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## **ARTICLE 1**

### **DEFINITIONS**

#### **Section 1.1 - DEFINITIONS**

For the purpose of this License, the following words, terms phrases and their derivations shall have the meanings given herein, unless the context clearly requires a different meaning. When not inconsistent with the context, the masculine pronoun includes the feminine pronoun, 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 always mandatory and not merely directory.

Access Channel - A video programming channel which Licensee makes available to the Town without cost for the purpose of transmitting non-commercial programming by members of the public, Town departments and agencies, public schools and educational, institutional and other non-profit organizations, subject to and in accordance with 47 U.S.C. 531.

Cable Communications Policy Act of 1984 ("CCPA" or "Cable Act"): Public Law No. 98-549, 98 Stat. 2779 (1984), amending the Communications Act of 1934, and effective on December 29, 1984, as further amended by the Cable Television Consumer Protection and Competition Act of 1992, Public Law No. 102-385 106 Stat. 1460 (1992) and the Telecommunications Act of 1996, Public Law No. 104-458, 110 Stat. 56 (1996).

Cable Service: The transmission to subscribers of video programming or other programming services, together with subscriber interaction, if any, which is required for the selection of such video programming which Licensee may make available to subscribers generally.

Cable Communications System or Cable System: A facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment, that is designed to provide cable service which includes video programming and which is provided to multiple subscribers within the Town.

Channel: A band of frequencies in the electromagnetic spectrum, or any other means of transmission (including without limitation, optical fibers or any other means now available or that may become available), which is capable of carrying a composite video signal.

CMR: Code of Massachusetts Regulations.

Division: The Cable Television Division of the Commonwealth of Massachusetts.

Downstream Channel: A channel over which signals travel from the Cable System headend to an authorized recipient of programming.

Educational Access: Any specific channel on the Cable System which has been allocated for use by educational organizations and institutions in the Town of Harwich, and the use thereof, to present non-commercial educational programming or information as determined by the Issuing Authority, and in accordance with 47 U.S.C. 531 and the terms hereof.

Effective Date: August 24, 1998.

FCC: The Federal Communications Commission, or any successor agency.

Government Access: Any specific channel on the Cable System which has been allocated for use by the Town of Harwich, the Issuing Authority or their designee(s), and

the use thereof, to present non-commercial programming or information as determined by the Issuing Authority, and in accordance with 47 U.S.C. 531 and the terms hereof.

Gross Annual Revenue: Compensation, in whatever form, exchange or otherwise, received by Licensee which is derived from all revenues for the provision of cable service on the Cable System within the Town of Harwich, defined as installation revenues (including, among other things, reconnection and second set), equipment charges, advertising revenues as prorated to include those attributable to the Harwich Cable System, leased access revenues, home shopping revenues and any other revenues from the operation of the cable television system in the Town of Harwich; provided, however, that gross annual revenues shall not include (1) any franchise fees (according to applicable law) or taxes on services furnished by the Licensee; (2) to the extent consistent with generally accepted accounting principles, adjustments to cash receipts and non-operating cash receipts for bad debts, refunds, credit adjustments, reimbursements from Affiliates or vendors, returned checks and asset sales when such sales do not occur in the ordinary course of business; (3) revenues of any Affiliate from the sale of merchandise (not including subscriber equipment) and (4) revenues from telecommunications services to the extent such revenues are excluded by the Cable Act as amended.

Issuing Authority: The Board of Selectmen of the Town of Harwich, Massachusetts.

Leased Channel: Any channel available for lease for programming by persons other than Licensee subject to and in accordance with 47 U.S.C. 532.

Licensee: MediaOne of Massachusetts, Inc., or any successor or transferee in accordance with the terms and conditions in this License.

Local Origination: Local programming produced by the Licensee and/or its staff.

Pay Cable or Premium Cable Services: Programming delivered for a fee or charge to subscribers on a per-channel basis or as a package of services, not including basic service and other regulated tiers.

Programming: Programming provided by, or generally considered comparable to programming provided by, a television broadcast station.

Public Access: Any specific channel on the Cable System which has been allocated for use by individuals and/or organizations, and the use thereof, to present non-commercial programming in accordance with 47 U.S.C. 531 and the terms hereof.

Public, Educational and Government Access ("PEG Access"): The right or ability of any Harwich residents or organizations, schools and governmental entities to use designated facilities, equipment and/or channels of the Cable System in accordance with 47 U.S.C. 531 and this License.

Public Ways: The surface of, as well as the spaces above and below, any and all public streets, avenues, alleys, highways, boulevards, concourses, driveways, bridges, tunnels, parks, parkways, waterways, bulkheads, piers, dedicated public utility easements or any other easements or rights of way dedicated for compatible uses, and public grounds and/or waters and all other publicly owned real property within or belonging to the Town now or hereafter existing. Reference herein to "Public Way" or "Street" shall not be construed to be a representation or guarantee by the Town that its property rights are sufficient to permit its use for any purpose without applicable legally required permits, or that the Licensee shall gain or be permitted to exercise any rights to use property in the Town greater than those already possessed by the Town.

Standard Service Package - A combination of cable service tiers, consisting of the Basic Broadcast tier and Cable Programming Service tiers, as those tiers are defined by the FCC, as provided by the Licensee as of the Effective Date and including any

individual broadcast channels or cable networks added to these tiers as a result of the reconstruction of the Cable Communications System.

Town: The Town of Harwich, Massachusetts.

Upstream Channel: A channel over which signals travel over the Cable System to the headend from remote points of origination.



## **ARTICLE 2**

### **GRANT AND TERM OF LICENSE**

#### **Section 2.1 - GRANT OF LICENSE**

Pursuant to the authority of Chapter 166A of the General Laws of the Commonwealth of Massachusetts and the Cable Communications Policy Act of 1984 as further amended by the Cable Television Consumer Protection and Competition Act of 1992 and the Telecommunications Act of 1996, and subject to the terms and conditions set forth herein, the Board of Selectmen, as the Issuing Authority of the Town, hereby grants a non-exclusive cable television license to Licensee, authorizing and permitting Licensee to construct, upgrade, install, operate and maintain a Cable Communications System within the corporate limits of the Town of Harwich.

#### **Section 2.2 - RIGHTS AND PRIVILEGES OF LICENSEE**

Subject to the terms and conditions herein, the Issuing Authority hereby grants to Licensee, the right to construct, upgrade, install, operate and maintain a Cable Communications System in, under, over, along, across or upon the Public Ways of the Town of Harwich within its municipal boundaries and subsequent additions thereto for the purpose of cable television system reception, transmission, collection, amplification, origination, distribution, and/or redistribution of Cable Services, I-Net services, cable modem services and other services customarily provided by a cable operator subject to and in accordance with all applicable laws. The Town reserves any rights it may have otherwise relative to services not within its franchising power including without limitation, telecommunications services.

#### **Section 2.3 - APPLICABLE LAW**

This License is granted under, in compliance with and subject to Chapter 166A of the General Laws and all other general laws and acts of the Legislature, and in compliance and subject to all applicable federal law, including, but not limited to, all rules of the Federal Communications Commission ("FCC"), as amended, and in compliance with and subject to all other municipal, state and federal rules and regulations in force and effect during the period for which this License is granted. This License is subject to all rules and regulations of the Massachusetts Cable Television Division. Any reference herein to federal, state and municipal laws, by-laws and ordinances, whether statutory or regulatory, shall be deemed to encompass the present terms thereof as amended from time to time during the license term.

#### **Section 2.4 - TERM OF LICENSE**

(a) This License shall commence upon execution. The period from execution through December 10, 1999 represents the unexpired term of the predecessor license and, as such, the terms herein constitute an amendment and restatement of said license.

(b) The renewal term of this License shall extend through December 10, 2009.

#### **Section 2.5 - TRANSFER AND ASSIGNMENT OF LICENSE**

(a) To the extent required by G.L.c. 166A, Section 7, and the regulations of the Commission promulgated thereunder (207 CMR 4.00 et. seq.), this License or control thereof shall not be transferred, assigned or disposed of in any manner, voluntarily or involuntarily, directly or indirectly, or by transfer of control of any person, company or other entity holding such License to any other person, company or other entity, without the prior written consent of the Issuing Authority, which consent shall not be unreasonably or arbitrarily withheld. Such consent shall be given only after a public hearing upon a written application and forms therefor as provided by the Division and on

FCC or other applicable forms. The application for transfer consent shall be signed by Licensee and by the proposed transferee or assignee.

(b) Any reasonable legal costs up to Two Thousand Dollars (\$2,000) incurred by the Issuing Authority in connection with the review of such application shall be reimbursed by the Licensee or transferee.

(c) Any transfer or assignment of license shall, by its terms, be expressly subject to the terms and conditions of this License and obligations, if any, arising from the award of this License. Any transferee or assignee of this License shall be subject to the terms and conditions contained in this License.

(d) The Licensee shall submit to the Issuing Authority an original and five (5) copies, unless otherwise directed, of the license transfer application, including any forms required by state or federal law.

## **Section 2.6 - NON-EXCLUSIVITY OF LICENSE**

(a) This License shall not affect the right of the Issuing Authority to grant to any other Person a license or right to occupy or use the streets, or portions thereof, for the construction, upgrade, installation, operation or maintenance of a Cable Communications System within the Town of Harwich; or the right of the Issuing Authority to permit the use of the Public Ways and places of the Town for any purpose whatsoever. The Licensee hereby acknowledges the Issuing Authority's right to make such grants and permit such uses.

(b) To the extent allowed by applicable law(s), the grant of any additional cable television license(s) shall be on substantially equivalent terms and conditions as those contained in this License or on terms when taken as a whole impose substantially equivalent burdens.

This paragraph shall be subject to specific performance.

(c) The issuance of additional license(s) shall be subject to all applicable federal law(s), and state laws, including G.L.c 166A and applicable regulations promulgated thereunder.

(d) In the event that the Licensee reports to the Issuing Authority that it is at a competitive disadvantage with material economic injury as a result of a competing multichannel video programmer operating in the Town that is not required to be licensed by the Town, the Issuing Authority and the Licensee agree that Section 625 of the Cable Act will be applicable such that commercial impracticability proceedings will be available. Among other factors, the Issuing Authority will consider the nature and extent of any such competitive disadvantage and material economic injury in assessing a Section 625, commercial impracticability modification, request from the Licensee. The Issuing Authority and the Licensee agree that for the purpose of considering a commercial impracticability modification request the parties shall stipulate as follows: (1) competition by another multichannel video programmer(s) in the Town resulting in material economic injury to the Licensee was unforeseeable as of the execution date of this License; (2) that such competition is beyond the control of the Licensee; and (3) that the nonoccurrence of such competition and resulting in material economic injury was a basic assumption upon which the requirements of this License was based. The Licensee shall have the right to obtain modification of requirements of this License if the Licensee demonstrates and the Issuing Authority finds that (i) it is commercially impracticable for the Licensee to comply with such requirement without modification and (ii) the proposal by the Licensee for modification of such requirement is appropriate because of commercial impracticability. Any final decision made by the Issuing Authority under this section shall be made in a public proceeding. Such decision shall be made within one hundred twenty (120) days after receipt of such request by the Issuing Authority, unless otherwise extended by agreement of the parties. The parties agree that the

standard applied to the Licensee's request for modification is the same as provided under the "Commercial Impracticability" provisions of the UCC - recognizing, and accounting for, distinctions given the context in which it is applied under Section 625 and that regarding the sale of goods which is governed by the UCC, or such other judicial interpretation if any exist.

### **Section 2.7 - POLICE AND REGULATORY POWERS**

By executing this License, Licensee acknowledges that its rights are subject to the powers of the Town to adopt and enforce general ordinances and bylaws necessary to the safety and welfare of the public and of general applicability and not specific to this License or to cable operators only. Licensee shall comply with all applicable laws and ordinances enacted by the pursuant to any such powers.

### **Section 2.8 - REMOVAL OR ABANDONMENT**

Upon termination of this License by passage of time, license revocation or otherwise, and unless Licensee renews its License for another term or Licensee transfers the Cable System to a transferee approved by the Issuing Authority, Licensee shall remove its supporting structures, poles, transmission and distribution systems and all other appurtenances from the Public Ways and places and shall restore all areas to their original condition.

If such removal is not completed within six (6) months after such termination, the Issuing Authority may deem any property not removed as having been abandoned. Notwithstanding this Section, to the extent federal law applies pursuant to Section 2.9 (Proceedings Upon Expiration or Revocation), the applicable provisions of federal law (47 U.S.C. 547) shall govern.

## **Section 2.9 - PROCEEDINGS UPON EXPIRATION OR REVOCATION**

In the event that this License is revoked, and all appeals have been exhausted, or that it expires, and the Issuing Authority determines not to renew this License and all appeals have been exhausted, or the License otherwise terminates, the Issuing Authority and the Licensee shall implement the provisions of Section 627 of the Cable Act, 47 U.S.C. 547, by transferring the Cable System to the Town or a subsequent licensee in accordance with 47 U.S.C. 547.

## **ARTICLE 3**

### **SYSTEM DESIGN, CONSTRUCTION AND OPERATION**

#### **Section 3.1 - AREA TO BE SERVED [SEE G.L.c. 166A §3(a)]**

(a) The area to be served is the Town of Harwich as depicted in Schedule 3.1. Service shall be provided to every dwelling occupied by a person requesting Cable Service, provided that the Licensee is able to obtain from property owners any necessary easements and/or permits in accordance with Section 621(a)(2) of the Federal Cable Communications Act of 1984.

(b) Provided Licensee has at least forty-five (45) days prior notice concerning the opening of residential subdivision trenching, or of the installation of conduit for the location of utilities, it shall install its cable in such trenching or conduits or may seek permission to utilize alternative trenching or conduits within a comparable time frame. If a substantial quantity of cable is required for a large subdivision and said quantity is not in stock, the Licensee shall be allowed additional time for said installation. The Issuing Authority, or its designee, shall exercise reasonable efforts to have the Planning Board and developers give timely notice of trenching and underground construction to the Licensee.

#### **Section 3.2 B LINE EXTENSION PROCEDURES**

(a) Subject to the provisions of the following paragraphs (b), (c), (d) and (e), any potential subscriber located in an area of the Town currently without service may request service from Licensee. Licensee shall extend service to such area promptly, but in no case later than sixty (60) days after all necessary permits are obtained. Licensee shall expeditiously seek all necessary permits.

(b) The Cable Television System shall be extended automatically, at Licensee's sole cost and expense, from existing cable plant to any and all areas of the Town contiguous to the cable plant, containing 20 homes per mile or fractional proportion thereof. Where areas of such density are not contiguous to the existing cable system, the Licensee shall extend the Cable System to such areas provided that from there to the existing Cable System the number of homes is at least ten times the number of miles, or fraction thereof, from the Cable System. Said service shall be made available to requesting subscribers within sixty (60) days, unless additional permits are required, in which case the sixty (60) days will begin at the time the permits are obtained. Licensee shall expeditiously seek such permits.

(c) The Cable Television System shall be further extended to all areas in the Town that do not meet the requirements of subsection (b) above upon request of one or more of the prospective subscribers in such areas and based upon the following cost calculation: The cost of wiring such areas shall be calculated by taking the capital cost for extending such service divided by the number of subscribers in such area minus the costs of extending service to the subscriber in an area that meets the 20 homes per mile or fractional proportion thereof density requirement specified in subsection (b) above. The resulting cost shall equal the per subscriber contribution relating to line extension of cable service in that particular area of the Town as depicted in the following formula:

$$\frac{CCA - C}{LE \times P} = SC$$

\*C equals the cost of construction of new plant from the termination of existing cable plant;

\*CA equals the average cost of construction per mile in the primary service area;



\*P equals the 20 subscribers per mile;

\*LE equals the number of dwelling units requesting service and paying a cost contribution

for construction in the line extension area;

\*SC equals the per subscriber contribution in aid of construction in the line extension area.

(d) Any potential subscriber located in an area of the Town without cable television service may request such service from Licensee. In areas meeting the requirements of Section 3.4 (c) above, Licensee shall extend service to the area promptly, but in no case later than sixty (60) days after all necessary permits are obtained. Licensee shall expeditiously seek all necessary permits. In those areas where service is not required by Section 3.4 (b), Licensee shall, within thirty (30) days following a request for service, conduct a survey to determine the number of homes in the immediate area and shall inform each potential subscriber of the possible contribution in aid of construction (see Section 3.4(c) above) that will be charged. Licensee shall apply for pole attachment, easements and rights-of-way agreements within thirty (30) days of receiving the contribution in aid of construction from all prospective subscribers. Cable television service(s) shall be made available and fully activated to all requesting subscribers who made a contribution in aid of construction within thirty (30) days of receipt of pole attachment agreements by Licensee.

(e) If the Licensee is denied free access to any private streets and ways, Licensee shall not be required to provide service to residences along such streets and ways unless reasonable access thereto is available for placement of trunk and feeder lines along public ways. Licensee shall not be required to extend service to residences located along public ways where such extension requires use of a privately owned easement for placement of trunk and feeder lines to which the Licensee has been denied reasonable access after reasonable efforts to obtain such access.

(f) During the two (2) year period commencing with the completion of any particular line extension constructed in accordance with (c) above, Licensee shall pay a pro-rata refund to any previous subscribers who made a contribution in aid of construction, as new subscribers are added to that particular line extension. The amount of refund shall be determined by application of the line extension formula, contained in Section 3.4 (c) above, reducing the per capita contribution in aid of construction each time a new subscriber is added. Any refunds due shall be paid annually to subscribers, or former subscribers, entitled to receive such a refund. Licensee shall file with the Issuing Authority or its designee(s), on an annual basis, the names, addresses and exact contribution in aid of construction of each new subscriber in a line extension area. An annual list of all refunds, including names and addresses of subscribers, shall also be filed with the Issuing Authority.

### **Section 3.3 - SUBSCRIBER NETWORK**

(a) No later than December 31, 1999, the Licensee shall make available to all residents of the Town a minimum seven hundred fifty Megahertz (750 MHz) Cable Communications System, fed by means of a fiber-optic transportation cable network, fully capable of carrying at least seventy-eight (78) NTSC video channels in the downstream direction and four (4) NTSC video channels in the upstream direction. Said 750 MHz Cable System shall be designed for not less than 550 MHz, or its equivalent, of video transmissions, with 200 MHz reserved for future digital or analog two-way transmissions, with the allocation of the analog and digital bandwidth within the 750 MHz may be subject to change at the discretion of the Licensee. The Cable System shall be constructed utilizing a hybrid fiber-coaxial cable architecture with fiber running to nodes within the Town.

(b) Timely completion of the upgrade to 750 MHz is subject to extension by reason of force majeure, and is contingent upon the receipt of timely approvals of

permits, easements and all other prerequisites to construction by the Town, governmental agencies, public utilities, property owners and vendors and other authorities provided such permits are pursued diligently by the Licensee. The Town will give the Licensee its reasonable cooperation in securing all permits, access rights, sub-headend or microwave link sites and other prerequisites to construction of the rebuilt system.

(c) Until completion of the upgrade in accordance with subsection (a) above, the Licensee shall continue to operate its 450 MHz Cable System, currently capable of providing fifty-eight (58) downstream video channels.

(d) Pursuant to the terms of the Social Contract between Licensee and the FCC, the Licensee agrees not to file a cost of service filing to recoup the costs of this rebuild or treat the cost of this rebuild as an external cost pass through or basis for rate adjustment.

(e) The Licensee shall not remove any television antenna of any subscriber but shall offer a device to allow subscribers to choose between cable and non-cable television reception.

(f) During the term of this License, Licensee shall use reasonable efforts to employ state of the art technology in the operation of the Cable Communications System taking into consideration the costs of doing so.

(g) The Cable System shall be technically capable of transmitting Town-specific access programming and commercial programming, provided however, Issuing Authority acknowledge it has no rights nor ability to mandate specific programming.

### **Section 3.4 - SERVICE TO RESIDENTIAL DWELLINGS: STANDARD DROP**

The Licensee shall make its service available to every residential (non-commercial) dwelling unit in the service area in the Town regardless of the type of dwelling, or its geographical location. Installation costs shall be nondiscriminatory except that an additional charge for time and materials may be made for customized

installation within a subscriber's residence or except when Licensee is engaged in marketing promotions. Any dwelling unit within one hundred fifty feet (150 ft.) of the cable plant for an aerial drop, or one hundred fifty feet (150 ft.) for an underground drop, shall be entitled to a standard installation rate, however, Licensee may reasonably charge subscribers for nonstandard and customized installations. Subscribers may be charged for drops in excess of the standard footage for materials and labor, and upon request, subscribers shall be provided an itemized cost for the same prior to acceptance of the terms for such non-standard drop.

### **Section 3.5 - INSTITUTIONAL NETWORK ("I-NET")**

(a) Within twelve (12) months from the execution of this License, the Town shall notify Licensee if it wishes Licensee to construct and operate an I-Net on behalf of the town. If the Town requires more than this allotment of time to make a decision, Licensee cannot guarantee that origination capability will not be interrupted for a period of time during construction

(b) If the Town elects construction of an I-Net, such advanced Institutional Network ("I-Net") with a minimum capacity of 550 MHz and capable of transmitting 5-186 MHz (29 channels) in the upstream direction and 222-550 MHz (54 channels) in the downstream direction or the equivalent thereof. Alternatively, the Town may require an all fiber I-Net. The advanced I-Net will be capable of transmitting composite video and high speed data from and among those buildings listed in **Schedule 3.4** attached hereto. Said I-Net may be used for school building Internet access as well as point-to-point administration networking. A design plan for such I-Net shall be submitted to the town within ninety (90) days of the Town's request provided no additional locations are added, and construction shall be completed within (6) months of said submission.

(c) If prior to construction, the Licensee determines that the I-Net's technical design described above does not meet the Town's requirement, or that another design is more appropriate, Licensee may, in its reasonable discretion following notice and consultation with Issuing Authority, alter the design of the I-Net provided that such alterations do not fundamentally change or reduce the I-Net's capabilities and channel capacity.

(d) The Licensee shall provide one (1) I-Net drop, free of charge, to each of the municipal buildings identified in **Schedule 3.4**. The Licensee shall provide one (1) I-Net drop, free of charge, to any new municipal or school building which lies along its I-Net route within ninety (90) days of a written request by the Issuing Authority. Additional I-Net drops, if any, in excess of the above shall be installed by the Licensee subject to payment by the Town of the Licensee's actual costs for time and materials.

(e) Unless otherwise provided herein, the Town and its designated I-Net users shall be solely responsible for any and all user terminal interface equipment including but not limited to, modems, routers, bridges, modulators, demodulators and associated computer and video production equipment.

(f) The Licensee shall be responsible for any headend, I-Net hub site or other equipment necessary to make the I-Net function, including responsibility for the underlying I-Net or distribution cables, wires, amplifiers and switching equipment. Upon request, the Town agrees to provide the Licensee with appropriate space for the I-Net hub site. The Licensee and the Town agree to work jointly to ensure said space meets the criteria listed in **Schedule 3.4(e)** attached hereto. The Licensee shall also be responsible for equipment to enable the I-Net to interact with the Subscriber Network such that I-Net transmissions may be transmitted upstream to the headend via the I-Net channel and downstream on an Access Channel.

(g) The Licensee shall hold all rights and title in the physical property of advanced I-Net, but shall provide the Town the right to use the I-Net, throughout the remaining term of this License subject to the following conditions:

- (1) The Town shall pay a use fee equal to \$17,000.00 per mile, or portion thereof, of miles in the I-Net. The total use fee shall then be credited with time value of money at 10% per annum, at the Town's direction, in equal annual increments over the remaining years in the license term against either the Issuing Authority payment as specified in Section 5.3 (a) of this License, or the capital fund as specified in Section 5.4 (c) of this License.
- (2) The Town may not lease out any portion of the I-Net to any third party or allow the I-Net to be used by a third party for commercial purposes.

(h) The Town shall have the right to use the I-Net, free of charge, for the transmission of data and composite video.

(i) The Licensee shall be responsible for maintenance of the I-Net in accordance with the following provisions:

- (1) Licensee shall maintain I-Net signal quality as prescribed by FCC Rules and Regulations, Part 76.
- (2) Licensee shall reasonably determine and assign the transmit and receive frequencies for all I-Net users subject to reasonable consultation with the users.
- (3) Licensee shall determine and design the correct signal strength levels necessary at each location.
- (4) The Town may install its preferred equipment, provided, however, the data equipment to be used has been pre-approved by Licensee in

advance of connection to the I-Net. Pre-purchase approval is recommended.

- (5) The Town shall designate a certified, experienced data communications professional (ex., MIS/LAN manager, network engineer, consultant, etc.). This person shall be responsible and accountable to the Town for all setup and ongoing operations of LAN to LAN connectivity over the I-Net.
- (6) Any user who causes interference or renders the I-Net system ineffective shall be notified and disconnected by Licensee if after consultation with the Issuing Authority, or its designee, said user fails to take reasonable corrective action.

### **Section 3.6 - SERVICE TO PUBLIC BUILDINGS AND SCHOOLS**

(a) Licensee shall provide, free of charge, one (1) drop, outlet and the Standard Service Package, including the level of service which includes *Cable in the Classroom* programming as long as Licensee receives *Cable in the Classroom* programming under agreements or pursuant to terms similar to those which are currently in place, excluding premium channels, to public buildings along its cable routes upon written request of the Issuing Authority.

(b) Any locations in the Harwich public schools which have been wired for residential cable service shall continue to receive an activated outlet of standard service in accordance with subsection (a) above. Any public classrooms which have not been wired for cable service pursuant to the obligation for such wiring provided for in the predecessor license, shall be wired at Licensee's sole cost and expense.

(c) All future newly constructed classrooms shall be wired for the Standard Service Package, within 200 feet of the cable plant, at Licensee's sole cost and expense.

(d) All future municipal buildings along the cable routes shall receive, free of charge, one (1) drop, outlet and the Standard Service Package.

(e) If necessary to receive the Standard Service Package, Licensee will provide a converter to any classroom or municipal building entitled to service under this Section at no charge to the Town.

### **Section 3.7 - STANDBY POWER**

The Licensee shall maintain a minimum of three (3) hours standby power at the headend facility and any nodes servicing the Town. Such standby power shall have continuous capability, contingent upon availability of fuel necessary to operate generators, and shall become activated automatically upon the failure of normal power supply. Upon written request, Licensee shall furnish evidence to the Issuing Authority on an annual basis that such standby power has been tested annually and is in good repair.

### **Section 3.8 - TREE TRIMMING**

In the installation, maintenance, operation and repair of the poles, cables, wires and all appliances or equipment of the Cable System, the Licensee shall avoid unnecessary damage to trees whether on public or private property in the Town and shall cut or otherwise prune such trees only to the least extent necessary. No cutting of trees on Town property shall occur except upon a permit in writing from the Town Tree Warden or other person designated by the Department of Public Works provided that such written permit is a requirement of general applicability and not specific to Licensee or cable television operators. Licensee shall make its best effort to secure the permission of the property owner prior to reasonable tree trimming.



### **Section 3.9 - UNDERGROUND WIRING OF UTILITIES**

In areas of the Town having both telephone lines and electric utility lines underground, whether required by ordinance or not, all of Licensee's cable and wires shall be underground. Licensee shall maintain membership and participate in the Massachusetts "DIG-SAFE" program.

### **Section 3.10 - PEDESTALS AND VAULTS**

In any cases in which vaults housing passive devices are to be utilized, in the Town Public Ways or within the Town public layout, such equipment must be flush at ground level or completely buried (in accordance with applicable Public Works Department regulations); provided, however, that Licensee may place active device (amplifiers, line extenders, power supplies, etc.) in a low-profile electronic control box, at Town approved locations to be determined when Licensee applies for an underground permit, which shall not be unreasonably denied and subject to other requirements of general applicability.

### **Section 3.11 - PRIVATE PROPERTY**

Licensee shall be subject to all laws, bylaws or regulations regarding private property in the course of constructing, upgrading, installing, operating and maintaining the Cable Communications System in the Town. Licensee shall promptly repair or replace all private property, real and personal, damaged or destroyed as a result of the construction, upgrade, installation, operation or maintenance of the Cable System at its sole cost and expense.

### **Section 3.12 - RESTORATION TO PRIOR CONDITION**

Whenever the Licensee takes up or disturbs any pavement, sidewalk or other improvement of any private way, Public Way or public place, it shall be replaced and the surface restored in as good condition as before entry as soon as possible, subject to approval of the Town 's Department of Public Works or their designee provided that such approval is a requirement of general applicability and not specific to Licensee or cable television operators. If the Licensee fails to make such restoration within a reasonable time, the Town may fix a reasonable time and notify the Licensee in writing of the restoration required and the time fixed for performance. Upon failure of the Licensee to comply within the time specified, the Town may cause proper restoration and repairs to be made and the reasonable expense of such work as itemized shall be paid by the Licensee upon demand by the Town.

### **Section 3.13 - COOPERATION WITH BUILDING MOVERS**

The Licensee shall, upon thirty (30) days request of any person holding an appropriate permit issued by the Town, temporarily raise or lower its lines to permit the moving of any building or other structure. The expense of such raising or lowering shall be in accordance with applicable law.

### **Section 3.14 - RELOCATION OF FACILITIES**

The Licensee shall, at its expense, temporarily or permanently relocate any part of the Cable System when required by the Town for good reason such as traffic, public safety, street construction, installation of sewers, drains, water pipes, power or signal lines or setting of new or replacement utility poles. In this respect, the Licensee shall be treated the same as other affected utilities.

### **Section 3.15 - RELOCATION OF FIRE ALARMS**

The Licensee shall reimburse the Town at cost for any reasonable expense including materials and labor caused by relocation of any fire alarm cable or equipment to make poles ready for Licensee's cable. The Town shall cooperate in this relocation so as to minimize delay in Licensee's construction schedule.

### **Section 3.16 - SERVICE INTERRUPTION**

Licensee may interrupt service for the purpose of repairing, upgrading or testing the Cable System and, if practical, Licensee shall do so only during periods of minimum use, and only after a minimum of twenty-four (24) hours notice to affected subscribers.

### **Section 3.17 - CONSTRUCTION AND MAINTENANCE STANDARDS**

(a) The Licensee shall construct and operate a Cable Communications System and render service to subscribers consistent with all applicable regulations during the term of this License. The construction, maintenance and operation of the Cable System for which this License is granted shall be in conformance with the applicable provisions of the National Electrical Code (Article 820), the National Electrical Safety Code, the National Television Standards Code and the rules and regulations of the Occupational Safety and Health Administration (OSHA), the Division and the FCC. Copies of any technical performance tests that may be required under FCC rules and regulations shall be submitted simultaneously to the Town.

(b) All structures, lines, equipment, and connections in, over, under, and upon streets, sidewalks, alleys, and Public Ways and places of the Town, wherever situated or located, shall at all times be kept and maintained in a safe condition and in good order and repair.

### **Section 3.18 - RIGHT OF INSPECTION**

(a) In the event the Issuing Authority reasonably suspects non-compliance with Cable System construction and maintenance terms of this License, the Issuing Authority or its designee(s) shall have the right to inspect all construction, installation and/or upgrade work performed subject to the provisions of this License and to make such tests as it shall deem necessary to ensure compliance with the terms and conditions of this License and all other applicable law. Any such inspection shall be conducted at reasonable times upon reasonable notice to Licensee except that inspection of cable wires in plain view on a Public Way shall not require any such notice. Licensee shall have the right to be present at any such inspection. Any such inspection shall not interfere with the Licensee's operations.

(b) Any tests conducted by the Town shall be at the sole cost and expense of the Town and shall have the prior written approval of the Licensee. Unless otherwise mutually agreed upon, the Town shall give at least thirty (30) days prior notification to the Licensee of its intention to conduct any testing.

### **Section 3.19 - EMERGENCY REMOVAL OF PLANT**

If, at any time, in case of fire or disaster in the Town, it shall become necessary in the reasonable judgment of the Issuing Authority or any designee, to cut or move any of the wires, cables, amplifiers, appliances or appurtenances of the Cable Communications System, the Town shall have the right to do so at the sole cost and expense of Licensee. Licensee shall be eligible, where applicable, for reimbursement under any applicable government program providing for reimbursement.

### **Section 3.20 - EMERGENCY AUDIO ALERT**

(a) Within ninety (90) days from the completion of the rebuild, the Licensee shall provide an emergency audio override alert system which system shall be in accordance with applicable FCC emergency alert rules. The Issuing Authority will designate two (2) individuals responsible for accessing said emergency system and shall designate two (2) successor individuals who may access the emergency system in the event of the absence or unavailability of the foregoing individuals. The designated individual(s) may gain access to the system by using a touch-tone telephone to override channels on the Cable System with the emergency telephone message. The audio alert shall be effective over the maximum number of channels that can be overridden through equipment available to the cable industry for such purposes and shall provide an audio signal over blank screen in its method of emergency communication. The emergency audio override shall be activated and in use upon completion of the rebuild, however, if the FCC earlier promulgates rules on emergency overrides, said service will be in accordance with the FCC rules. The Town shall hold the Licensee harmless in connection with the Town's negligent use of said emergency audio override. Licensee shall test the emergency override annually and shall report on same to the Issuing Authority.

(b) Licensee shall provide A/B switches, upon Issuing Authority's written request, for not more than ten (10) municipal outlets, to facilitate switching from cable to broadcast transmission during a loss of service.

(c) An emergency alert system made available through a regional headend shall satisfy this provision.

## **ARTICLE 4**

### **RATES AND PROGRAMMING**

#### **Section 4.1 - INITIAL RATES**

The initial rates for all programming, installation and equipment which are in effect on the Effective Date of this License are listed in **Schedule 4.1** attached hereto. These rates are provided for informational purposes only and are subject to change at Licensee's sole discretion pursuant to applicable law.

#### **Section 4.2 - RATE RE-REGULATION**

The Issuing Authority reserves the right to regulate rates for cable service to the extent such regulation is allowed at this time, or hereafter, under the applicable federal and state law.

#### **Section 4.3 - PROGRAMMING CATEGORIES**

Licensee has offered and shall provide the following cable services:

- (1) the broad categories of broadcast stations, satellite services and other cable services set forth in **Schedule 4.3** attached hereto;
- (2) all PEG Access channels required by Section 5.1 (Community and PEG Access Programming) of this License.

#### **Section 4.4 - PROGRAMMING TIERS**

(a) The initial programming and services offered by Licensee are listed in **Schedule 4.4**, attached hereto. This schedule of programming tiers is provided for informational purposes only and is subject to change at Licensee's sole discretion pursuant to applicable law.

(b) Nothing in this section shall preclude any right of the Issuing Authority to participate in the formulation of a basic cable programming service for the Town, should such right be granted to the Town under applicable federal or state law in the future.

#### **Section 4.5 - LEASED ACCESS**

Pursuant to the Cable Act, 47 U.S.C. 532 (b) (iii) (B), Licensee will make available channel capacity for commercial use by persons unaffiliated with Licensee.

#### **Section 4.6 - STEREO TV TRANSMISSIONS**

Provided that Licensee's headend is capable of receiving more of a television broadcaster's programming day in stereo, Licensee shall transmit this broadcast programming in stereo to its subscribers.

#### **Section 4.7 - CHANNEL LINEUP**

Licensee shall notify the Issuing Authority and the subscribers, in advance, each time its channel lineup changes including all channel reassignments, additions or deletions, insofar as it is within the Licensee's reasonable ability to provide such notice. If notice cannot be given in advance, then it shall be given within fourteen (14) days of such changes. In the event the channel lineup is changed during the term of the License, Licensee shall provide each subscriber with an updated channel lineup.

#### **Section 4.8 - REMOTE CONTROLS**

Licensee shall allow subscribers to purchase, from parties other than the Licensee, and to utilize remote control devices which are deemed compatible with the converter installed by Licensee. Licensee may require a separate reasonable charge for use of the remote control capacity of its converter.

#### **Section 4.9 - DISCOUNT**

Licensee shall offer a ten percent (10%) discount on the basic broadcast level or component of service to all head of household, who are also Medicaid eligible at their permanent residence. In order to qualify for such discount affected persons must present evidence of such eligibility to Licensee.



**ARTICLE 5**  
**COMMUNITY PROGRAMMING AND**  
**ACCESS COMMITMENTS AND POLICIES**

**Section 5.1 B DEDICATED PUBLIC, EDUCATIONAL AND GOVERNMENT  
ACCESS CHANNELS (PEG)**

- (a) License shall provide the Town with four downstream PEG access channels.
- (b) One channel for governmental purposes shall be under the management of the Issuing Authority, or its designee.
- (c) One channel for educational purposes shall be under the management of the Harwich School Department.
- (d) One channel shall be dedicated to Cape Cod Community Channel, (the "College",) provided however that the College reasonably remunerates Licensee for its revenue-producing use of the channel, not to exceed 15% of such gross annual revenues and, furthermore, that the College reasonably provides use of its channel to Barnstable County governmental and quasi-governmental agencies for the purpose of transmitting programs of regional interest to Cape Cod residents. At two year intervals during the term of this License, the Issuing Authority, upon request of the Licensee, shall, in good faith, review with the Licensee the desirability and necessity of maintaining an access channel designation for the College and, at the Issuing Authority's discretion, such channel may be eliminated or redesignated for alternative use.
- (e) One channel for public access purposes shall be under the management of Cape Cod Community Television Corporation, in accordance with the terms of the agreement found in **Schedule 5.1** of this License.

## **Section 5.2 B UPSTREAM ORIGINATIONS**

Licensee shall maintain existing remote video and audio origination capability from Harwich Town Hall, Harwich High School, Harwich Middle School and Cape Cod Regional Technical High School, and, subject to the reasonable approval of the Licensee based on proximity to the cable plant, two additional locations designated by the Issuing Authority. Licensee shall provide fixed or portable modulators to these locations upon request of the Issuing Authority.

Licensee shall configure upstream originations such that programming then goes downstream on the appropriate PEG channel. This provision may be fulfilled by I-Net connections.

## **Section 5.3 - COMPENSATION FOR USE OF THE PUBLIC WAYS: PEG FRANCHISE FEES**

In compensation for use of the Town's public ways, Licensee shall make the following payments to the Issuing Authority, or its designee, said payments to be used exclusively to support operations related to the PEG channels:

(a) To the Issuing Authority, or its designee, Licensee shall pay, annually by April 1, or within 90 days of the close of its fiscal year, if based other than on the calendar year, a franchise fee equal to 2.75% of its annual gross revenues, except as provided for in section (c) below. The first such payment shall be due, on or before, April 1, 1999, based upon Licensee's partial fiscal year of July 1, 1998- December 31, 1998. These fees shall be used on behalf of educational and governmental access;

(b) To Cape Cod Community Television Corporation (the "Corporation",)  
Licensee shall pay, annually by April 1, or within 90 days of the close of its fiscal year, if based other than on the calendar year, a base franchise fee equal to 1.25% of its annual gross revenues. In addition, Licensee shall, simultaneously, augment this base franchise fee payment, by an amount up to an additional .25% of its annual gross revenues, to match any annual bona fide revenues which the Corporation receives from sources other than the Licensee.

(c) The base franchise fee payment to the Corporation shall be increased to 1.75% if, and when, all other original Towns serviced by the Corporation agree in their respective license agreements with Licensee, to designate base franchise fee payments to the Corporation of an equal or greater magnitude. At such time, the franchise fee payment payable to the Issuing Authority under section (a) above shall be reduced from 2.75% to 2.25%.

(d) At the Issuing Authority's direction, franchise fees may be required to be paid quarterly as opposed to annually.

(e) Within 30 days of execution of this License, Licensee shall advance the sum of \$75,000 to the Issuing Authority, or its designee, to be credited in equal increments, with the time value of money at prime + 1%, against future franchise fee payments due to the Issuing Authority.

#### **Section 5.4 - CAPITAL FUNDING FOR PEG CHANNELS**

(a) Within 30 days of the execution of this License, Licensee shall make a capital payment, on behalf of the Town of Harwich, to Cape Cod Community Television

Corporation, in the amount of \$40,000.00, to further the goals of public access programming and utilization.

(b) Within 30 days of the execution of this License, Licensee shall make a capital payment, to support the development of educational and governmental access programming or utilization, to the Issuing Authority, in the amount of \$50,000.00.

(c) Additional capital grants to the Issuing Authority shall be made upon the following schedule: \$50,000.00 on or before April 1, 2000; \$50,000.00 on or before April 1, 2003; \$60,000.00 on or before April 7, 2006.

#### **Section 5.5 - PILOT EDUCATIONAL TECHNOLOGY PROJECT**

Licensee shall develop a pilot project with the Town's School Department in conjunction with Licensee's high speed data service. The pilot project will be developed and implemented by Licensee after consultation with appropriate School Department personnel. The pilot status will enable teachers, students and administrators to participate in the development of educational software for the high speed data services; including innovative digital, multimedia and interactive telecommunications applications. In connection with the pilot project, Licensee shall furnish approximately Fifty Thousand Dollars (\$50,000) in goods and services to the Town, the valuation of which shall be at Licensee's sole determination, however, itemized and reported to the Issuing Authority. Alternatively, the Town may utilize the \$50,000.00 in goods and services from Licensee to establish a Private Virtual Network (PVN) and to operate such network in order to evaluate its viability or an alternative to the construction and operation of a full I-Net. Licensee's costs associated with the pilot project in PVN shall not be subject to assessment on subscriber rates.

## **Section 5.6 B UNDERWRITING**

Individual access producers may, in accordance with standards applicable to non-commercial public television stations, solicit and include notices of underwriting support.

## **Section 5.7 - INTERNET ACCESS**

In accordance with the Social Contract entered into by Licensee and the FCC, the Licensee will within one (1) year after offering on-line service for personal computers commercially available in the Town, and upon the request from the Harwich School Department, provide each school in the Town with one (1) free connection to such on-line service. At a minimum, such on-line service will provide access to the Internet. Each connected school will receive one (1) free cable modem and free, unlimited access to the on-line service. Said modems and on-line service shall continue to be provided to the Town until March 1, 2002. Town libraries shall also be eligible for free Internet access subject to Licensee's Library Program, attached hereto as Schedule 5.7.

## **ARTICLE 6**

### **SUBSCRIBER RIGHTS AND CONSUMER PROTECTION**

#### **Section 6.1 - CUSTOMER SERVICE OFFICE**

The Licensee agrees to locate at a convenient location within the Town an office managed either by the Licensee or a competent third party which shall serve customer needs. Said office shall be open for walk-in business during normal business hours, including at least one (1) weeknight or weekend morning, which may be changed from time to time to reflect the needs of the community.

#### **Section 6.2 - TELEPHONE ACCESS**

(a) The Licensee shall maintain a publicly listed, toll free, customer service number for the general purpose of servicing customer needs including receiving and resolving complaints, including without limitation, those regarding service, equipment malfunctions or billing and collection disputes. Licensee shall have available trained customer service personnel to receive and log service calls and complaints from 9:00 AM to 5:00 PM Monday through Friday. Licensee shall comply with the FCC standards regarding response to customer phone calls.

(b) Licensee shall provide a "live" telephone answering service during other times (5:00 PM to 9:00 AM) which shall be informed how to respond in case of emergencies requiring standby technicians. Such answering service shall be also instructed to call upon Licensee's standby personnel when it is evident that the complaints received are indicative of a problem affecting three (3) or more subscribers.

### **Section 6.3 - INSTALLATIONS, OUTAGES AND SERVICE CALLS**

Licensee agrees to be bound by the customer services obligations adopted by the FCC in 47 C.F.R. § 76.309(c), as they may hereafter be amended, a copy of which is attached as

#### **Schedule 6.3.**

### **Section 6.4 - INSTALLATION**

(a) Licensee shall make a good faith effort to respond to all requests for aerial installation within seven (7) days of such request, or at such other time as is mutually agreed upon by Licensee and said subscriber. Underground installation shall be completed as expeditiously as is practicable. If arranging appointments for installation, Licensee shall specify in advance whether such will occur in the morning or afternoon, or a narrower interval, if possible, and will make reasonable efforts to install at times convenient to subscribers (including times other than 9:00 AM to 5:00 PM weekdays).

(b) Licensee shall be responsible for picking up and changing converters at subscriber's request at no additional charge where such converter changeout is initiated by Licensee to provide additional channels that have become available as a result of Licensee's expansion of channel capacity. In order to improve service, Licensee reserves the right to offer subscribers the option of bringing converters in to a Licensee office for drop-off or exchange themselves.

### **Section 6.5 - MINIMUM SUBSCRIBER INFORMATION**

Licensee will provide all prospective subscribers with complete, clear and concise written information before consummation of any agreement for initial installation of

cable service. Such sales materials shall clearly disclose the price and other information concerning Licensee's lowest cost basic service. Such information shall include but not be limited to the following:

- (a) All service and rates, deposits if applicable, installation costs, additional television set charges, service upgrade or downgrade charges, and relocation of cable outlet charges.

- (b) Written information concerning billing and termination procedures, procedures for ordering changes in or termination of services, and all refund policies, including the availability of rebates or credits for loss of service.

- (c) Written information concerning the utilization of video cassette recorders (VCRs) with cable service(s), including the cost for hooking up VCRs so that they function as manufactured, and any other associated VCR costs or charges.

- (d) Written information concerning the availability of special equipment such as VCR kits, A/B switches, and lockboxes and all other equipment notifications contained in 207 CMR 10.00 et. seq. (See **Schedule 6.5** attached hereto.)

- (e) Written information concerning privacy policies, pursuant to state and federal law.

- (f) Written information concerning steps to take in the event of loss of service.

## **Section 6.6 - PARENTAL CONTROL**

- (a) Upon request, and at no separate, additional charge, the Licensee shall provide subscribers with the capability to control the reception of any channel on the Cable Communications System.



(b) The Issuing Authority acknowledges that the parental control capability may be part of a converter box and the Licensee may charge subscriber for use of said box.

#### **Section 6.7 - BILLING AND TERMINATION PROCEDURES**

Licensee will comply with the regulations of the Division, 207 CMR 10.00 et. seq., as those regulations may be amended from time to time, and will inform all prospective subscribers of complete information about rates and charges for different levels of services and service calls, billing and collection procedures, procedures for ordering changes in or termination of services, and refund policies, before consummation of any agreement for installation of service.

#### **Section 6.8 - VOLUNTARY DISCONNECTION OF SERVICE**

Subscribers who request full disconnection of cable service shall not be responsible for further charges for such service upon actual termination of service or after seven (7) days notice to Licensee, whichever occurs first. Licensee shall make a good faith effort to disconnect service as soon as possible after requested to do so by a subscriber. A subscriber who requests full disconnection of cable service shall make a good faith effort to return all of his or her customer premises equipment to Licensee's local business location or any other reasonable location Licensee may designate.

#### **Section 6.9 - BILLING DISPUTES**

In the event of a bona fide billing dispute, Licensee will resolve each dispute within fifteen (15) working days of receiving notification from the subscriber. The subscriber shall be responsible for paying only that portion of the bill that is not in

dispute. In no event shall Licensee disconnect or assess a late payment charge from the subscriber for failure to pay bona fide disputed bills, or portions thereof, upon notice of said dispute.

#### **Section 6.10 - PROTECTION OF SUBSCRIBER PRIVACY**

(a) Licensee shall respect the rights of privacy of every subscriber and/or user of the Cable Communications System and shall not violate such rights through the use of any device or signal associated with the Cable System, and as hereafter provided.

(b) Licensee shall comply with all privacy provisions contained in this Section and all other applicable federal and state laws including, but not limited to, the provisions of Section 631 of the Cable Communications Policy Act of 1984 and Title 18 United States Code Section 2520.

(c) Licensee shall be responsible for carrying out and enforcing the Cable System's privacy policy, and shall at all times maintain adequate physical, technical and administrative security safeguards to ensure that personal subscriber information is handled and protected strictly in accordance with this policy.

(d) Licensee shall notify all third parties who offer cable services in conjunction with Licensee, or independently over the Cable System, of the subscriber privacy requirements contained in this License.

### **Section 6.11 - PRIVACY WRITTEN NOTICE**

Prior to the commencement of cable service to a new subscriber, and annually thereafter to all Cable System subscribers, Licensee shall provide a comprehensive and easily understandable written document explaining Licensee's practices regarding the collection, retention, uses, and dissemination of personal subscriber information, and describing Licensee's policy for the protection of subscriber privacy.

### **Section 6.12 - DISTRIBUTION OF SUBSCRIBER INFORMATION**

Licensee and its agents or employees shall not, without giving subscribers an opportunity to prevent disclosure, disclose to any third party a subscriber's name or address. Said opportunity to prevent disclosure shall be provided to each subscriber annually through a written notice. A subscriber shall have the right, at any time, to request Licensee not to disclose to any third party data identifying the subscriber either by name or address and Licensee shall abide by this request. Any such disclosure shall be in accordance with 47 U.S.C. 631.

### **Section 6.13 - POLLING BY CABLE**

No poll or other upstream response of a subscriber or user shall be conducted or obtained unless the program of which the upstream response is a part shall contain an explicit disclosure of the nature, purpose and prospective use of the results of the poll or upstream response, unless the program has an informational, educational function which is self evident. Licensee or its agents shall release the results of upstream response only in the aggregate and without individual references.

**Section 6.14 - INFORMATION WITH RESPECT TO VIEWING HABITS AND  
SUBSCRIPTION DECISIONS**

Licensee or its agents or its employees shall not make available to any third party, including the Town, information concerning the viewing habits or subscription package decisions of any individual subscriber except as required by law.

**Section 6.15 - SUBSCRIBER'S RIGHT TO INSPECT AND VERIFY  
INFORMATION**

(a) Licensee shall make available for inspection by a subscriber at a reasonable time and place all personal subscriber information that Licensee maintains regarding said subscriber.

(b) A subscriber may obtain from Licensee a copy of any or all of the personal subscriber information regarding him or her maintained by Licensee. Licensee may require a reasonable fee for making said copy.

(c) A subscriber or user may challenge the accuracy, completeness, retention, use or dissemination of any item of personal subscriber information. Such challenges and related inquiries about the handling of subscriber information, shall be directed to Licensee's General Manager.

**Section 6.16 - MONITORING**

Neither Licensee or its agents nor the Town or its agents shall tap or monitor, arrange for the tapping or monitoring, or permit any other person to tap or monitor, any

cable, line, signal, input device, or subscriber outlet or receiver for any purpose, without the prior written authorization of the affected subscriber or commercial use; provided, however, that Licensee may conduct system wide or individually addressed "sweeps" solely for the purpose of verifying system integrity, checking for illegal taps, controlling return-path transmission, or billing for pay cable services or pay-per-view. Licensee shall report to the affected parties and all appropriate authorities any instances of monitoring or tapping of the Cable Communications System, or any part thereof, of which it has knowledge, whether or not such activity has been authorized by Licensee. Licensee shall not record or retain any information transmitted between a subscriber or commercial use and any third party, except as required for lawful business purposes. Licensee shall destroy all subscriber information of a personal nature after a reasonable period of time except as authorized not to do so by the affected subscriber.

#### **Section 6.17 - EMPLOYEE IDENTIFICATION CARDS**

All of Licensee's employees, including repair and sales personnel, entering private property must have visible employee photo-identification card.

#### **Section 6.18 - TECHNICAL AND CUSTOMER SERVICE STAFF LEVELS**

Licensee will employ enough service technicians and customer service representatives to meet its obligations under this License.

#### **Section 6.19 - NON-DISCRIMINATION**

Licensee shall not discriminate against any person in its solicitation, service or access activities, if applicable, on the basis of race, color, creed, religion, ancestry, national origin, geographical location within the Town, sex, affectional preference, disability, age, marital status, or status with regard to public assistance. Licensee shall be

subject to all other requirements of federal and state regulations concerning non-discrimination.

**Section 6.20 - MUNICIPAL ACCESS TO LICENSEE'S SURVEY MATERIALS**

In the event the Licensee surveys the Harwich subscriber population to test for response to particular programming preferences, or for other reasons, it shall, upon request of the Issuing Authority share the results of its programming surveys so long as the Licensee does not consider the questions and/or the results proprietary.

**Section 6.21 B POST REBUILD REMARKETING**

Licensee shall use its best efforts to notify Harwich subscribers concerning new services, rates and any other benefits which might be derived from the rebuilt Cable system.

Specifically, Licensee shall insure that marketing materials make clear that subscribers may select from within all levels of service which it offers.

## **ARTICLE 7**

### **LICENSE ADMINISTRATION**

#### **Section 7.1 - REGULATORY AUTHORITY**

The Issuing Authority and/or its designee(s) shall be responsible for the day to day regulation of the Cable Communications System. The Issuing Authority shall monitor and enforce Licensee's compliance with the terms and conditions of this License. The Issuing Authority shall notify Licensee in writing of any instance of non-compliance and may direct that such non-compliance be corrected within thirty (30) days to the reasonable satisfaction of the Issuing Authority, unless a longer period is specified herein, or is mutually agreed upon by the Issuing Authority and Licensee.

#### **Section 7.2 - INDEMNIFICATION**

(a) The Licensee shall indemnify and hold the Town and its agents, harmless at all times during the term of this License from any and all claims alleged to be caused by Licensee's construction, installation, operation, or maintenance of any structure, equipment, wire or cable to be installed pursuant to the License or exercise of any of its rights under this License. Upon receipt of notice in writing from the Town, the Licensee shall at its own expense defend any such actions or proceedings. Indemnified expenses shall include without limitation, all out-of-pocket expenses, such as attorney's fees.

(b) In order for the Town to assert its rights to be indemnified, defended, or held harmless, the Town must:

- (1) promptly notify Licensee of any claim or legal proceeding which gives rise to such right;
- (2) the Town shall afford the Licensee the opportunity to participate in and fully control any compromise, settlement or other resolution or

disposition of such claim or proceeding, unless, however, the Town , in its sole discretion, determines that its interests cannot be represented in good faith by the Licensee and further acceptance of any non-monetary settlement or term involving injunctive relief or orders affecting the Town shall be subject to Town's consent; and

- (3) the Town shall fully cooperate with the reasonable requests of the Licensee in its participation in, and control, compromise, settlement or resolution or other disposition of such claim or proceeding subject to subparagraph (2) above.

### **Section 7.3 - INSURANCE**

(a) The Licensee shall carry insurance throughout the term of this License and any removal period pursuant to G.L.c. 166A, Section 5(f) with the Town as a named insured with an insurance company authorized to conduct business in Massachusetts satisfactory to the Issuing Authority indemnifying the Town and the Licensee from and against any and all claims for injury or damage to persons or property, both real and personal, caused by the construction, installation, operation, maintenance or removal of its Cable System or cable-related activity. The amount of such insurance against liability for damage to property shall be no less than One Million Dollars (\$1,000,000) as to any one occurrence. The amount of such insurance for liability for injury or death to any person shall be no less than One Million Dollars (\$1,000,000). The amount of such insurance for excess liability shall be Five Million Dollars (\$5,000,000) in umbrella form. Policy will contain a provision that the Issuing Authority will receive thirty (30) days written notice prior to any cancellation.

- (b) The Licensee shall carry insurance against all claims arising out of the operation of motor vehicles and general tort or contract liability in the amount



of One Million Dollars (\$1,000,000). Policy will contain a provision that the Issuing Authority will receive thirty (30) days written notice prior to any cancellation.

(c) All insurance coverage, including Workers' Compensation, shall be maintained throughout the period of this License. All expenses incurred for said insurance shall be at the sole expense of the Licensee. Policy will contain a provision that the Issuing Authority will receive thirty (30) days written notice prior to any cancellation.

(d) The Licensee shall provide Issuing Authority with certificate(s) of insurance for all policies required herein on an annual basis.

#### **Section 7.4 - PERFORMANCE BOND**

(a) The Licensee shall maintain at its own expense throughout the term of this License a faithful performance bond running to the Town , with at least one good and sufficient surety licensed to do business in the Commonwealth of Massachusetts and reasonable approval by the Town in the sum of One Hundred Thousand Dollars (\$100,000). When the Cable System upgrade is complete, the amount of the bond shall be reduced to the sum of Twenty-five Thousand Dollars (\$25,000). Said bond shall be conditioned that the Licensee shall well and truly observe, fulfill and perform each material term and condition of this License and that in case of any failure to comply with any term and/or condition contained herein, the amount thereof shall be recoverable from said performance bond by the Town for all amounts resulting from the failure of Licensee to comply with any provision in this License.

(b) The performance bond shall be effective throughout the term of this License including the time for removal of facilities provided for herein, and shall be conditioned that in the event that Licensee shall fail to comply with any one or more provisions of

this License, or to comply with any order, permit or direction of any department, agency, commission, board, division or office of the Town having jurisdiction over its acts, or to pay any claims, liens or taxes due the Town which arise by reason of the construction, upgrade, maintenance, operation or removal of the Cable Communications System, the Town shall recover from the surety of such bond all damages up to the limits insured by such bond, suffered by the Town as a result thereof, within thirty (30) days after a written request for same. Said condition shall be a continuing obligation of this License, and thereafter until Licensee has liquidated all of its obligations to the Town that may have arisen from the grant of this License or from the exercise of any privilege therein granted. Neither this Section, any bond accepted pursuant thereto, or any damages recovered thereunder shall limit the liability of Licensee under this License.

#### **Section 7.5 - SERVICE INTERRUPTIONS**

In the event that the Licensee's service to any subscriber is interrupted for twenty-four (24) or more consecutive hours, it will grant such subscriber a pro rata credit or rebate, on a daily basis, of that portion of the service charge during the next consecutive billing cycle, or apply such credit to any outstanding balance then currently due. In the instance of an individual subscriber service interruptions, credits shall be applied as described above after due notice to the Licensee from the subscriber.

#### **Section 7.6 - PERFORMANCE EVALUATION SESSIONS**

The Issuing Authority may at its discretion but not more than once a year, hold a performance evaluation session on or about the anniversary of the Effective Date of this License. All such evaluation sessions shall be open to the public. The purpose of said evaluation sessions shall be to, among other things, review Licensee's compliance to the terms and conditions of this License, and hear comments, suggestions or complaints from

the public. The Issuing Authority shall provide the Licensee with thirty (30) days, advance written notice of such performance evaluation session. The Issuing Authority shall have the right to question Licensee on any aspect concerning the construction, installation, operation or maintenance of the Cable Communications System. During review and evaluation by the Issuing Authority, Licensee shall fully cooperate with the Issuing Authority or its designee, and produce such documents or other materials as are reasonably requested by the Town and which are not considered proprietary by Licensee. Licensee shall notify its subscribers of all performance evaluation sessions by announcements on the Local Origination channel of its Cable System in the evening hours for at least five (5) consecutive days preceding each such session, provided that Licensee shall not be required to preempt its regularly scheduled access or Local Origination programming to air these announcements.

#### **Section 7.7 - NON-PERFORMANCE BY THE LICENSEE**

- (a) The payment of damages for violations under this License shall not be deemed to excuse the violation.
- (b) Failure of the Town to enforce the performance of any term of this License shall not be deemed a waiver of its right to insist upon the subsequent performance of that term.

#### **Section 7.8 - LICENSE FEE ENTITLEMENT**

- (a) Subject to applicable law, Licensee shall, on or before March 15th of each year, submit a license fee to the Issuing Authority as provided in Section 9 of Chapter 166A of the Massachusetts General Laws. The number of subscribers, for purposes of this Section, shall be calculated on the last day of each year.

(b) Should Massachusetts law be changed to permit the Town and/or the Commonwealth to collect a greater license fee than provided above the Issuing Authority may collect an additional license fee after forty-five (45) days notice to Licensee of its intent to do so; provided that Licensee shall not be liable for a total financial commitment pursuant to this License and applicable law including but not limited to state and federal license fees and franchise fees, and PEG Access operating expenses in excess of five percent (5%) of the Licensee's gross annual revenue.

#### **Section 7.9 - NOTICE OF COMPLAINT PROCEDURE**

Licensee shall periodically, and at various times of the day, present its business office and address and publicly listed telephone number by means of alphanumeric display on its Local Origination channel. Said notice shall inform subscribers of the procedures required to request service or register a complaint.

#### **Section 7.10 - SUBSCRIBER AND USER COMPLAINTS**

Licensee shall keep all written as well as a record of verbal complaints it receives on file in its local business office in accordance with applicable state regulations. Should state regulatory requirements for maintenance of complaint records be eliminated, then the Issuing Authority shall have the right to request Licensee to reasonably maintain records of written and verbal complaints which it receives. The Issuing Authority or its designee shall have the right to examine, review and copy said complaints at its own expense during Licensee's business hours upon reasonable notice.

#### **Section 7.11 - SUBSCRIBER COMPLAINT REPORT**

To the extent required by G.L.c. 166A, Section 10, and 207 CMR 7.03, Licensee shall notify the Issuing Authority, on forms prescribed by the Division, of complaints of subscribers received during the reporting period and the manner in which the complaints

have been met, including the time required to make any necessary repairs or adjustments. Licensee shall provide monthly reports of the same information upon the request of the Issuing Authority. Should the Division eliminate complaint reporting procedures, Licensee shall, in conjunction with the Issuing Authority, develop an acceptable form of complaint reporting.

#### **Section 7.12 - INDIVIDUAL COMPLAINT REPORTS**

Licensee shall, within ten (10) days after receiving a request therefore, send a written report to the Issuing Authority with respect to any complaint. Such report shall provide a full explanation of the investigation, finding(s) and corrective steps taken.

#### **Section 7.13 - INITIAL PERFORMANCE TESTS**

Initial proof of performance testing shall occur within sixty (60) days after the completion of the system upgrade. Said testing shall include performance testing of the Subscriber Network and the Institutional Network.. Should performance in either case prove defective, the defect shall be appropriately corrected and another proof of performance test shall be scheduled in a timely period. Upon written request, Licensee shall make available a copy of the tests for the Cable Advisory Committee. The costs of such tests shall be borne solely by Licensee.

#### **Section 7.14 - QUALITY OF SERVICE**

Where there exists credible evidence which, in the reasonable judgment of the Issuing Authority casts doubt upon the reliability or technical quality of cable service(s), after notice to Licensee and an opportunity to cure, the Issuing Authority shall have the right and authority to require Licensee to test, analyze and report on the performance of

the Cable System. Licensee shall fully cooperate with the Issuing Authority in performing such testing.

The Issuing Authority may require said tests/inspections be supervised by a mutually agreed upon professional cable television engineer, at terms satisfactory to both the Town and Licensee, who is not an employee or agent of the Licensee of the Town. Licensee shall pay for the costs of said engineer only if the tests performed show that Licensee is not in compliance with the standards set forth in Section 3.16 (Construction and Maintenance Standards) herein.

#### **Section 7.15 - SERVICE INTERRUPTION REPORT**

Licensee shall submit, on a form prescribed by the Division, a list of all significant service interruptions. Said report shall be submitted along with the Subscriber Complaint Report required in Section 7.10 (Subscriber and User Complaints) herein.

#### **Section 7.16 - FINANCIAL REPORTS**

Pursuant to G.L.c. 166A, Section 8, the Licensee shall file annually with the Division, on forms prescribed by the Division, a statement of its revenues and expenses for official use only. In addition, Licensee shall file annually with the Division and the Issuing Authority on forms prescribed by the Division, a financial balance sheet and statement of ownership which shall be open to public inspection. Such statements and balance sheets shall be sworn to by the person preparing same and by the Owner or Treasurer of the Licensee. In the event the Division no longer requires or provides forms for such reporting, the Licensee shall annually provide the financial information requested in a format reasonably approved the Issuing Authority.

#### **Section 7.17 - NUMBER OF SUBSCRIBERS**

Licensee shall file annually with the Issuing Authority a report containing the number of subscribers. Said report shall be filed with the Financial Reports required pursuant to Section 7.16 (Financial Reports) herein.

#### **Section 7.18 - LINE EXTENSION REPORT**

The Issuing Authority may require Licensee to submit a report detailing the areas in the Town in which the Cable System has been extended during said reporting period, the dates of said extensions and the number of households capable of receiving cable service(s).

#### **Section 7.19 - NON-EXCLUSIVITY OF REMEDY**

No decision by the Issuing Authority or the Town to invoke any remedy under this License or under any statute, law or ordinance shall preclude the availability of any other such remedy.

#### **Section 7.20 - REVOCATION OF LICENSE**

This License may be revoked by the Issuing Authority, to the extent permitted by law. Any such revocations of this License shall be ordered after a public hearing by the Issuing Authority subject to the appeals provisions of G.L.c. 166A, Section 4, or any other rights available to the Licensee.

#### **Section 7.21 - LETTER OF CREDIT**

(a) Upon a reasonable determination by the Issuing Authority that a material breach of this License has occurred, the Issuing Authority may require the Licensee to maintain, upon thirty (30) days notice from the Issuing Authority, at its own expense, an irrevocable documentary letter of

credit from a financial institution in the amount of ten thousand dollars (\$10,000). The form and content of such letter of credit shall be approved by the Issuing Authority, which approval shall not be unreasonably withheld. The letter of credit shall be used to insure the faithful performance by the Licensee of all material provisions of this License, and compliance with all material orders, permits and directions of any office of the Town having jurisdiction over the Licensee's acts of defaults under this license, and the payment by the Licensee of any claim, liens, fees or taxes due the Town which arise by reason of the construction, operation or maintenance of the Cable System.

(b) Withdrawals notwithstanding, the letter of credit shall be maintained during the term of this License in the amount of ten thousand dollars (\$10,000), (i.e., even if amounts have been withdrawn pursuant to subsection (a) or (c) of this section).

(b) Once the letter of credit is established, if the Licensee after thirty (30) days written notice fails to pay to the Issuing Authority any fees, taxes or penalties due and unpaid, or fails to repay the Issuing Authority within thirty (30) days of its written demand for any damages, costs or expenses that the Issuing Authority is compelled to pay by reason of any default of the Licensee in connection with this License; or, fails, after thirty (30) days written notice of such failure by the Issuing Authority, to comply with any material provision of this License or to effect a cure, the Issuing Authority may, in its discretion, withdraw funds from the letter of credit equal to damages created thereby as determined by the Issuing Authority upon the following conditions:

(1) The Issuing Authority must indicate in the correspondence by which it initially notifies the Licensee of the default for which damages are sought



that failure to cure the act or omission within thirty (30) days, or such longer period as is reasonably required, may result in a withdrawal from the letter of credit. In this correspondence, the Issuing Authority shall also indicate the basis upon which it believes the Licensee is in default.

- (2) Upon the expiration of said thirty (30) day period, the Issuing Authority must provide written notice to the Licensee of the amount to be withdrawn and specify the reasons such amount is due. Such notice shall also provide that at Licensee's request, a public hearing will be held by the Issuing Authority prior to the withdrawal of any assessment of damages. At such hearing the Licensee may present testimony or evidence as to why damages should not be assessed. After the conclusion of said hearing, the Issuing Authority shall issue a public statement as to its decision to assess or not to assess damages. A request by the Licensee for a public hearing on whether damages should be assessed shall stay the Issuing Authority's right to withdraw from the letter of credit.

- (c) Any decision of the Issuing Authority to assess damages under the letter of credit may be appealed to any court of competent jurisdiction. Any such appeal of the Issuing Authority's decision shall not result in a mandatory stay of the Issuing Authority's right to withdraw from the letter of credit, unless ordered by the court.

- (d) The rights reserved to the Issuing Authority with respect to the letter of credit are in addition to all other rights of the Issuing Authority, whether reserved by this License or authorized by law, and no action, proceeding or exercise of a right with respect to such letter of credit shall affect any other right the Issuing Authority may have.



## **ARTICLE 8**

### **GENERAL PROVISIONS**

#### **Section 8.1 - LICENSE AS CONTRACT UNDER SEAL**

Upon its execution by the Issuing Authority and Licensee this License shall be deemed to constitute a contract under seal by and between Licensee, on the one hand, and the Town of Harwich, on the other hand.

#### **Section 8.2 - ENTIRE AGREEMENT**

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

#### **Section 8.3 - CAPTIONS**

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

#### **Section 8.4 - SEVERABILITY**

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

## **Section 8.5 - FORCE MAJEURE**

If for any reason of force majeure either party is unable in whole or in part to carry out its obligations hereunder, said party shall not be deemed in violation or default during the continuance of such inability. Unless further limited elsewhere in this License, the term "force majeure" as used herein shall have the following meaning: strikes; acts of God; acts of public enemies, orders of any kind of the government of the United States of America or of the Commonwealth of Massachusetts or any of their departments, agencies, political subdivisions, or officials, or any civil or military authority; insurrections; riots, epidemics; landslides; lightning; earthquakes; fires, hurricanes; volcanic activity; storms; floods; washouts; droughts; arrests; civil disturbances; explosions; partial or entire failure of utilities; or any other cause or event not reasonably within the control of the disabled party.

## **Section 8.6 - NOTICES**

Every notice to be served upon the Issuing Authority shall be delivered or sent by certified mail (postage prepaid) to Attn: Board of Selectmen, Town of Harwich, Town Hall, 732 Main Street, Harwich, MA 02645 or such other address as the Issuing Authority may specify in writing to the Licensee. Every notice served upon the Licensee shall be delivered or sent by certified mail (postage prepaid) to Attn: Director of Government Affairs, MediaOne, 6 Campanelli Drive, Harwich, MA 01810-1095 with a copy to Attn: Corporate Counsel, MediaOne, 6 Campanelli Drive, Andover, MA 01810-1095, or such other address as the Licensee may specify in writing to the Issuing Authority. The delivery shall be equivalent to direct personal notice, direction or order, and shall be deemed to have been given at the time of mailing or receipt.

#### **Section 8.7 - REMOVAL OF ANTENNAS**

Licensee shall not remove any television antenna of any subscriber but shall, offer to said subscriber and maintain an adequate switching device to allow said subscriber to choose between cable and non-cable television reception.

#### **Section 8.8 - SUBSCRIBER TELEVISION SETS**

To the extent prohibited by law, Licensee shall not engage directly or indirectly in the business of selling or repairing television or radio sets; provided, however, that Licensee may make adjustments to television sets in the course of normal maintenance.

#### **Section 8.9 - COST OF PUBLICATION**

Licensee shall, upon request of the Issuing Authority within thirty (30) days of the execution of this License, print and distribute, a maximum of twenty-five (25) copies of the License.

#### **Section 8.10 - JURISDICTION**

Exclusive jurisdiction and venue over and dispute or judgment rendered pursuant to any Article herein shall be in a court of appropriate venue and subject matter jurisdiction located in the Commonwealth of Massachusetts, or upon appeal, other competent court or agency, and the parties by this instrument subject themselves to the personal jurisdiction of said court for the entry of any such judgment and for the resolution of any dispute, action, or suit arising in connection with the entry of such judgment.

#### **Section 8.11 MANAGEMENT CHANGES**

License shall, periodically and no less than annually, upon request of the Issuing Authority, provide up-to-date maps of its technical plant within the Town of Harwich, as well, as up-to-date organizational charts depicting Licensee's management personnel. In addition, upon request of the Issuing Authority, Licensee shall provide up-to-date lists of Cape Cod area management personnel and their local telephone numbers.

WITNESS OUR HANDS AND OFFICIAL SEALS, THIS \_\_\_\_\_ DAY OF  
\_\_\_\_\_, 19\_\_\_\_.

**Approved as to form:**

**TOWN OF HARWICH**

**By:**

\_\_\_\_\_  
\_\_\_\_\_  
**Howard E. Horton, Esq.**  
**for the Town of Harwich**

**Sandra B. Daniels, Chairman**

\_\_\_\_\_

**Dana A. DeCosta, Selectman**

\_\_\_\_\_

**Peter S. Hughes, Selectman**

\_\_\_\_\_

**Peter J. Luddy, Selectman**

\_\_\_\_\_

**Cyd Zeigler, Selectman**

**by:**

**This License is hereby Accepted**

**MASSACHUSETTS, INC.**

**MEDIAONE OF**

\_\_\_\_\_

**Russell H. Stephens**  
**Senior Vice President**  
**Northeast Region**

**Schedule 3.1**

**Service Area**



### **Schedule 3.4**

### **I-Net Locations**

**Schedule 3.4(f)**

**I-Net Hub-Site Criteria**

## **Schedule 4.1**

### **Initial Rates**

**Schedule 4.4**

**Initial Programming Line-Up**

**SCHEDULE 5.1**  
**AGREEMENT BETWEEN**  
**CAPE COD COMMUNITY TELEVISION CORPORATION**  
**MEDIAONE**  
**and**  
**TOWN OF HARWICH**  
**ARTICLE I DEFINITIONS**

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

1. "Access Corporation" means Cape Cod Community Television Corporation, which represents and warrants it is the nonprofit, tax exempt eligible corporation designated by the Issuing Authority to manage and operate public access in the Town pursuant to 47 U.S.C. 531.

2. "Access Programming" means programs on the public access channels. It must be noncommercial within the standards for underwriting applicable to the Public Broadcasting Service (PBS) or the standards necessary to maintain its tax exempt status within the applicable regulations of the Internal Revenue Service and excludes political campaigning.

3. "Cable Advisory Committee" means the Cable Advisory Committee as designated and authorized by the Issuing Authority, if any, to be responsible for cable television regulation and municipal uses of cable television in the Town of Harwich.
4. "Cable License" or "License" means the agreement effective on August 24, 1998 between the Town of Harwich and MediaOne, authorizing MediaOne to construct, own, operate and maintain a cable television system in the Town of Harwich.
5. "Channel" means a band of frequencies in the electromagnetic spectrum, or any other means of transmission (including without limitation, optical fibers or any other means new available or that may become available), which is capable of carrying a composite video signal.
6. "Commercial Program" means programming from which revenue is derived, by any party, and programming the purpose of which is to conduct trade or commerce. It shall not include programming supported by underwriting grants or contributions of any kind.
7. "Downstream Channel" means a channel over which signals travel from the system headend to an authorized location within the system.
8. "Institutional Network" means the portion of the cable television system, separate from the subscriber network, designed to deliver and receive programming or other services to or from the Licensee and on the Network.
9. "Issuing Authority" The Board of Selectmen of Harwich executing this Agreement, as it is a part of the License incorporated therein.

10. "Licensee" MediaOne , or its authorized transferee.

11. "Political Campaigning" means programs which, in whole or in part, promote political candidates during their election campaigns. It shall not include programs which in whole or in part, provide equal opportunities for all political candidates campaigning for a particular office, nor shall it include bona fide newscasts interviews, news documentaries, or on-the-spot coverage of news events.

12. "Public Access" means channel space and time as well as production and post-production equipment, facilities and training available free of charge to any person living in Harwich or working for an organization in Harwich, on a first come, first-served, nondiscriminatory basis.

13. "Public Access Facility" means the location from which the Access Corporation may operate the public access function.

14. "Public Institution" means any government institution or other not-for-profit institution organized and located in the Town of Harwich.

15. "Upstream Channel" means a channel over which signals travel from an authorized location to the cable system headend.

## **ARTICLE II OBLIGATIONS OF LICENSEE**

### **Section 1 Annual Operating Funds: Schedule of Payments: Capital Funds**

License shall provide the Access Corporation with annual operating grants and Capital Funds in accordance with the License.

These annual funds shall be used by the Access Corporation for salaries, operating and other expenses connected with public access programming and operations.

### **Section 2 Public Access Facility**

Licensee shall provide origination capability to the Public Access Facility such that programs may be transmitted upstream to the Headend and then downstream on the access channels on the subscriber network.

### **Section 3 System Design**

Licensee shall maintain headend switching equipment to process the upstream signals from the Public Access Facility and to place such signals on the designated access cable channels. Other than this automatic switching, Licensee shall not have further switching obligations. The Access Corporation will, however, be responsible for scheduling and transmitting public access programming on these channels. Licensee shall not be responsible for the quality of the upstream channel prior to origination.

### **Section 4 System Maintenance of Channels**

Licensee shall monitor the downstream public access channel(s) for technical quality and shall ensure that they are maintained at standards commensurate with those which apply to the cable system's commercial channels; provided, however, that this section shall not require Licensee to guarantee the technical quality of access users' productions.



**Section 4 (a) Public Access Channel(s)**

Licensee shall provide one dedicated channel to the Access Corporation for use on the subscriber network. If Licensee upgrades its cable plant to 1 GHZ or greater of capacity, and if such channel, over a period for one year, is programmed with locally produced, non-duplicative, non-alpha numeric video programming, 90% of the time between the hours of 10 AM and 10 PM on weekdays, and 9:00 AM B 5:00 PM on Saturdays, Licensee shall provide an additional channel on the subscriber network to the Access Corporation.

**Section 5 Access Information for Subscribers**

Upon four months notice, Licensee shall insert in its monthly billing statements to Harwich subscribers one page of promotional public access announcements at least one time per year, at a time to be determined by Licensee providing that the announcements are delivered to Licensee by the Access Corporation on a timely basis. This material shall be prepared and printed by the Access Corporation at its own expense; and Access Corporation shall bear full responsibility and liability for the contents of said announcements. Any additional postage which may be required to mail said billing statements as a result of the insert, shall be the sole financial responsibility of the Access Corporation.

### **ARTICLE III OBLIGATIONS OF THE ACCESS CORPORATION**

#### **Section 1 Public Access Use: Operating Rules and Procedures**

The Access Corporation shall be solely responsible for the management and operation of Public Access and public access programming on the cable system in the Town of Harwich, including training, quality of originated signals, (except as described in Section II.4) scheduling the public access channels and managing the access facilities, equipment, acquisition and maintenance in the Public Access Facility. The Access Corporation shall, within six (6) months following the execution of this agreement, promulgate a set a access operating rules and procedures which ensure that training, equipment, facilities and access channel time be available to residents of or any organizations serving the Town of Harwich. These rules shall ensure the right to use designated channels, facilities and equipment on a nondiscriminatory, first-come, first-served basis subject to the terms of this agreement and subject also to Access Corporation's goal of establishing regularity in programming. Access user compliance with such rules shall be monitored by the Access Corporation. The Access Corporation shall furnish a copy of such rules to the Licensee within thirty (30) days of their adoption and shall provide Licensee with amendments to such rules throughout the term of this Agreement.

#### **Section 2 Programming**

Editorial discretion and the content of programming and the liability therefor placed on the access channels operated by the Access Corporation shall solely reside in and be the sole responsibility of the Access Corporation. Notwithstanding the foregoing, the Access Corporation programming shall be designed to achieve the purposes set forth in the Access Corporation's Articles of Incorporation and Bylaws and shall consist of Access Programming as defined in the License and the Access Corporation shall avoid competition on a subsidized bases with Licensee.

To these ends:

- a. The Access Corporation shall not sell to a third party any proprietary interest that the Access Corporation may have in any programming without first offering licensee the exclusive right to purchase such interest by matching the best good-faith offer tendered in writing by the third party;
- b. All liability, license and copyright fees associated with the programming produced by the Access Corporation or placed on the access channel shall be the sole responsibility of the Access Corporation.

### **Section 3 Coverage of Regional News and Events**

Upon request of the Issuing Authority, the Access Corporation shall reasonably cover events and issues of a regional nature.

### **Section 4 Logs**

The Access Corporation shall keep a log of all access programming transmitted on the public access channels and the names and addresses of all access producers. The logs will be available for public inspection and retained for no less than two years.

### **Section 5 Indemnification**

The Access Corporation shall indemnify and hold harmless the Licensee and shall, in its rules for public access, require every access user to indemnify both Licensee and the Access Corporation and hold each of them harmless against any claims arising out of any program or program material produced and/or cablecast, including but not limited to claims in the nature of libel, slander, invasion of privacy or publicity rights, noncompliance with applicable laws, license fees and unauthorized use of copyrighted material.

## **Section 6 Insurance**

- a. The Access Corporation shall carry insurance indemnifying Licensee, the Town of Harwich and itself from and against any and all claims and liability for injury or damage to persons or property due to risk or peril caused by the use of access equipment or facilities managed by the Access Corporation, and shall name both Licensee and the Town of Harwich additional insureds. Such insurance shall not be less than five hundred thousand dollars (\$500,000.00) for bodily injury or death to any one person or property damage resulting from any one occurrence. The Access Corporation shall insure all public access equipment for theft, loss and damage.
- b. The insurance policy required under paragraph (a) above shall contain the following endorsement: It is hereby understood and agreed that this policy shall not be canceled or materially changed until thirty (30) days after receipt by the Town and Licensee, by certified mail, of one (1) copy of a written notice of such intent.

## **Section 7 Informational and Annual Reports**

The Access Corporation shall provide an annual report of its finances and operations to its members, the Harwich Cable Advisory Committee, the Issuing Authority and Licensee by April 15 for the previous calendar year. At any time during the term of this Agreement, upon the reasonable request of the Town or the Licensee, the Access Corporation shall provide such further information as may be reasonably requested to document the expenditure of funds in the performance of the Access Corporation pursuant to this agreement. The Access Corporation shall, at the discretion of the Issuing Authority, participate in performance evaluation sessions concerning its compliance with the terms and conditions of this Agreement.

## **Section 8 Maintenance of Equipment**

The Access Corporation shall maintain its equipment to insure the reasonable technical quality of its origination signals and to insure reasonable quality of production equipment used by public access users in production of programs.

## **Section 9 Board Expansion**

Within ninety (90) days of the execution of this Agreement, The Access Corporation shall amend its By-Laws to allow for a member of its Board of Directors to be appointed by the Issuing Authority.

## **ARTICLE IV TOWN OF HARWICH**

### **Section 1 Designation of Access Corporation Under the License**

The Town of Harwich, through its Issuing Authority, shall maintain the designation of Cape Cod Community Television Corporation as the Access Corporation throughout the term of the License. Should Cape Cod Community Television substantially breach its obligation under the materials terms of this Agreement, then, after notice and an opportunity to cure, the Issuing Authority and the Licensee, shall have the right to agree upon a new organization to receive the designation as Access Corporation. In no event shall Licensee be designated as the Access Corporation, nor shall it have the responsibility to provide public access services during any period in which a replacement Access Corporation has not been designated by the Issuing Authority. Pursuant to M.G.L. Chapter 166A and applicable federal law, the Issuing Authority has entered into this Agreement (Schedule 5.1 of the License) in its capacity of carrying out its cable licensing obligations and its participation in this Agreement is derived from and confined to such obligations.

## **ARTICLE V TERMINATION**

### **Section 1 Termination**

This agreement shall terminate on the earliest date of either the expiration of the current License; or the adjudication of the bankruptcy of the Access Corporation; or such time as the Access Corporation ceases to be a nonprofit corporation under the laws of the Commonwealth of Massachusetts; or at such time as Licensee and the Town of Harwich institute a license amendment removing the Access Corporation's designation as having sole responsibility for public access under the License, pursuant to Article IV Section 1 of this Agreement, or at such time as this License is amended pursuant to Article II Section 2.6 of License.

### **Section 2 Termination by License Amendment**

Should this Agreement be terminated as a result of an amendatory action of the License by Licensee and the Town of Harwich, all equipment acquired through the Capital Funds made available through the Licensee shall be deeded to either Licensee or a newly designated Access Corporation, at the Issuing Authority's direction, within ninety (90) days of termination of this Agreement.

Agreed to this \_\_\_\_\_ of \_\_\_\_\_, 1998

**Town of Harwich  
By:**

\_\_\_\_\_  
\_\_\_\_\_  
**Chairman  
MediaOne By**

**Sandra B. Daniels,**

\_\_\_\_\_  
**Selectman**  
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**Dana A. DeCosta,**

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**Peter S. Hughes, Selectman**

**Access Corporation**

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**Peter J. Luddy, Selectman**

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**Cyd Zeigler, Selectman**



**Schedule 5.7**  
**Library Program**

**Schedule 6.3**

**FCC Customer Service Regulations**

**Schedule 6.5**  
**Customer Equipment Notice**