

**RESOLUTION 04-10
TO REPEAL AND RE-ENACT IN ITS ENTIRETY
CHAPTER 10 ENTITLED
CABLE TELEVISION**

BE IT RESOLVED AND ORDAINED by the Board of Commissioners of the Town of Thurmont that Chapter 10, entitled "Cable Television", be repealed and re-enacted in its entirety to read as follows:

Chapter 10
Cable Television

STATEMENT OF INTENT AND PURPOSE

WHEREAS, the Grantor, by adoption of this Ordinance, desires to bring about the further development and continued operation of a cable television system within the Town of Thurmont, and;

WHEREAS, the Grantor has the requisite authority to grant franchises permitting and regulating the use of its streets, rights-of-way, and public grounds, and the laws of the State of Maryland (the "State") and is authorized to grant and renew one (1) or more non-exclusive franchises to operate, own, construct, maintain and reconstruct a cable television system in the Town of Thurmont, and:

WHEREAS, the Grantor and the Grantee have complied with all federal and State-mandated procedural and substantive requirements pertinent to the granting or renewal of this Franchise.

FINDINGS

The Grantor, after due evaluation of the Grantee, and after public hearings affording due process and an opportunity to be heard with respect to the granting of this Franchise, has made the following findings:

1. The grantee has the requisite legal, technical and financial capability to construct, maintain and operate a Cable System within the Town of Thurmont and to meet the future cable-related needs of Town of Thurmont.
2. The Grantee's plan for constructing, maintaining and operating the Grantee's Cable System are adequate and feasible and it is in the best interest of the Grantor and its residents to grant a non-exclusive franchise to the Grantee under the terms set forth in the Ordinance.

3. The Franchise granted by the Grantor to the Grantee pursuant to this Ordinance complies with the existing applicable Maryland statutes and all applicable federal rules, laws and regulations.

SECTION 1. DEFINITIONS.

For the purpose of this Franchise, the following terms, phrases, words, and their derivations shall have the meanings given herein. 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 and the neuter shall include the masculine and feminine genders. The words "shall" and "will" are mandatory and not merely directory. The word "may" is directory and discretionary and not mandatory. Words not defined shall be given their common and ordinary meaning. Forms of the word "include" mean "including, without limitation;" and references to "hereunder," "herein," "hereof," and the like, refer to this Ordinance.

- A. "Cable Act" means the Cable Communications Policy Act of 1984 as amended by the Cable Television Consumer Protection and Competition Act of 1992, the Telecommunications Act of 1996, as amended (47 U.S.C. §§ 521, *et seq.*)
- B. "Cable System", "Cable Service", "Cable Operator" and "Basic Cable Service" each have the meanings set forth in the Cable Act.
- C. "Effective Date" means the date of acceptance of the terms and conditions of this Franchise by the Grantee, as recorded on the signature page of this Franchise.
- D. "FCC" means the Federal Communications Commission, its designee, or any successor thereto.
- E. "Force Majeure" means an act of God, severe weather or other catastrophic act of nature, war, terrorism, civil disturbance, strike or other labor unrest, governmental, administrative or judicial order or regulation or any event that is reasonably beyond a party's ability to anticipate or control.
- F. "Franchise" means this Ordinance and the contractual relationship established hereby.

- G. "Franchise Area" means the legal boundaries of Town of Thurmont existing as of the Effective Date and any additions thereto by way of annexation or other legal means.
- H. "Grantee Indemnitees" means the Grantee, its affiliated companies and each of the Grantee's (and its affiliated companies') respective present and former officers, shareholders, directors, employees, partners and agents.
- I. "Gross Revenues" means all revenues, as determined in accordance with generally accepted accounting principals, received by the Grantee from the operation of the Cable System to provide Cable Services within the Franchise Area, including customer equipment and installation charges, disconnection and reconnection charges, and revenues from advertising sales less agency fees. Gross Revenues shall not include deposits, refunds and credits made to subscribers, bad debt, any tax, fee or assessment of general applicability collected by the Grantee from subscribers for pass-through to a government agency, including the FCC User Fee, or any PEG or I-Net amounts recovered from subscribers.
- J. "Liabilities" means losses, liabilities, claims, costs, damages and expenses, including fines, forfeitures, disbursements, court or administrative costs and reasonable attorneys' fees.
- K. "Material Breach" has the meaning set forth in Section 10.C.
- L. "PEG" means non-commercial public, educational and governmental programming channels and such equipment, facilities and funding as the context may require.
- M. "Person" means any natural person or any association, firm, company, partnership, joint venture, corporation, or other legally recognized entity, whether for-profit or not-for-profit.
- N. "Rights-of-Way" means the area on, above and below any real property in the Franchise Area in which the Grantor has an interest, including, but not limited to, any street, road, highway, freeway, lane, path, skyway, alley, court, sidewalk, boulevard, parkway, park, drive, and any other place, area or real property owned by, or under the control of Grantor including any other places or areas dedicated for public use, or dedicated to a use compatible with the Grantee's Cable System operations, including public or utility easements.

- O. "Subscriber" means any person or entity within the Franchise Area who lawfully receives Cable Service from the Grantee.
- P. "Term" has the meaning set forth in Section 2.C.

SECTION 2. GRANT OF AUTHORITY AND GENERAL PROVISIONS.

- A. Grant of Franchise. The Grantor hereby grants the Grantee the right to own, construct, operate and maintain a Cable System, in, over, along and under the Rights-of-Way within the Franchise Area. Nothing in this Franchise shall be construed to prohibit the Grantee from offering any service over its Cable System that is not prohibited by applicable federal, state or local law.
- B. Acceptance; Effective Date; Franchise Term. This Franchise shall continue in full force and effect from and after the Effective Date until it expires on November 9, 2009.
- C. Area Covered. This Franchise is granted for the entire Franchise Area. The Grantee, upon request, will make service available to all residences within the Franchise Area and any annexed territory in the event that (1) such existing or annexed territory has a density of at least forty (40) homes per linear strand mile of cable (excluding homes subscribing to any direct-to-home satellite technology, including via C-band, Ka-band and Ku-band technology), as measured from a trunkline or distribution cable that is actively delivering Cable Service as of the date of such request for service; (2) any such residence requesting service can be provided with service by a standard installation which is no more than one hundred twenty-five (125) feet from the cable distribution system existing as of the date of such request for service and (3) such existing or annexed territory is not being served by (a) a cable television system operator other than the Grantee or its affiliates, (b) an open video system, (c) a multichannel distribution system, or multi-point multichannel distribution system (d) a master antenna television system, or (v) a satellite master antenna television system.

SECTION 3. CABLE SYSTEM.

- A. System Maintenance or Upgrade. The Grantee agrees to comply with the terms and conditions set forth in this Franchise governing construction and technical requirements for maintenance of the Grantee's Cable System, in addition to any other requirements specified by this Franchise and any

applicable law which is generally applicable to all entities involved in construction in the Rights-of-Way.

- B. Technical Standards. The Grantee's Cable System shall be designed, constructed and operated so as to meet those technical standards promulgated by the FCC relating to Cable Systems contained in subpart K of part 76 of the FCC's rules and regulations as may, from time to time, be amended.
- C. Emergency Alert System. The Grantee will comply with the FCC's Emergency Alert System requirements throughout the Term of this Franchise. The Grantor agrees to indemnify, defend and hold harmless the Grantee Indemnitees from and against any Liabilities arising out of, resulting from or in any way connected with the Grantor's use of such Emergency Alert System.

SECTION 4. CONSTRUCTION PROVISIONS.

- A. Construction Standards.
1. All installation of electronic equipment shall be durable and installed in accordance with industry standards and practices.
 2. The Grantee's plant and equipment for the provision of Cable Service, including, but not limited to, the antenna site, headend and distribution system shall be installed, located, erected, constructed, reconstructed, replaced, removed, repaired, maintained and operated in accordance with good engineering practices.
 3. The Grantee shall employ ordinary care and shall install and maintain its facilities using commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injury or nuisance to the public.
- B. Construction Codes and Permits. The Grantee shall obtain all legally required permits before commencing any work requiring a permit, including the opening or disturbance of any Right-of-Way within the Franchise Area. The Grantee shall strictly adhere to all building and zoning codes currently or hereafter applicable to construction, operation or maintenance of the Grantee's Cable System in the Franchise Area, provided that such codes are of general applicability and such codes are uniformly and consistently applied by the Grantor as to other public utility companies and other entities operating in the Franchise Area.

- C. Repair of Rights-of-Way and Property. Any and all Rights-of-Way or public property, which are disturbed or damaged by the Grantee as a result of the construction, repair, replacement, relocation, operation, maintenance or reconstruction of the Grantee's Cable System shall be repaired by the Grantee, at its expense, to a condition comparable to that existing immediately prior to such construction, repair, replacement, relocation, operation, maintenance or reconstruction.
- D. Use of Existing Poles. The Grantee shall exercise commercially reasonable efforts to negotiate the lease of pole space and facilities from the existing pole owners for all aerial construction of the Grantee's Cable System.
- E. Undergrounding of Cable. The Grantee's cable distribution lines shall be installed underground at the Grantee's expense where all existing telephone and electrical utilities are installed underground as of the date upon which the Grantee commences installation of the Grantee's cable distribution lines, unless such underground installation will cause a material degradation of the signal quality of any of the signals transmitted via the Grantee's Cable System. The Grantee shall place cable distribution lines underground in newly platted areas in concert with both the telephone and electrical utilities, to the extent the Grantee is notified of such underground placement prior to the Grantee commencing the installation of such cable distribution lines. Notwithstanding anything in this Section 4.E. to the contrary, ground-mounted facilities, such as customer taps, line extenders, system passive devices, amplifier boxes, power supplies and pedestal-mounted terminal boxes may be placed above ground. In the event that any telephone or electric utility company is reimbursed by the Grantor or any agency thereof for the placement of facilities underground or the movement of its facilities, the Grantee shall be reimbursed upon the same terms and conditions as any such telephone, electric or other utility company.
- F. Open Trenches. The Grantor agrees to exercise reasonable efforts to include the Grantee in the platting process for any new subdivision. Without limiting the foregoing, the Grantor agrees to require as a condition of issuing a permit for open trenching to any utility company or developer that such utility company or developer provide at least twenty (20) days' prior written notice to the Grantee as to the availability of such open trench and that such utility company or developer provide the Grantee with reasonable access to such open trench.

G. Reservation of Rights-of-Way Rights.

1. Nothing in this Franchise shall be construed to prevent the Grantor from constructing, maintaining, repairing or relocating sewers; grading, paving, maintaining, repairing, relocating and/or altering any Rights-of-Way; constructing, laying down, repairing, maintaining or relocating any water mains; or constructing, maintaining, relocating, or repairing any sidewalk or other public work.
2. All such work shall be done by the Grantor, insofar as practicable, in such a manner as not to obstruct, injure or prevent the free use and operation of the poles, wires, conduits, conductors, pipes or appurtenances of the Grantee.
3. If any such property of the Grantee shall interfere with the construction or relocation, maintenance or repair of any street public improvement, whether it be construction, repair, maintenance, removal or relocation of a sewer, public sidewalk, or water main, street or any other public improvement, thirty (30) days' written notice shall be given to the Grantee by the Grantor and all such poles, wires, conduits or other appliances and facilities shall be removed or replaced by the Grantee so that the same shall not interfere with the said public work of the Grantor, and such removal or replacement shall be at the expense of the Grantee, unless such removal or replacement results from the Grantor's construction of facilities providing Cable Services or similar services, in which event such removal or relocation shall be at the expense of the Grantor. Should, however, any utility company or other entity be reimbursed for relocation of its facilities as part of the same work that requires the Grantee to remove its facilities, the Grantee shall be reimbursed upon the same terms and conditions as such utility company or other entity.

H. Reasonable Care. Nothing contained in this Franchise shall relieve any person, including the Grantor, from liability arising out of the failure to exercise reasonable care to avoid injuring the Grantee's facilities while performing any work connected with grading, regrading, or changing the line of any street or public place or with the construction or reconstruction of any sewer or water system.

I. Trimming of Trees. The Grantee shall have the authority to trim trees upon and hanging over Rights-of-Way so as to prevent the branches of such trees from coming in contact with the wires and cables of the

Grantee's Cable System; provided, however, all such trimming shall be done at the expense of the Grantee.

- J. Movement of Facilities. In the event it is necessary to temporarily move or remove any of the Grantee's wires, cables, poles, or other facilities placed pursuant to this Franchise in order to lawfully move a large object, vehicle, building or other structure over the streets of the Grantor, upon two (2) weeks' prior written notice by the Grantor to the Grantee, the Grantee shall move, at the expense of the person requesting the temporary removal, such of the Grantee's facilities as may be required to facilitate such movement. The Grantee reserves the right to request that such expenses be paid in advance. Any service disruption provisions of this Franchise shall not apply in the event that the removal of the Grantee's wires, cables, poles or other facilities results in temporary service disruptions.

SECTION 5. SERVICE PROVISIONS.

- A. Programming Decisions. The Grantee shall provide broad categories of programming services in accordance with the Cable Act.
- B. Cable Service Connections to Schools and the Grantor's Facilities. The Grantee, upon written request of the Grantor, will provide and maintain one (1) connection for Basic Cable Service to each elementary and secondary public school, library, and the Grantor's administration facility within the Franchise Area that is located within one hundred twenty-five (125) feet of a trunkline or distribution cable that is actively delivering Cable Service and listed in Exhibit A. The Grantee will bring its connection to a specified exterior demarcation point mutually agreed upon by the Grantee and such institution.

SECTION 6. CONSUMER PROTECTION AND RIGHTS OF INDIVIDUALS.

- A. Customer Service Standards. The Grantee will comply with the customer service standards promulgated by the FCC for the provision of Cable Service in accordance with the Cable Act for as long as such standards are in effect.
1. The Grantee shall maintain on file with the Grantor at all times a current schedule of all rates and charges with respect to the Grantee's Cable Services.
 2. The Grantee shall provide written notice of changes in such rates and charges as required by state and federal regulations.

- B. Subscriber Complaint Practices.
1. The Grantee shall maintain a publicly listed toll-free telephone number. The Grantee shall maintain adequate telephone lines and personnel to respond in a timely manner to schedule service calls and answer Subscriber complaints or inquiries. The Grantee shall follow all applicable federal and state regulations in responding to complaints by customers. A complaint as used in this Franchise will mean notice by a Subscriber of a billing dispute or problem with picture quality which is not resolved during or promptly subsequent to the initial telephone or service call.
 2. The Grantee shall render efficient Cable Service, make repairs promptly and interrupt service only for good cause and for the shortest time reasonably possible under the circumstances.
- C. Parental Control Option. The Grantee shall provide parental control devices, at reasonable cost, to Subscribers who wish to be able to prevent certain Cable Services from entering the Subscriber's home.
- D. Rights of Individuals Protected.
1. Discriminatory Practices Prohibited: The Grantee shall not deny service, deny access, or otherwise discriminate against Subscribers on the basis of race, color, religion, national origin, sex, or age. Grantee shall comply at all times with all other applicable federal and state laws relating to nondiscrimination.
 2. Subscriber Privacy: The Grantee shall comply with all privacy provisions of the Cable Act, as amended.

SECTION 7. FRANCHISE FEE.

- A. Franchise Fee. The Grantee shall pay to the Grantor a franchise fee equal to three percent (3 %) of Gross Revenues. Franchise fees may be passed through to Subscribers as a line item on Subscriber invoices and otherwise. Without limiting Section 2.B. hereof, in the event another provider of video programming services uses or occupies the Rights-of-Way for purposes of constructing, maintaining and operating a system for the distribution of video programming services, the Grantee shall not be required to pay a franchise fee on any portion of Gross Revenues unless such other provider is also required to pay a franchise fee on the same portion of such provider's gross revenues attributable to such provider's

provision of such services. Additionally, the fee payable by the Grantee, as a percentage of a portion of Gross Revenues, shall not exceed the percentage payable by such other provider on the same portion of its gross revenues.

- B. Payment of Franchise Fee. Payments due the Grantor under this provision shall be computed annually and shall be due and payable annually. Each payment shall be accompanied by a report showing the basis for the computation. The period of limitation for recovery of any franchise fee payable under this Franchise shall be two (2) years from the date upon which the pertinent payment by the Grantee is due.

SECTION 8. INSURANCE.

The Grantee will maintain in full force and effect for the Term, at the Grantee's expense, a commercial liability insurance policy with the Grantor as an additional insured, written by a company authorized to do business in the State, or will provide self-insurance reasonably satisfactory to the Grantor protecting the Grantor against liability for loss, personal injury and property damage occasioned by the operation of the Grantee's Cable System by the Grantee. Such insurance will be maintained in an amount not less than \$1,000,000. The Grantee will also maintain Workers Compensation coverage throughout the Term as required by the laws of the State. Evidence in the form of a certificate of insurance or of such self-insurance will be provided to the Grantor upon written request.

SECTION 9. INDEMNIFICATION.

- A. Indemnification of the Grantor. The Grantee will indemnify, defend and hold harmless the Grantor from and against any and all Liabilities which result from any negligence by the Grantee in the operation of the Grantee's Cable System within the Franchise Area. The Grantor shall give the Grantee timely written notice of the making of any claim or of the commencement of any action, suit or other proceeding covered by the indemnity in this Section 9.A within ten (10) business days after receipt of such claim or action. In the event any such claim arises, the Grantor shall tender the defense thereof to the Grantee and the Grantee shall have the right to defend, settle or compromise any claims arising hereunder and the Grantor shall cooperate fully herein. If the Grantor determines in good faith that its interests cannot be represented by the Grantee, the Grantee shall be excused from any obligation to represent the Grantor.
- B. Indemnification of the Grantee. The Grantee will not be required to indemnify the Grantor for the negligent acts or omissions of the Grantor or its officials, boards, commissions, agents, employees or representatives.

Further, the Grantor will indemnify, defend and hold harmless the Grantee Indemnitees from and against any and all Liabilities arising out of, in connection with, or in any way related to any negligent acts or omissions by the Grantor, its officials, boards, commissions, agents, employees or representatives.

SECTION 10. VIOLATIONS AND REVOCATION.

- A. Franchise Violations. Whenever the Grantor believes that the Grantee has allegedly violated one (1) or more material terms, conditions or provisions of this Franchise, the Grantor shall informally discuss the matter with the Grantee. If such discussions do not lead to a resolution of such matter, the Grantor shall provide a written notice to the Grantee setting forth the alleged violation (the "Violation Notice"). The Violation Notice shall describe in reasonable detail the alleged violation so as to afford the Grantee an opportunity to respond to the allegation or remedy such alleged violation. If the Grantee does not dispute the alleged violation, the Grantee shall have thirty (30) days subsequent to receipt of the Violation Notice in which to either correct the referenced violation or, if the referenced violation cannot be corrected within the thirty (30)-day period, to have commenced and be diligently pursuing corrective action. In the alternative, the Grantee may, within fourteen (14) business days after receipt of the Violation Notice, notify the Grantor that there is a dispute as to whether a violation or failure has, in fact, occurred. Such notice by the Grantee to the Grantor shall specify with particularity the matters disputed by the Grantee and shall stay the running of the above-described time periods for correcting the alleged violation.
1. The Grantor shall hear the Grantee's dispute at a regularly or specially scheduled meeting. The Grantee will be given at least thirty (30) days' prior written notice of such hearing. The Grantee shall have the right to subpoena and cross-examine witnesses. The Grantor shall determine if the Grantee has committed a violation and shall make written findings of fact relative to its determination. If a violation is found, the Grantee may petition for reconsideration before any competent tribunal having jurisdiction over such matters.
 2. If after hearing the dispute the claim is upheld by the Grantor, the Grantee shall have thirty (30) business days after such a determination to remedy the violation or failure. The time for the Grantee to correct any such violation or failure shall be extended by the Grantor if the necessary action to correct such violation or failure is of such a nature or character to require more than thirty

(30) days within which to perform the required corrective action, provided the Grantee commences the corrective action within the thirty (30)-day period and thereafter uses reasonable diligence to correct the violation or failure. Notwithstanding the above provisions, the Grantee does not waive any of its rights under federal law.

- B. Franchise Revocation. In addition to all other rights which the Grantor has pursuant to law or equity, the Grantor reserves the right to revoke, terminate or cancel this Franchise, and all rights and privileges pertaining thereto in accordance with the following procedures and applicable federal law, in the event that the Grantee continues to violate a material provision of this Franchise after completion of the procedures and correction periods set forth in Section 10.A herein.
- C. Revocation Procedures. In the event that the Grantor determines, as set forth above, that the Grantee has violated, or failed, refused or neglected to comply with, any material provision of this Franchise (each a "Material Breach"), the Grantor may make a written demand on the Grantee that it remedy such Material Breach and that a continuation of such Material Breach may be cause for revocation of this Franchise. If the Material Breach is not remedied within thirty (30) days following such demand or such other longer period as may be reasonably necessary in order to remedy such Material Breach, the Grantor shall determine whether or not such violation, breach, failure, refusal or neglect by the Grantee is due to an event of Force Majeure. Such determination shall not be unreasonably delayed or withheld.
1. A public hearing shall be held and the Grantee shall be provided with an opportunity to be heard upon thirty (30) days' written notice to the Grantee of the time and the place of the hearing. The causes for pending revocation and the reasons alleged to constitute such cause shall be recited in the written notice. Said notice shall affirmatively recite the continued Material Breach(es) after completion of the proceedings set forth in Section 10.A herein and correction periods that need to be shown by the Grantor to support a revocation.
 2. If, after notice is given and, a full public proceeding is held pursuant to Section 10.A. herein, the Grantor determines there is a continued Material Breach by the Grantee which is not an event of Force Majeure, then the Grantor shall direct the Grantee to correct or remedy the same within such reasonable additional time, in such reasonable manner and upon such reasonable terms and

conditions as the Grantor may direct. If the Grantee fails to correct or remedy such Material Breach pursuant to the immediately preceding sentence, the Grantor may declare, by resolution, this Franchise revoked and canceled and of no further force and effect unless there is compliance within such reasonable period as the Grantor may fix, such period not to be less than thirty (30) days.

3. If the Grantor, after notice is given and, a full public proceeding is held and appeal is exhausted, declares this Franchise breached, the parties may pursue their remedies pursuant to Franchise or any other remedy, legal or equitable. The Grantee may continue to operate the system until all legal appeals procedures have been exhausted.
4. Notwithstanding the above provisions, the Grantee does not waive any of its rights under federal law or regulation.

SECTION 11. ASSIGNMENT OR TRANSFER OF FRANCHISE.

The Grantee shall have the right to assign its rights and privileges hereunder, subject to the terms and conditions herein imposed, such assignment to become effective only upon the assignee's filing with the Grantor a written acceptance of the terms and conditions herein imposed and subject to the approval of the Grantor, whose approval shall be limited to an examination of the legal, technical and financial qualifications of the assignee. Such approval by the Grantor shall not be unreasonably conditioned, delayed or withheld. Notwithstanding the above requirements, the Grantee shall have the right to freely assign its rights and privileges hereunder, without the consent of the Grantor but upon written notice, to any entity controlled by, in control of, or under common control with the Grantee or that acquires all or substantially all of the assets or a majority of the voting stock or other equity interests of the Grantee by way of consolidation, merger or reorganization or to transfer the assets or stock of the Grantee to a financial institution as security for refinancing purposes.

SECTION 12. MISCELLANEOUS PROVISIONS.

- A. Compliance with Laws. The Grantee and the Grantor shall conform to all State and federal laws, rules and regulations regarding Cable Service as they become effective, unless otherwise stated herein. The Grantee shall also comply with all generally applicable ordinances, resolutions, rules and regulations heretofore or hereafter adopted pursuant to the Grantor's lawful police powers that do not discriminate against the Grantee or materially impair or abrogate any of the Grantee's contractual rights or obligations under this Franchise and that are not preempted by State or federal law. In the event of

a conflict between any ordinance or resolution and this Franchise, this Franchise shall control; provided, however, that the Grantee agrees that it is subject to the lawful police powers of the Grantor.

- B. Severability. If any term, condition or provision of this Franchise shall, to any extent, be held to be invalid or unenforceable, the remainder hereof shall not be affected thereby, and this Franchise and all the terms, provisions and conditions hereof shall, in all other respects, continue to be effective.
- C. Administration of Franchise. This Franchise is a contract and neither party may take any unilateral action, which materially changes the explicit mutual promises and covenants contained herein. Any changes, modifications or amendments to this Franchise must be made in writing, signed by the Grantee and the Grantor.
- D. Franchise Requirement. In accordance with applicable law, and subject to the remainder of this Section 12.D., from and after the acceptance of this Franchise by the Grantee, as recorded on the signature page of this Franchise, the Grantor shall not allow and it shall be unlawful for any person, other than the Grantee or its affiliates, to construct, install or maintain within any Right-of-Way, or within any other public property of the Grantor, or within any privately owned area within the Franchise Area that has not yet become public property but is designated or delineated as proposed public property on any tentative subdivision map approved by the Grantor, or the Grantor's official map or the Grantor's major thoroughfare plan, any equipment or facilities for distributing any Cable Service through a Cable System, unless a Franchise authorizing such use of such Rights-of-Way or property or areas has first been obtained in accordance with federal and State law and the terms and conditions of this Franchise.

The Grantor shall not allow, authorize or permit any Person, including the Grantor itself, to provide video programming services and/or Cable Services in Grantor's Rights-of-Way within the Franchise Area on terms or conditions more favorable or less burdensome to such Person than those applied to the Grantee pursuant to this Franchise, in order that one video programming operator not be granted an unfair competitive advantage over another, and to provide all parties equal protection under the law. In any renewal of this Franchise, the Grantor, should it seek to impose increased obligations upon the Grantee, must take into account any additional franchise(s) or authorizations granted prior to the date of such renewal and, in order to impose any increased obligations upon the Grantee, the Grantor must first make a finding that the proposed increased obligations are not more burdensome and/or less favorable, on a term-by-term basis, to the Grantee than those contained in such additional franchise(s) or authorization(s).

- E. Reservation of Rights. Acceptance of the terms and conditions of this Franchise will not constitute, or be deemed to constitute, a waiver, either expressly or impliedly, by the Grantee of any constitutional or legal right which it may have or may be determined to have, either by subsequent legislation or court decisions. The Grantor hereby acknowledges that the Grantee reserves all of its rights under applicable federal and State constitutions, laws, rules and regulations.
- F. Force Majeure. With respect to any provision of this Franchise, the violation or noncompliance with which could result in the imposition of a financial penalty, forfeiture or any other sanction or enforcement procedure upon the Grantee, such violation or noncompliance will be excused if such violation or noncompliance is the result of an event of Force Majeure. The Grantee shall also be excused from performing any obligation to the extent such failure to perform is caused by a utility provider servicing or monitoring its utility poles, if any, to which the Grantee's facilities are attached or the unavailability of materials required to perform the pertinent obligation. Furthermore, the parties hereby agree that it is not the Grantor's intention to subject the Grantee to penalties, fines, forfeiture or revocation of this Franchise for violations of this Franchise where the violation was a good faith error that resulted in no or minimal negative impact on Subscribers within the Franchise Area, or where strict performance would result in practical difficulties and hardship to the Grantee which outweighs the benefit to be derived by the Grantor and/or Subscribers.
- G. Captions. The paragraph captions and headings in this Franchise are for convenience and reference purposes only and shall not affect in any way the meaning or interpretation of this Franchise.
- H. Calculation of Time. Where the performance or doing of any act, duty, matter, payment or thing is required hereunder and the period of time or duration for the performance thereof is prescribed and fixed herein, the time shall be computed so as to exclude the first and include the last day of the prescribed or fixed period or duration of time. When the last day of the period falls on Saturday, Sunday or a legal holiday, that day shall be omitted from the computation of the pertinent time period.
- I. Written Notice. All notices, reports or demands required to be given under this Franchise shall be in writing and shall be deemed to be given upon delivery if delivered personally to the person designated below, or on the fifth day following mailing if sent in accordance with the notice requirement of this Section 12.1. and deposited in the United States mail in a sealed

envelope, with registered or certified mail postage prepaid thereon, or on the next business day if sent by express mail or overnight air courier addressed to the party to which notice is being given, as follows:

If to the Grantor: President, Board of Commissioners
Town of Thurmont
10 Frederick Road, PO Box 17
Thurmont, MD 21788

If to the Grantee: Adelpia Communications
Attn: Legal Department
One North Main Street
Coudersport, PA 16915

with a copy to: Adelpia Communications
675 Peter Jefferson Place
Suite 450
Charlottesville, Virginia 22911
Attention: Legal Department

Such addresses and phone numbers may be changed by either party upon notice to the other party given as provided in this section.

- J. Entire Agreement. This Franchise contains the entire understanding between the parties with respect to the subject matter hereof and supersedes and abrogates all other prior understandings and agreements, whether oral or written. This Franchise may not be modified except in writing signed by both parties.
- K. Confidentiality. The Grantor agrees to treat any information disclosed by the Grantee as confidential and only to disclose such information (1) to its employees, representatives and agents thereof that have a need to know; provided that, the Grantor shall in all events be responsible for any action or inaction of its employees, representatives and agents that violate this Section 11.K.; (2) in order to enforce its rights under this Franchise; (3) in compliance with applicable law. Any information of the Grantee which becomes publicly known through no fault of the Grantor or its employees, representatives and agents shall not be deemed confidential for purposes of this Section 11.K.

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SECTION 13. PUBLICATION.

This Franchise shall be signed by the Board of Commissioners and attested by the Clerk. The Franchise shall be published in accordance with the requirements of the Grantor and state law and shall take effect upon acceptance by the Grantee as set forth herein.

SECTION 14. ACCEPTANCE.

The Grantor by virtue of the signatures on this Ordinance and the Grantee by virtue of the signatures set forth below, agree to be legally bound by all provisions and conditions set forth in this Ordinance, together forming a mutually binding contractual agreement which cannot be amended without a writing executed by both parties.

Passed and adopted this 9th day of November, 2004

ATTEST:

By: Richard K. May

The Commissioners of Thurmont By: Martin Allen Burns, President
Clerk, [Grantor Name]
[Grantor Official's Name]
Martin Allen Burns

Its: [Signature]
Date: 11 / 10 / 04

Accepted by Adelphia GS Cable, LLC I/k/a Adelphia Communications

By: _____
Name: _____
Title: _____
Its: _____
Date: _____