising revenues less commissions paid to unaffiliated third parties, locally-derived revenues or commissions from home shopping channels, and commercial leased access of Cable Service Channels. Unless prohibited by either federal or state law, Gross Revenues do not include (1) any taxes, fees or assessments collected by the Grantee from Subscribers for pass-through to a government agency, including, without limitation, any state or federal regulatory fees, any Franchise Fee, or any sales or utility taxes; (2) unrecovered bad debt; (3) credits, refunds and deposits paid to Subscribers; (4) any exclusions available under applicable state law.

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

"Normal Operating Conditions" shall mean business conditions within Grantee's service department which are within the control of Grantee. Those conditions that are not within the control of Grantee include, but are not limited to, natural disasters, civil disturbances, severe or unusual weather conditions or other conditions of force majeure.

"Pay-Per-View Event(s) or Pay-Per-View Movie(s)" means a Cable Service delivered over the Cable System by Grantee directly to Subscribers pursuant to this Ordinance, for which Subscribers pay an additional fee per event to Grantee.

"Premium Channel" means a Cable Service delivered over the Cable System by Grantee directly to Subscribers pursuant to this Ordinance, for which Subscribers pay an additional per Channel subscription fee to Grantee.

"Service Interruption" means the loss of picture or sound on one or more channels, which is not caused by the failure or malfunction of a Subscriber's television receiver or by the error of the Subscriber.

"Standard Installation" shall mean installations to residences and buildings that are located up to 125 feet from the point of connection to Grantee's existing distribution system.

"Street" shall mean the surface of and the space above and below any public street, road, highway, freeway, lane, path, public way or place, sidewalk, alley, court, boulevard, parkway, drive, easement, or other right-of-way in the Franchise territory as set forth in Section 4, in each case which have been dedicated for compatible uses as set forth in 47 U.S.C. § 541(a)(2).

"Subscriber" means a lawful recipient of Grantee's Cable Service.

SECTION 3. RIGHTS AND PRIVILEGES OF GRANTEE

Any Franchise granted by the City pursuant to this Ordinance shall be nonexclusive, and shall grant to the Grantee the right and privilege to erect, construct, operate, maintain and repair in, upon, along, across, above, over and under the Street any poles, wires, cables, underground conduits, manholes, and other television conductors and fixtures necessary for or appurtenant to the maintenance and operation of a Cable System. The City specifically reserves the right to grant, at any time, one or more additional Cable System Franchises in accordance with federal and state law.

SECTION 4. FRANCHISE TERRITORY

The Franchise is for the present territorial limits of the City and for any area henceforth added to those territorial limits during the term of the Franchise.

SECTION 5. GRANT, ACCEPTANCE AND DURATION OF FRANCHISE

Any Franchise granted pursuant to this Ordinance shall take effect when legally adopted by the City of Bowling Green Board of Commissioners according to Kentucky law, and accepted and agreed to by Grantee in writing, at which time the Grantee shall be bound by all the terms and conditions contained herein. The Franchise and the rights, privileges and authority granted to Grantee thereby shall take effect and be in force from and after such date, and shall continue in force and effect for a term of ten years.

SECTION 6. POLICE POWERS

In accepting a Franchise granted pursuant to this Ordinance, the Grantee acknowledges that its rights thereunder are subject to the police power of the City to adopt and enforce general ordinances necessary to the safety and welfare of the public; it agrees to comply with all applicable general laws and ordinances enacted by the City pursuant to such power, including any future amendments to such general laws and ordinances which are generally applicable police-power time, place and manner regulations of the use of the rights-of-way. Any Franchise granted pursuant to this Ordinance is a contract and except as to those changes which are the result of the City's lawful exercise of its general police power, the City may not take any unilateral action which materially changes the mutual promises in this contract.

SECTION 7. CABLE FRANCHISE REQUIRED

No Cable System shall be allowed to occupy, use, or operate in the Streets of the City to provide Cable Service without a Cable System Franchise.

SECTION 8. GRANTEE'S FINANCIAL RESOURCES AND PERFORMANCE BOND

The Grantee, throughout the term of the Franchise, shall maintain adequate financial resources to perform, or provide a plan acceptable to the City demonstrating that it can perform, on a timely basis, all obligations pursuant to this Ordinance. Except as expressly provided herein, the Grantee shall not be required to obtain or maintain a bond as a condition of this Ordinance unless there is a change to the financial qualifications of the Grantee such that the City makes a good faith finding that such financial qualifications are insufficient to afford compliance with the terms of this Ordinance. The Grantee and the City recognize that the costs associated with bonds may ultimately be borne by Subscribers in the form of increased rates for Cable Service. In order to minimize such costs, the City agrees to only require a performance bond if the Grantee's legal, financial or technical qualifications prohibit its ability to comply with the terms of this Ordinance. However, the City shall in no event require a performance bond in an amount greater than $100,000. In the event that a performance bond is required, the City agrees to give the Grantee at least 60 days' prior written notice thereof stating the exact reason for the requirement. Any such bond shall contain the following endorsement:

It is hereby understood and agreed that this bond may not be canceled by the surety and that the intention not to renew may not be stated by the surety until 30 days after receipt by the City, by registered mail, a written notice of such intent to cancel or not to renew.

The performance bond may only be drawn upon by the Grantee in the event:

The Grantee fails to pay the City any amounts due under the terms of this Ordinance;

A. The Grantee fails to reimburse costs borne by the City to correct violations of this Ordinance not corrected by the Grantee; or

B. The Grantee fails to pay any monetary remedies or damages assessed by a court of law against the Grantee and awarded to City for a violation of this Ordinance.

C. Prior to drawing upon the performance bond for the purposes described in this Section, the City shall notify the Grantee in writing that payment is due and that the Grantee shall have 30 days from the receipt of such written notice to make a full and complete payment. If the Grantee does not make the payment within 30 days, the City may withdraw the amount thereof from the performance bond.

SECTION 9. LIABILITY AND INSURANCE

The Grantee shall maintain, and by its acceptance of the Franchise specifically agrees that it will maintain, throughout the term of the Franchise, liability insurance insuring the City and the Grantee in the amount and in the terms at least as follows:

Workers' Compensation	Statutory Limits
Commercial General Liability	$1,000,000 per occurrence, $2,000,000 General Aggregate
Auto Liability including coverage on all owned, non-owned hired autos	$1,000,000 per occurrence Combined Single Limit (C.S.L.)
Umbrella Liability	$5,000,000 per occurrence

Insurance coverage shall be provided through insurance companies licensed to do business in the Commonwealth of Kentucky with a Best Rating of A- or better. Certificates of insurance must be provided to the City within 30 days of the execution of this Ordinance. Notwithstanding the foregoing, the Grantee may self-insure any required insurance.

SECTION 10. INDEMNIFICATION

The Grantee shall, at its sole cost and expense, fully indemnify, defend and hold harmless the City and the City's officers, boards, and all members, commissions and employees against any and all claims, suits, actions, liability and judgments for damages and liabilities assumed by the City in connection therewith to persons or property in any way:

A. Arising out of or through the negligent acts or omissions of the Grantee, its servants, agents or employees in the construction or operation of the Cable System;

B. Arising out of any claim based solely on the acts or omissions of the Grantee for invasion of the right of privacy, for defamation of any person, firm, or corporation, or the violation, infringement or dilution of any copyright, trademark, trade name, service mark or patent, (excluding claims arising out of or relating to City programming); and,

C. Arising out of the Grantee's failure to comply with the provisions of any federal, state or generally-applicable local statute, ordinance or regulation applicable to the Grantee in its business hereunder.

The foregoing indemnity is conditioned upon the City giving the Grantee written notice of its obligation to indemnify the City at least ten calendar prior to the deadline for responding to the claim or action, and if no such deadline exists, within 30 days of the City's receipt of the claim or action. Nothing herein shall be deemed to prevent the City from cooperating with the Grantee and participating in the defense of any litigation by their own counsel at their sole expense.

Notwithstanding the foregoing, the Grantee shall not be obligated to indemnify the City for any damages, liability or claims resulting from the willful misconduct or negligence of the City or from the City's use of the Cable System, including any PEG Channels.

SECTION 11. RIGHTS OF INDIVIDUALS

The Grantee shall not deny service, deny access, or otherwise discriminate against Subscribers, Channel users or general citizens in the City on the basis of race, color, religion, age or sex. The Grantee shall operate the Cable System in in compliance with the privacy rights of Subscribers as contained in 47 U.S.C. § 551.

SECTION 12. COMPLIANCE WITH STATE AND FEDERAL LAWS

Notwithstanding any other provision of this Ordinance to the contrary, Grantee shall at all times comply with all applicable laws and regulations of the state and federal government or any administrative agencies thereof.

SECTION 13. DESCRIPTION OF CABLE TELEVISION DISTRIBUTION SYSTEM

The Grantee will operate a Cable System capable of providing over 200 Channels, which may include high-definition (HD) programming, digital video recorder (DVR) and video-on-demand (VOD) services. The Grantee will keep the City advised of its major upgrades or projects for the Cable System.

SECTION 14. SERVICE AVAILABILITY AND RECORD REQUEST

Subject to Section 15, the Grantee shall provide Cable Service throughout the entire City and shall keep a record for at least three years of all requests for line extensions received by the Grantee pursuant to Section 15.

SECTION 15. CABLE SYSTEM EXTENSION / NON-STANDARD INSTALLATIONS

Upon request, the Grantee shall extend its Cable System to any area of the City having at least 20 single residence dwelling units per cable mile. Density per cable mile shall be computed by dividing the number of residential dwelling units in the area by the length, in miles or fractions thereof, of the total amount of cable necessary to make Cable Service available to the residential dwelling units in such area in accordance with Grantee's Cable System design parameters. The cable length shall be measured from the nearest point of access to the then-existing system, provided that extension is technically feasible from that point of access, and located within the Street. The total cable length shall exclude the drop cable necessary to serve individual Subscriber premises.

Subject to the limitations set forth above, Grantee must provide an aerial drop line to any dwelling unit and/or business requesting connection at the Standard Installation charge, if the connection to such dwelling unit or business would require no more than a Standard Installation. With respect to requests for connection requiring an aerial drop line in excess of a Standard Installation, Grantee must extend and make available Cable Service to such dwelling unit or business at a connection charge not to exceed the actual installation costs incurred by the Grantee for the distance exceeding 125 feet. Grantee's obligations under this Section shall be conditioned upon the Grantee having legal access to any such dwelling unit or business wherein such Cable Service is to be provided, and the City acknowledges that the Grantee cannot control the dissemination of particular Cable Services beyond the point of demarcation at a multiple dwelling unit. Further, nothing herein shall require the Grantee to provide Cable Service to any person who fails to abide by the Grantee's terms and conditions of Cable Service.

SECTION 16. CONSTRUCTION AND TECHNICAL STANDARDS

Construction, installation, operation and maintenance of the Cable System shall be performed in an orderly and workmanlike manner. All new cables and wires shall be installed, where possible, parallel with electric and telephone lines. Grantee shall at all times comply with:

(a) National Electrical Safety Code (National Bureau of Standards);

(b) Applicable FCC or other federal and state regulations; and,

(c) Generally applicable local ordinances, regulations and permitting requirements not in conflict with this Ordinance or the codes and regulations identified above, including but not limited to the City's Public Works Manual.

In addition, the Grantee shall provide the City, upon request, with a written report of the results of the Grantee's annual proof of performance tests conducted pursuant to FCC standards and requirements if such tests are required by applicable law.

In any event, the Cable System shall not endanger or interfere with the safety of persons or property or with the functioning of property, in the City. Any antenna structure used in the Cable System shall comply with the applicable standards and requirements of the U.S. Department of Transportation for the construction, marking, and lighting of antenna structures. All working facilities, conditions and procedures used during construction, installation and maintenance of the Cable System shall comply with the applicable standards of the Occupational Safety and Health Administration. Rf leakage shall be checked and maintained in conformance with FCC rules and regulations.

The Grantee shall maintain equipment capable of providing standby power for the headend for a minimum of two hours.

In all areas of the City where the cables, wires, and other like facilities (including but not limited to telephone and power), of all public utilities are placed underground, the Grantee shall place its cables, wires, or other like facilities underground to the maximum extent that existing technology reasonably permits.

The methods of construction, upgrade, installation, maintenance and repair of the Cable System shall comply and be consistent with good engineering practices for Cable Systems of similar size and design, and consistent with and satisfy FCC performance and technical standards. All work shall be performed by the Grantee in a good and workmanlike manner.

The Grantee shall compensate property owners for any damages caused by its installation, construction, operation or removal of its cable facilities, as required by the Cable Communications Policy Act of 1984, 47 U.S.C. § 541(a)(2)(C).

SECTION 17. USE OF STREETS

The Cable System shall be located, erected and maintained so that none of its facilities shall unreasonably endanger or interfere with the lives of any persons, or with the safety and use of the property, safety of other persons, or interfere with any improvements the City may deem proper to make, or unnecessarily hinder or obstruct the free use of the Streets.

In case of any disturbance of pavement, sidewalk, driveway or other surfacing, the Grantee shall, at its own cost and expense, replace and restore all paving, sidewalk, driveway, landscaping, or surface of any Street disturbed, in as good condition as before said work was commenced and in accordance with generally applicable standards for such work, as set by the City in its Public Works Manual.

In the event that, at any time the City shall lawfully elect to grade, regrade or alter or change the grade of any Street, or to construct, reconstruct, widen or alter any Street for purposes of a public improvement, the Grantee, upon ten business days' notice by the proper government unit, shall remove or relocate as necessary its poles, wires, cables, underground conduits, manholes and other fixtures at its own expense.

The Grantee shall, on the request of any person holding a building-moving permit issued by the City, temporarily raise or lower its wires to permit the moving of buildings. The person requesting such raising or lowering shall bear the expense of such temporary removal, raising or lowering of wires, and the Grantee shall have the authority to require such payment in advance. The Grantee shall be given not less than ten business days' notice to arrange for such temporary wire changes.

The Grantee shall have the right to remove, trim, cut and keep clear of the Cable System, the trees in and along the Streets of the City and except for incidental trimming done by Grantee employees in the course of performing their other duties, shall make good faith efforts to notify the City prior to engaging in any such activity.

No poles or other wire-holding structures shall be erected in the Streets of the City by the Grantee without the generally required prior approval of the City with regard to location, height, type and any other pertinent aspect. Where existing poles or other wire-holding structures may be available in the Streets of the City for use by the Grantee, or where the City or a public utility serving the City desires to make use of such poles or structures of the Grantee in the Streets of the City, the use of such poles or structures by Grantee, the City or such public utility, respectively, shall be pursuant to generally applicable laws regarding such pole or structure use.

SECTION 18. OPERATIONAL STANDARDS

The Grantee shall put, keep and maintain all parts of the Cable System in good condition throughout the term of the Franchise.

The Grantee shall render efficient service, make repairs promptly, and interrupt Cable Service only for good cause and for the shortest time reasonable. Such interruptions, insofar as possible, shall, where reasonable, occur during periods of minimum Cable System use.

The Grantee shall not allow its Cable System to interfere with television reception of persons not served by the Grantee, nor shall the Cable System interfere with, obstruct or hinder in any manner, the operation of the various utilities serving the residents within the confines of the City.

The Grantee shall continue, through the term of the Franchise, to maintain the technical standards and quality of service set forth in this Ordinance. Should the City find that the Grantee has failed to maintain these technical standards and quality of service, and such failure continues for three months following such resolution, the failure will constitute a breach of a condition for which the remedies set forth in this Ordinance are applicable.

SECTION 19. COMPLAINT PROCEDURE / CUSTOMER SERVICE

The City shall have primary responsibility for the continuing administration of the Franchise terms and implementation of complaint procedures.

Grantee shall comply with the FCC's customer service standards and other customer service standards set forth below.

OFFICE HOURS AND TELEPHONE AVAILABILITY

Grantee shall maintain an office in the City to receive bill payments, exchange equipment and respond to customer inquiries through at least December 31, 2028. In the event of an office closure or relocation outside of the City after December 31, 2028, Grantee shall provide written notice to the City, and must continue to have the capability to conveniently serve its Subscribers' needs by providing, or contracting with third party agents to provide, the opportunity for Subscribers to exchange Cable Service equipment and make payments in the City during Normal Business Hours. By way of example, "in the City" in this context may include mail delivery of new equipment to a Subscriber's home along with "drop ship" packaging from a local shipping store such as FedEx or UPS for returning the old equipment.

Grantee shall provide and maintain a local or toll free telephone access line that will be available to Subscribers 24 hours a day, seven days a week. Trained representatives shall respond to customer telephone inquiries during Normal Business Hours. After Normal Business Hours, the access line may be answered by a service or an automated response system. Inquiries received after Normal Business Hours must be responded to by a trained company representative on the next business day.

Under Normal Operating Conditions and during Normal Business Hours, telephone answering time by a customer representative, including wait time, shall not exceed 30 seconds after the connection is made. If the call needs to be transferred, transfer time shall not exceed 30 seconds. These standards shall be met no less than 90% of the time, measured on a quarterly basis.

Under Normal Operating Conditions, the customer shall receive a busy signal less than 3% of the time.

Grantee shall not be required to acquire equipment or perform surveys to measure compliance with the telephone answering requirements above unless a historical record of written complaints indicates a clear failure to comply.

INSTALLATIONS AND SERVICE CALLS

Grantee shall maintain a staff of employees, or agents, including subcontractors, sufficient to provide adequate and prompt service to its Subscribers. Grantee shall require that any employee or agent, including any subcontractor, who personally visits any residential dwelling, shall display a photo identification badge.

Under Normal Operating Conditions, Standard Installations will be performed within seven business days after an order has been placed.

Excluding conditions beyond the control of Grantee, Grantee shall begin working on a Service Interruption promptly and in no event later than 24 hours after the interruption becomes known, and shall diligently pursue to completion. Grantee shall begin actions to correct other service problems the next business day after notification of the service problem.

Upon scheduling of appointments with the Subscribers for installations, service calls and other activities, Grantee shall provide the Subscriber with either a specific time or an "appointment window" of a maximum of four hours during Normal Business Hours. Grantee may schedule service calls and installation activities outside of Normal Business Hours at a time that is convenient for the Subscriber.

Grantee may not cancel an appointment with a Subscriber after the close of business on the business day prior to the scheduled appointment. If, at any time, an installer or technician is running late, an attempt to contact the Subscriber must be made prior to the time of the appointment. If the appointment must be rescheduled, it must be done so at a time that is convenient for the Subscriber.

NOTICES

Grantee shall provide written or electronic notice to each Subscriber upon initial subscription, and once per calendar year thereafter to each Subscriber, and at any time upon request, regarding each of the following areas:

1. Products and services offered;
2. Prices and options for programming services and conditions of subscription to programming and other services;
3. Channel positions of programming carried on the Cable System;
4. Installation and service maintenance policies;
5. Instructions on how to use the Cable Service;
6. Billing and Subscriber complaint procedures;
7. Grantee's address and telephone number; and,
8. A notice of Subscriber privacy rights as required by federal law.

To the extent required by applicable law, Grantee shall notify Subscribers and the City of any increase in rates, change in programming services or change in Channel positions a minimum of 30 days in advance of such changes, provided that such change is within the control of Grantee. Grantee shall not be required to provide prior notice to Subscribers of any rate change that is the result of a regulatory fee, Franchise Fee or any other fee, tax, assessment or charge of any kind imposed by any federal agency, the Commonwealth of Kentucky or the City on the transaction between Grantee and the Subscriber.

BILLING

Bills shall be clear, concise and understandable. Bills must be fully itemized, with itemizations including but not limited to, Basic Service and Premium Channel charges and equipment charges to the extent required by applicable law. Bills will also clearly delineate all activity during the billing period, including optional charges, rebates, and credits.

In case of a billing dispute, Grantee must respond to a complaint from a Subscriber within 30 days.

SECTION 20. PAYMENT OF MULTICHANNEL VIDEO PROGRAMMING SERVICES TAX

Grantee shall make payments at the times and in conformance with the requirements of KRS 136.600 – 136.660 ("Excise Tax") and said payments shall be in lieu of any Franchise Fees paid to the City. If the City exercises its right to collect Franchise Fees, then Grantee agrees that the Franchise Fee shall be in an amount equal to 5% of Grantee's Gross Revenues. In such case the Franchise Fee shall be payable as follows:

The first payment period for the Franchise Fee to be paid under this Section shall commence 90 days after Grantee's receipt of the City's written notice. The percentage of Franchise Fee and the method of calculation shall be equal when compared to the percentage or method of calculation of the Franchise Fee in all Franchises or authorizations to provide video service granted by the City. In the event any Franchise or authorization to provide video service provides for a lesser Franchise Fee than any other Franchise or authorization to provide video service, the Grantee's obligation to pay a Franchise Fee under such Franchise and this Section shall be reduced by an equivalent amount.

It shall be payable quarterly for each calendar quarter and the Grantee shall file a report of all applicable Gross Revenues received during the calendar quarter, and said payment shall be made to the City no later than 45 days after the expiration of the quarter. The Gross Revenues report from operations of the Grantee within the City shall include a statement of Gross Revenues upon which the Franchise Fee is based. In the event that any undisputed Franchise Fee payment or recomputed amount as established below is not timely paid on the date due, interest shall be charged from such date at the annual rate of prime plus one (1) percent.

In the event that Grantee pays a Franchise Fee under subsection (A), upon reasonable notice, the City shall have the right during Normal Business Hours to inspect the Grantee's records relevant to the payment of Franchise Fees and the right to audit and to re-compute any amounts determined to be payable under this Ordinance; provided, however, that such audit shall take place within twelve months following the close of each of Grantee's fiscal year for which the audit is applicable. If, as a result of such audit, the City determines that the Grantee has underpaid its Franchise Fees to the City in any twelve month period by 10% or more, in addition to making full payment of the relevant obligation, the Grantee shall reimburse the City for all of the reasonable costs associated with the audit, including costs for attorneys, accountants and other consultants, up to a maximum of $5,000 and subject to applicable law. Any undisputed additional amount due to the City as a result of an audit shall be paid within the 30 days following written notice to Grantee by the City, which notice shall include a copy of the audit report and copies of all invoices for which the City seeks reimbursement. No auditor engaged by the City shall be compensated on a success based formula, e.g., payment based on a percentage of an underpayment, if any.

The City is not prohibited from collecting valid fees or taxes, including, but not limited to property taxes, occupational license fees and other fees or taxes allowed by federal and state law, and the Excise Tax distribution from the state is not a payment in lieu of any tax, fee or other assessment except as specifically provided in this Ordinance or as required by applicable law. Nothing herein shall be deemed a waiver of any right of Grantee to challenge the imposition of any fee as inconsistent with applicable law.

The Grantee may pass Franchise Fees through to Subscribes as a line item on Subscriber bills or otherwise as Grantee chooses, consistent with federal law.

SECTION 21. TRANSFER OF OWNERSHIP

Except as set forth in subsections D, E, F and G:

1. No Franchise granted pursuant to this Ordinance nor any rights, interest or obligations of the Grantee in the Cable System or pursuant to any Franchise granted pursuant to this Ordinance shall in any event be sold, assigned, transferred, leased, subleased or disposed of (including, but not limited to,

by forced or voluntary sale, sale or lease of all or substantially all of the assets or a merger, consolidation, sale of stock of Grantee, receivership or other means) in whole, or in part, nor shall title thereto, either legal or equitable, or any right or interest therein, pass to or vest in any person or entity either by act of the Grantee, by act of any person or entity holding control of or any interest in the Grantee or the Cable System or any Franchise granted pursuant to this Ordinance by operation of law or otherwise, without the prior express written approval by the City, in compliance with applicable state and federal law; and,

2. No change in control of or any controlling interest in the Grantee, the Cable System or any Franchise granted pursuant to this Ordinance shall occur after the effective date of any Franchise granted pursuant to this Ordinance, by any act of the Grantee, by act of any person or entity holding control of the Grantee, the Cable System or the Franchise granted herein, by operation of law or otherwise, without the prior express written approval by the City, in compliance with applicable state and federal laws. For purposes of this Ordinance, "control" and "controlling interest" mean actual working control in whatever manner exercised, including without limitation, working control through ownership, debt instruments or negative control, as the case may be, of the Cable System or of the Grantee. "Control" or "controlling interest" as used herein may be held simultaneously by more than one person or entity, or group of persons or entities.

Every transfer without the prior approval of the City shall constitute a default of this Ordinance. In the event of such a default, the City shall proceed according to the procedure set forth in this Ordinance, and any applicable state or federal law.

The Grantee shall petition in writing for approval of a proposed transfer with the City. In making such petition, the Grantee shall file the appropriate form mandated by federal law or regulation with the City. The petition shall detail the terms of the transfer and all applicable qualifications of the assignee or transferee relating to fulfilling the terms of the Franchise. The City will not unreasonably withhold its/their approval to any transfer. In making such a determination, the City shall consider the following;

provided, however, that the City will respond within 120 days or such other period as applicable law may require:

1. technical qualifications, experience and expertise of the proposed assignee or transferee (including conducting an investigation of the proposed assignee or transferee's service record in other communities);
2. legal qualifications of the proposed assignee or transferee; and,
3. financial qualifications of the proposed assignee or transferee.

Notwithstanding the foregoing, the approval by the City does not constitute a waiver or release of any noncompliance claims the City may have against the Grantee or of rights of the City under this Ordinance or applicable law upon discovery, whether arising before or after the effective date of a transfer.

If the City does not respond or fails to render a final decision within 120 days (or such other period as applicable law shall require) of receipt of the Grantee's petition for approval, the petition shall be deemed to have been approved, unless the Grantee and City agree to an extension of time.

Notwithstanding the foregoing, no consent shall be required for the Grantee to hypothecate, pledge, mortgage or assign all or any part of the Cable System, or any right or interest therein for financing purposes; provided, that each such hypothecation, pledge, mortgage or assignment for financing purposes shall be subject to the rights of the City pursuant to this Ordinance and applicable law.

Notwithstanding any other provision of this Section, no consent shall be required for any transfer of the Franchise or any interest in the Cable System or the Grantee to any entity controlling, controlled by or under the same common control as the Grantee.

Notwithstanding any other provision of this Section, no consent shall be required to sell, assign, transfer, lease, sublease or dispose of any portion of the Cable System or other asset of the Grantee that will not physically occupy the Streets after such transaction.

Except as set forth in subsection D, as waived by the City, or in the event of a change in control where the Grantee remains the same, any approval by the City of a transfer shall be contingent upon the prospective transferee or assignee of the Grantee agreeing in writing to abide by and accept the terms of this Ordinance, subject to applicable law.

SECTION 22. AVAILABILITY OF BOOKS, RECORDS AND REPORTS

The Grantee shall fully cooperate in making available at reasonable times, and the City shall have the right to inspect, the books, records, maps, plans and other like materials of the Grantee necessary for enforcement of this Ordinance, at any time during Normal Business Hours, including, but not limited to, the Grantee's schedule of charges for Subscriber service, records of all written complaints and a full and complete set of plans, records and strand maps showing the location of the Cable System.

The City shall maintain as confidential any information disclosed to it by Grantee under the terms of this Ordinance which Grantee has designated as confidential. In the event that the City believes at any time that it is required by law to disclose such information to a third party, it will so notify Grantee at a time prior to any such disclosure that affords Grantee a reasonable opportunity to take such action as it deems necessary to prevent such disclosure, including seeking relief in court.

Upon request, the Grantee shall provide the City, no later than 120 days after the end of the Grantee's fiscal year, a copy of Grantee's or Grantee's parent company's Form 10-K for the preceding twelve month period. Copies of all non-confidential petitions, applications, communications and reports submitted by the Grantee to the FCC, Securities and Exchange Commission or any other federal or state regulatory commission or agency having jurisdiction in respect to any matters affecting cable television operations authorized pursuant to the Franchise, shall be provided to the City upon request.

Copies of renewal or replacement insurance certificates shall be delivered each year to the City upon request.

SECTION 23. PUBLIC, EDUCATIONAL AND GOVERNMENTAL PROGRAMMING

In order to support Public, Educational and Governmental ("PEG") access programming in the City, Grantee shall, upon the effective date of any Franchise granted hereunder by the City, make available (or continue making available, as applicable) one downstream Channel on the Cable System for non-commercial PEG access programming to be programmed by the City or its designee (the "PEG Access Channel").

As of the effective date of any Franchise granted pursuant to this Ordinance, Grantee shall transport (or continue transporting, as applicable) standard definition PEG Access Channel programming that originates from the current City Hall located at 1001 College Street, Bowling Green, KY 42101 (the "Existing City Hall"), to Grantee's Cable System headend using equipment and coaxial or fiber cable that belong to Grantee (the "Return Line"). Provided that the PEG Access Channel programming continues to originate at the Existing City Hall and subject to subsections C. and D. below, Grantee will continue to transport the standard definition PEG Access Channel programming originating from the Existing City Hall using the Return Line until the original expiration date of the Franchise.

The Grantee shall have no responsibility for the PEG programming or the PEG Access Channel other than providing the downstream Channel on the Cable System for the PEG Access Channel from Grantee's headend to Subscribers and ensuring that such Channels meet any FCC standards required for such Channels. The City is responsible for (i) all costs and equipment required to produce the PEG Access Channel programming; and (ii) any capital costs related to replacing, modifying, upgrading or moving the Return Line, if technologically required or requested by the City.

If any unused time exists on the PEG Access Channel and the Grantee or any affiliate of the Grantee desires to distribute any service over such channel during such unused time, the Grantee shall so notify the City in writing. Unused time shall not include any original programming, or one repeat of any original programming per day. The Grantee's notice to the City shall describe the Grantee's or its affiliate's plans for use of the PEG Access Channel. The Grantee or its affiliate may commence the distribution of the planned service over the PEG Access Channel at the end of the 30th day after receipt of such notice. In the event that the Grantee or its affiliate is using any PEG Access Channel time pursuant to this subsection, and the City has determined in good faith that it has the ability to utilize any such PEG Access Channel time again, the Grantee or its affiliate shall relinquish such time promptly, but in no event later than 90 days following the City's written request for same.

SECTION 24. PARENTAL CONTROL DEVICES

Upon request and to the extent required by Federal law, the Grantee shall provide all Subscribers receiving Channels showing first-run movies and special entertainment events with a parental control device that prevents the unauthorized viewing of such Channels.

SECTION 25. EMERGENCY ALERT SYSTEM

Grantee shall comply with 47 U.S.C. § 544(g) and all regulations issued pursuant thereto with respect to an Emergency Alert System ("EAS").

SECTION 26. DEFAULT OF FRANCHISE; LIQUIDATED DAMAGES; REVOCATION, TERMINATION AND CANCELLATION OF FRANCHISE

When any event, act or omission on the part of the Grantee occurs which represents a violation of a material provision of this Ordinance, then such event, act or omission may be considered a breach of this Ordinance. A material violation includes, but is not limited to, the following:

The Grantee has made a material, false statement; or

Failure to make the required payments or failure to file the required reports as provided under this Ordinance following notice of the failure and a reasonable opportunity to cure; unless the Grantee is contesting the legality or applicability of such payments or reports in good faith; or

A transfer of the Franchise without the prior consent of the City; or

The Grantee materially violates any FCC order, ruling or regulation concerning technical or performance standards, unless the Grantee is contesting the legality or applicability of such order in good faith; or

The Grantee violates a material provision of the Franchise; or

Failure to restore service after 126 hours of interrupted service, except when approval of such interruption is obtained from the City or when the interruption occurs as a result of an event of force majeure.

The City agrees that it will enforce the terms of this Ordinance on a competitively neutral basis. For purposes of establishing the date of breach, the date of violation will be the date that the event can clearly be established or, if it cannot be so established, the date the Grantee receives notice of the violation from the City. For purposes of the opportunity to cure, the date of violation will be the date the Grantee receives notice of the violation from the City and not the date of the event.

The City and Grantee agree to attempt to informally resolve any issues first through verbal or written communication. If such discussions are not successful, the City shall notify the Grantee, in writing, of the specific breach, and direct the Grantee to comply with all such provisions of this Ordinance. The Grantee shall have 30 days from receipt of the violation notice to (i) respond to the City, contesting the assertion of noncompliance, or (ii) to cure such default, or (iii) if, by the nature of default, such default cannot be cured within the 30 day period, initiate reasonable steps to remedy such default and notify the City of the steps being taken and the projected date that they will be completed.

In the event the Grantee fails to correct the enumerated condition within the time set forth above, the City shall notify the Grantee of the time and place of a due process administrative hearing to be conducted by the City which shall be held not less than 30 days thereafter.

At the time of the public due process hearing, the Grantee may present evidence and information regarding the alleged breach of the Franchise and shall have the right to examine and cross-examine witnesses. If the situation has been resolved, or steps are being taken to resolve the situation, the Grantee may present such information at the hearing. The public hearing shall be on the record and a written transcript shall be promptly made available to the Grantee, and in no event later than 30 days after such hearing, the cost of which shall be borne by Grantee. The decision of the City shall be made in writing based on the evidence presented at the hearing and shall be delivered to the Grantee. The Grantee may appeal such determination to an appropriate court. The Grantee may continue to operate the Cable System until all legal appeals procedures have been exhausted.

If after following the process above, the City determines that the Grantee is in violation of a material provision of this Ordinance, the City may begin assessing liquidated damages against the Grantee in the amount of $200.00 per day for each day the violation continues, provided that (w) the City may not begin assessing liquidated damages until after it has provided the Grantee with specific written notice thereof, (x) liquidated damages may not be assessed for a time period exceeding 120 days per violation, (y) the amount of all liquidated damages per annum shall not exceed $15,000 in the aggregate, and (z) the City may not pursue any other penalties or remedies while collecting liquidated damages. For purposes of clarification, if the maximum time period or maximum amount of liquidated damages specified in (x) and (y) above has been reached and the violation has not yet been cured, the City may thereafter pursue such other remedies as provided herein or at law.

With respect to liquidated damages, all similar violations or failures from the same factual events affecting multiple Subscribers shall be assessed as a single violation, and a violation or failure may only be assessed under any one material term. Nothing herein is intended to allow duplicative recovery from or payments by the Grantee or its surety.

For material violations of any Franchise granted pursuant to this Ordinance and after first granting Grantee a due process hearing to contest any alleged violations of its Franchise, the City may revoke any Franchise granted pursuant to the Ordinance with an effective date of not less than six months thereafter. The basis for the City's decision to revoke the Grantee's Franchise shall be made in writing based on the evidence presented at the hearing and shall be delivered to the Grantee. The Grantee may appeal such determination to an appropriate court. The Grantee may continue to operate the Cable System until all legal appeals procedures have been exhausted. Nothing in this Ordinance, including the enforcement provisions set forth in this Section, shall prevent Grantee from filing at any time a legal action in any permissible court or tribunal seeking a declaration or enforcement of Grantee's rights or obligations under the Franchise.

The exercise of one remedy by the City shall not foreclose use of another, provided that liquidated damages shall be an exclusive remedy for the time period in which they are assessed, further provided, however, that liquidated damages shall not be a substitute for specific performance by the Grantee or legal action by the City once assessment of liquidated damages ceases, but shall be in addition to such specific performance or legal action. The Grantee reserves and may exercise any rights it has under law or at equity with respect to such remedies.

Notwithstanding any other provision of this Ordinance, it is the intent of the City not to subject the Grantee to penalties, fines, forfeitures, or revocation of the Franchise in any of the following instances: (1) in instances or for matters where a violation of this Ordinance by the Grantee was unintentional and of *de minimis* effect on Subscribers, the public or the City; or (2) where there existed circumstances reasonably beyond the control of the Grantee that precipitated a violation of this Ordinance, or were deemed to have prevented the Grantee from complying with any term or condition of this Ordinance.

SECTION 27. FORCE MAJEURE

The Grantee shall not be deemed in default of provisions of this Ordinance where performance was rendered impossible by act of war, riots, civil disturbances, labor, strikes, floods, pandemics, or other circumstances beyond the reasonable control of Grantee, and the Franchise shall not be revoked or the Grantee penalized for such non-compliance; provided that the Grantee takes prompt steps to bring itself back into compliance and to comply as soon as possible under the circumstances with its Franchise obligations without unduly endangering the health or safety of the Grantee's employees or the integrity of its property, or without unduly endangering the health or safety of the public. Notwithstanding the foregoing, neither mere economic hardship nor any misfeasance or malfeasance of the Grantee or its directors, officers or employees shall constitute a force majeure event under this Ordinance. The Grantee shall provide written notice to the City of the applicability of this Section within a reasonable period of time after its discovery of the same.

SECTION 28. BIDS PROCESS FOR RENEWALS AND NEW APPLICANTS

All bids received by the City shall become the sole property of the City. Subject to applicable law, the City reserves the right to reject any and all bids and waive all informalities and/or technicalities where the best interest of the City may be served.

Bids must be sealed, and submitted at the time and place indicated in the request for proposals. Bids may be modified at any time prior to the opening of the bids, provided that any modifications must be duly executed in the manner that the bid must be executed. No bid shall be opened or inspected before the public opening.

Before submitting a bid, each Applicant must (a) examine the Ordinance thoroughly, (b) familiarize itself with local conditions that may in any manner affect performance under the Franchise, (c) familiarize itself with federal, state and local laws, ordinances, rules and regulations affecting performance under the Franchise and (d) carefully correlate its observations with the requirements of the ordinance.

The City may make such investigations as it deems necessary to determine the legal, financial and technical ability of each Applicant to perform under the Franchise, and the Applicant shall furnish to the City all such relevant information and data for this purpose as the City may request. The City reserves the right to request information regarding the existing Cable System and plans for future expansion and changes. The City reserves the right, consistent with the standards and procedures established in applicable law, to reject any bid if the evidence submitted by, or investigation of, such Applicant fails to satisfy the City that such Applicant is properly qualified to carry out the obligations of the Franchise and to complete the work contemplated therein. Conditional bids will not be accepted.

SECTION 29. RELIEF FROM THIS ORDINANCE

Grantee may file a written petition, at any time, with the City seeking relief from one or more provisions of this Ordinance. The relief requested may specifically include the delay in implementation of one or more provisions of this Ordinance. Grantee's filing of a petition pursuant to this Section shall in no way limit its rights under applicable law including, without limitations, Section 625 of the Cable Act.

If at any time during the existence of this Ordinance, a competing provider of multi-channel video programming service, is granted the right to use the Streets on more favorable term(s) than those established for the Grantee under this Ordinance (including but not limited to lesser Channel capacity, lesser requirements to provide PEG access, less onerous reporting requirements, less onerous customer notification requirements, less restrictive billing practices, less onerous customer service requirements, or lower percentage or method of calculation of Franchise Fee), then such term(s) shall also be simultaneously extended to the Grantee, upon the written request of the Grantee, so that no such provider of multi-channel service using the Streets shall receive an unfair competitive advantage.

SECTION 30. SUPERVISION OF THE FRANCHISE

The City designates the City Manager, or his or her designee, to serve as the liaison between each of the City and the Grantee. The designee shall monitor the Grantee's compliance with the terms of the Franchise and this Ordinance.

SECTION 31. FAILURE OF CITY TO ENFORCE THIS ORDINANCE CONSTITUTES NO WAIVER OF TERMS THEREOF

The Grantee shall not be excused from complying with any of the terms and conditions of this Ordinance by any failure of the City upon any one or more occurrences to insist upon or to seek compliance with any such terms or conditions.

SECTION 32. LAW GOVERNS

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

SECTION 33. SEVERABILITY

If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof.

SECTION 34. TIME IS OF THE ESSENCE TO THIS ORDINANCE

Whenever this Ordinance shall set forth any time for an act to be performed by or on behalf of the Grantee, such time shall be deemed of the essence and any failure of the Grantee to perform within the time allotted shall always be sufficient grounds for the City to invoke an appropriate penalty, including possible revocation of the Franchise.

(Ordinance No. BG2025 - 23)

NOW, THEREFORE, BE IT ORDAINED by the City of Bowling Green, Kentucky as follows:

1. The provisions of this Ordinance are hereby declared to be severable, and if any section, phrase or provision shall for any reason be declared invalid, such declaration of invalidity shall not affect the validity of the remainder of this Ordinance.

2. All prior Municipal Orders or Ordinances or parts of any Municipal Order or Ordinance in conflict herewith are hereby repealed.

3. This Ordinance is adopted pursuant to KRS 83A.060 in that it was introduced on September 16, 2025, and given final reading on October 21, 2025, and said Ordinance shall be in full force and effect upon signature, recordation and publication in summary pursuant to KRS Chapter 424.

ADOPTED: October 21, 2025

APPROVED: ______________________
Mayor, Chairman of Board of Commissioners

ATTEST: Ashley Jackson
City Clerk

SPONSORED BY: Jeffery B. Meisel, City Manager

HILLARY M. HIGHTOWER
City Attorney
Email: Hillary.Hightower@bgky.org
Phone: (270) 393-3038

CITY OF BOWLING GREEN
F O U N D E D 1 7 9 8
DEPARTMENT OF LAW

CHRISTY MONTGOMERY
Paralegal
Email: Christy.Montgomery@bgky.org
Phone: (270) 393-3045

CONFIDENTIAL MEMORANDUM

TO: Mayor Todd Alcott
Commissioner Carlos Bailey
Commissioner Dana Beasley-Brown
Commissioner Melinda Hill
Commissioner Sue Parrigin
City Manager Jeff Meisel

FROM: Hillary Hightower

DATE: September 10, 2025

SUBJECT: Cable Franchise

On the agenda for September 16th is an ordinance setting forth the requirements for obtaining a cable television franchise in the City of Bowling Green. As you are aware, the nuts and bolts of this ordinance have been negotiated since 2012 by our telecommunications counsel, Linda Ain, Gene Harmon, and during the last five years, by me. During the 12 years it has taken to negotiate these terms, there have been a number of changes in the law. One of the major changes in the law is the ability to require, as part of cable franchises, in-kind services. We have received free cable from Spectrum/Charter for years, but that will stop at some point as part of this new ordinance. Several items that were of priority for previous Boards of Commissioners were having an office for a minimum of three years, which is included in this ordinance, and the ability to impose liquidated damages and, upon the maximum date expiring for those, to pursue any other remedy provided for in the franchise agreement. In addition, pursuant to this ordinance we are not responsible for the capital costs unless we request relocation or replacement of the fiber. Repairs will continue to be the responsibility of Spectrum.

Similar to our telecommunications ordinance requirements, upon passage of this ordinance at the second reading, we will open up the bidding process for cable systems. Presuming Charter's bid is consistent with the terms of this ordinance, which I expect it to be, we will accept Charter's bid in a two reading ordinance. Further, we will agree to transfer the franchise agreement to Cox upon merger of the companies.

1017 COLLEGE STREET • CITY HALL ANNEX BUILDING
POST OFFICE BOX 430 • BOWLING GREEN • KY • 42102-0430
270.393.3000 • TTD PHONE NUMBER 1.800.545.1833 EXTENSION 330
FAX 270.393.3032 • www.bgky.org

Also, upon passage of this new ordinance specifying our requirements, we plan to delete Chapter 7 of the City's Code of Ordinances, as we will operate under this new ordinance.

If you have any questions about this agreement, please let me know.