

**CABLE TELEVISION
FINAL LICENSE**

**GRANTED TO
RCN-BECOCOM, L.L.C.**

MARCH 9, 1999

**BOARD OF SELECTMAN
TOWN OF WAKEFIELD
MASSACHUSETTS**

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LICENSE PROVISION

1. **Grant of License.**

The Board of Selectmen of the Town of Wakefield, Massachusetts (the “Issuing Authority”) hereby grants to RCN-BecoCom, L.L.C. (the “Licensee”) a license to construct, own, operate, extend and maintain a cable television and cable communications system (the “License”) within the Town of Wakefield (the “Town”). This License is granted pursuant to applicable state and federal law, and incorporates the present terms of such law and such terms as they are amended from time to time during the License term.

2. **Non-Exclusivity of License.**

(a) This License is non-exclusive.

(b) To the extent allowed by applicable law(s), any additional cable television license(s) shall be granted in the form and substance of this License. This paragraph shall be subject to specific performance.

(c) In the event Licensee reports to the Issuing Authority that it is at a competitive disadvantage as a result of a competing multi-channel video programmer operating in the Town, not currently required to be licensed by the Issuing Authority, the Issuing Authority and the Licensee agree that 47 U.S.C. § 545 will be applicable. Among other factors, the Issuing Authority will consider the nature and extent of any such competitive disadvantage in assessing a request for modification from the Licensee pursuant to such provision. The Issuing Authority and the Licensee agree that the specific kinds of potential competing multi-channel video programmer(s) or the terms and

conditions of any such potential competition that may occur, are unforeseeable as of the date of the execution of this License.

3. **System Technology.**

(a) The Licensee shall have a period of eighteen (18) months in which to construct a modern residential cable television system with a capacity of not less than 750 megahertz and an additional three (3) months to offer cable service to any residential dwelling in the Town (the "System"). Said period shall commence when all necessary permits and approvals are granted by the Wakefield Municipal Light Plant which shall be expeditiously sought by the Licensee.

(b) The Licensee's System or separate institutional network (the "I-Net") shall be capable of transmitting to the Town, audio, video and data to the sites listed in Exhibit 1. The designation of these sites may be reasonably changed by the Issuing Authority prior to construction. Additional sites will be added, at a cost with a reasonable rate of return, upon the request of the Issuing Authority. Licensee shall designate six (6) upstream and six (6) downstream channels on the I-Net for use by the Town or its designee. Any use by the Town of the I-Net or subscriber network ("Subscriber Network") for audio, video or data transmission shall be for non-commercial educational and governmental purposes and public, educational and governmental access programming. Except with the written permission of the Licensee, such transmission facilities may not be used to transmit or receive any form of communication (whether audio, video, data, voice or otherwise) that the Licensee is, or becomes, in the business of transmitting, nor extended to additional sites.

(c) The Licensee's System shall provide capacity for cable services interconnected with cable television systems in towns abutting the Town and meeting the following criteria: (1) where the costs of such interconnection are commercially reasonable and Licensee's costs of such interconnection may be passed through to subscribers according to applicable law; and (2) where such other system is: (a) obligated by local issuing authorities to provide equivalent interconnection; (b) agrees to share equitably the costs of such interconnection; and (c) each system is technically capable of interconnection with the other.

(d) To the extent consistent with federal law, the Licensee's System shall have an emergency audio alert override system available to public safety officials responsible for emergency communications.

4. **Public, Educational and Governmental Access Programming.**

To further the goals of public, educational and governmental access ("PEG Access") programming as defined in accordance with federal law, the Licensee shall:

(a) enter into an agreement with Wakefield Community Access Television ("WCAT"), or its successor, substantially in the form attached as Exhibit 2;

(b) pay into a restricted municipal grant account the following aggregate amounts upon the following schedule, subject to legal limits on the amount of franchise fees and in lieu of any franchise fees due to the Town pursuant to Massachusetts law:

(1) A payment of \$300,000 to be paid as follows:

(i) \$60,000.00 to be paid by Licensee upon the completion of construction of the System; and

(ii) \$60,000.00 to be paid by Licensee each year thereafter on the anniversary date of the initial payment until paid in full.

At the time of the execution of this License, Licensee and the Issuing Authority agree that the \$300,000.00 scheduled capital funding commitment for public, education, and government access programming (“PEG”) is significantly more burdensome to the Licensee than the funding commitment required of the cable operator under a predecessor renewal license granted on June 22, 1997. The determination of a more burdensome commitment is made by taking into consideration the time value of money and assessing Licensee’s PEG capital commitment as a percentage of the projected aggregated gross revenues to be derived under this License, as compared with the PEG capital commitment of the incumbent cable operator as a percentage of projected aggregated gross revenues under its predecessor license.

Although the funding commitment of the Licensee is projected to be significantly more burdensome on this comparative basis, Licensee agrees that this is a minimum commitment. Furthermore, in the event that, based upon the actual aggregated gross revenues earned by Licensee, its PEG capital commitment of \$300,000.00 taking into account the time value of money at current prime + 2 percent is, upon a review to be undertaken annually, is at any time less of a burden than that of the incumbent cable operator under such Operator’s predecessor license relative to its actual gross aggregate revenues, then Licensee shall either increase its PEG capital commitment or accelerate its schedule of payments such that it has a PEG capital commitment equal to that of the incumbent cable operator when such commitment is expressed as a ratio of the PEG capital funding to aggregated gross revenue actually earned.

(c) On or before March 1 of each year, a payment representing 4.5% of its annual gross revenues for operating funds, from the provision of cable television services in the preceding calendar year.

(d) In the event that this License is not renewed or that the Licensee is no longer required by law to obtain a license from the Issuing Authority after the expiration date of this License, then, within 30 days after such date, the Licensee shall pay 4.5% of its gross revenue from January 1 of the year in which the License expires through the expiration date.

(e) The foregoing payments are subject to the provision that all PEG Access programming produced in the Town with said funding shall be cablecast exclusively on one or more of the PEG channels on the Licensee's System in the Town unless permission otherwise is granted in writing by the Licensee, except that PEG Access programming produced in the Town may be made available to any other providers of video programming in the Town if such providers are obligated to pay into a restricted municipal grant account capital and operating grants equivalent to the foregoing.

(f) The Licensee shall make available a total of three (3) downstream channels on the Subscriber Network for PEG Access use by the Wakefield Public Schools, WCAT or its successors, and the Town, respectively. Licensee shall use its best efforts to carry the PEG channels on the same channel assignments as they are currently carried at the present time.

(g) For purposes of this section, the term "gross revenues" shall mean consideration in any form or kind derived by the Licensee for the provision of cable services over the System within the Town including, without limitation, the distribution of

any cable service over the System, the provision of any service-related activity in connection with the operation of the System, basic service monthly fees, all other service fees, installation, reconnection, downgrade, upgrade and any similar fees, fees paid for channels designated for commercial use, converter and remote control rentals, leases or sales and advertising and home shopping revenues. Gross revenues shall not include: (1) any taxes on services furnished by the Licensee which are imposed upon any subscriber or use (as opposed to Licensee) by the Commonwealth of Massachusetts, Town or other governmental unit and collected by the Licensee on behalf of said governmental unit; (2) franchise fees paid by Licensee to the FCC, the State or the Town collected from subscribers unless otherwise allowed by applicable law; (3) programming revenues of any affiliate whose programming is carried on the System when such revenues are paid to said affiliate by the Licensee and recovered by the Licensee through charges to subscribers that are included in Gross Revenues; (4) to the extent consistent with generally accepted accounting principles (“GAAP”), adjustments to cash receipts and non-operating cash receipt for bad debts, refunds, credit adjustments, returned checks and asset sales when such sales do not occur in the ordinary course of business; and (5) revenues of any affiliate from the sale of merchandise or non-cable television or non-cable communications services, including subscriptions to periodicals, as a result of or due to advertising on the System.

5. **Local Business Office.**

Licensee shall establish a convenient bill payment site(s) as an alternative to maintaining a local business office. Licensee intends to provide customer service support through its Boston, Massachusetts and Dallas, Pennsylvania offices.

6. **Indemnification**

(a) 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 directly by or arising under 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 including the grant of this License by the Town. 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) 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 reasonable discretion, determines that in 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) 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.

7. **Performance Bond.**

The performance bond required by M.G.L. ch. 166A section 5(k) shall be in the amount of \$100,000.00, which may be reduced to \$10,000.00 upon completion of the System construction required by Section 3(a) or (b).

8. **Determination of Breach.**

(a) In the event that the Issuing Authority has reason to believe that the Licensee has defaulted in the performance of any provisions of this License, except as excused by an event of force majeure (as hereinafter defined in paragraph (d) of this provision) or other events beyond the reasonable control of the Licensee, the Issuing Authority shall notify the Licensee in writing, by certified mail, of the grounds for such belief. The Licensee shall have thirty (30) days from the receipt of such notice to:

1. contest in writing the Issuing Authority's assertion of default and provide evidence to support the Licensee's position; or
2. cure any such default and provide written evidence of such cure; or, in the event that such default is not capable of being cured within such 30 day period, take reasonable steps to cure and diligently continue such efforts until said cure is complete and report to the Issuing Authority in writing by certified mail,

at 14 day intervals as to the steps taken to cure said default and the progress of said cure.

(b) In the event that the Licensee fails to make a timely response as provided above, the Issuing Authority shall promptly schedule a public hearing no sooner than 14 days after written notice has been sent by certified mail, to the Licensee. The Licensee shall be provided reasonable opportunity to offer evidence and be heard at such hearing. Within 30 days after such hearing, the Issuing Authority shall issue a written decision.

(c) In the event the Issuing Authority determines after hearing that the Licensee is in default, the Issuing Authority may determine to pursue any lawful remedy available to it.

(d) 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; lightening; earthquakes; fires, hurricanes; volcanic activity; storms; floods; washouts; droughts; arrests; civil disturbances; explosions; partial or entire failure of utilities; or any other similar cause or event not reasonably within Licensee’s control, which shall include the failure to perform the timely performance of walk-out, make-ready and location of aerial plant and underground utilities by all utilities and cable companies despite the best efforts of the Licensee.

9. **Letter of Credit.**

(a) In the event the Licensee: (1) does not have a sufficient record from which the Issuing Authority is reasonably capable of judging the Licensee's performance under prior cable television licenses or (2) is found to be in default pursuant to the foregoing section, the Issuing Authority may, at its discretion, require the Licensee to furnish an irrevocable letter of credit (the "Letter") in the amount of \$10,000.00 in favor of the Issuing Authority. Such Letter shall be in form reasonably acceptable to the Issuing Authority and shall secure the faithful compliance by the Licensee with this License and applicable law and the payment by the Licensee of any amounts due to the Town arising from the construction or operation of its System.

(b) Within ten (10) days after any withdrawal against such Letter, the Licensee shall renew the letter to the full amount of \$10,000.00.

10. **Proceedings Upon Expiration or Revocation of License.**

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, the Issuing Authority and the Licensee shall implement the provisions of 47 U.S.C. §547 by transferring the System to the Town or a subsequent licensee in accordance with such provision.

11. **Term.**

This License shall be in effect for a period of ten (10) years from the date of issue.

TOWN OF WAKEFIELD
BY THE BOARD OF SELECTMEN

Wayne M. Tarr, Chairman

Kevin T. Haggerty

Peter G. Melanson

Linda A. Swain

John B. Encarnacao

RCN-BECOCOM, L.L.C.

By: _____
Michael J. Mahoney
Title: President and Chief Operating Officer

WAKEFIELD COMMUNITY ACCESS
TELEVISION

By: _____
Title: _____

Exhibit 1

I-Net Drops and Outlets

<u>Building</u>	<u>Address</u>
WCATV	30 Converse Street
Greenwood Fire Station	37 Crescent Street
Police Headquarters	5 Oak Street
Woodville School	1 Union Street
Montrose School	30 Farm Street
Jr. High School	531 Main Street
Greenwood School	525 Main Street
Dobears School	1030 Main Street
Yeuell School	340 Lowell Street
Walton School	18 Davidson Road
High School	60 Farm Street
High School Softball Field	
Doyle School	11 Paul Avenue
Atwell School	525 Main Street
Lake Quannapowitt	Lake Avenue/Church Street
Main Library	Main Street
Little Red School House	39 Prospect Street
St. Joseph School	15 Gould Street
Town Hall	1 Lafayette Street
Franklin School	Franklin Street
Northeast Regional Vocational	Nahant Street
Nazareth Academy	Jordan Avenue
Newbury Junior College Extension	
Lincoln School/Senior Center	Otis Street
Fisher Junior College Extension	Jordan Avenue
American Civic Center	Armory Street
Beebe Library	Avon Street

Additional Sites:

Melrose/Wakefield Hospital

EXHIBIT 2

Agreement By and Among

Wakefield Community Access Television (“WCAT”)

RCN-BecoCom, L.L.C. (“Licensee”)

and

Town of Wakefield Board of Selectman (“Issuing Authority”)

(the “Agreement”)

Section 1 Organization and Authority

WCAT shall be organized as a non-profit corporation in accordance with the General Laws of Massachusetts, as amended. WCAT shall direct its activities to the development and promotion of public access (“Access”) programming as defined in accordance with federal law.

Section 2 Capital Funds and Annual Operating Funds: Schedule of Payments

(a) To further the goals of Access programming, the Licensee shall pay into a restricted municipal grant account the following aggregate amounts, subject to legal limits on the amount of franchise fees:

(1) For capital and unrestricted cable-related expenditures, a one-time payment of \$300,000 to be paid as follows: (i) \$60,000.00 to be paid by Licensee upon the completion of construction of the System; and (ii) \$60,000.00 to be paid by Licensee each year thereafter until paid in full.

(2) For operating funds, annually on or before March 1, 4.5% of its annual gross revenues from the provision of cable television services in the preceding calendar year, except that in the event that its License is not renewed or that the Licensee is no longer required by law to obtain a License from the Issuing Authority after the expiration date of this current License then, within 30 days after such date, the Licensee shall pay 4.5% of its gross revenues from January 1, of the year in which the License expires through the expiration date. For purposes of this section, the term “gross revenues” shall have the meaning given it in the Non-Discretionary Cable Television License dated _____, 1998 between the Issuing Authority and Licensee.

(b) The Issuing Authority shall be responsible for the allocation of the funds in the restricted municipal grant account. The Licensee's obligations shall be satisfied by payment of the aggregate amounts specified in subsection (a) above.

(c) Any payments to WCAT shall be used only to support the operation and utilization of Access programming on the Wakefield Access channels and may include, but is not limited to, such items as equipment, salaries of personnel associated with Access programming, rent, telephone and other reasonable administrative costs.

Section 3 **Channel Capacity**

The Issuing Authority shall make available to WCAT one downstream channel on the subscriber network and two (2) upstream channels on the I-Net for public access use.

Section 4 **System Maintenance of Access Channels**

The Licensee shall monitor the public access channels for technical quality and shall ensure that it is maintained at standards commensurate with those applicable to the Licensee's commercial channels in the Town of Wakefield; provided, however, that nothing in this section guarantees the technical quality of access users' production. The operation of the channels provided to WCAT pursuant to this Agreement and the operation and maintenance of the equipment acquired by WCAT shall be its sole responsibility.

Section 5 **Public Access Use: Operation Rules and Procedures**

WCAT shall be solely responsible for the management and operation of Access programming on the cable system in the Town, including training, quality of originated signals, scheduling the Access channels and managing the Access facilities and equipment. WCAT shall, within six (6) months following the execution of this Agreement, promulgate a set of access operating rules and procedures which ensure that training, equipment, facilities and access channel time available to Wakefield residents, institutions, educational organizations, and the municipal government servicing the Town. These rules shall ensure the right to use the designated channels, facilities and equipment on a non-discriminatory, first-come, first-served basis subject to the terms of this Agreement. Access user compliance with such rules shall be monitored by WCAT and periodically reviewed by the Issuing Authority.

Section 6 **Coverage of Local Meetings**

WCAT shall be solely responsible for providing live coverage of regularly scheduled Board of Selectmen and School Committee meetings. Upon reasonable notice from the Issuing Authority, WCAT shall also provide coverage of special meetings of the Board of Selectmen and School Committee meetings to the extent that WCAT shall also

provide coverage of Town Meetings. Under no circumstances shall Licensee be required to provide coverage of local meetings.

Section 7 **Indemnification**

WCAT shall at its sole cost and expense indemnify and hold harmless the Licensee against any and all claims or judgments on the property of WCAT. WCAT shall, in its rules for Access use, require every access user to indemnify both the Licensee and WCAT 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, obscenity or indecency, non-compliance with applicable laws, license fees and unauthorized use of copyrighted material.

Section 8 **Insurance**

(a) WCAT shall carry insurance indemnifying the Licensee, the Town of Wakefield, their officers, agents, 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 WCAT and shall name both Licensee and the Town of Wakefield as additional insured. Such insurance coverage shall not be less than one million dollars (\$1,000,000.00) for personal injury or death to any one person or property damage resulting from any one occurrence. WCAT shall ensure its equipment for theft, loss and damage.

(b) The insurance policy required under paragraph (a) above shall contain the following endorsement:

Wakefield/RCN-BecoCom, L.L.C. Access Agreement

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 of Wakefield and Licensee, by certified mail, of one (1) copy of a written notice of such intent.

Section 9 **Editorial Control**

WCAT shall be responsible for programming the Access channels. Neither the Issuing Authority nor the Licensee shall engage in program censorship or any other editorial control of the content of Access programming on the Access channels, except as otherwise required or permitted by applicable law.

Section 10 **Informational and Annual Reports**

WCAT shall provide a written report of its finances and operations to the Issuing Authority and the Licensee for the previous calendar year by July 15 of each year. At any

time during the term of this agreement, upon the reasonable request of the Issuing Authority or the Licensee, WCAT shall provide such further information as may be reasonably requested to document the content and purpose of the expenditure of funds.

WITNESS OUR HAND AND OFFICIAL SEALS, THIS _____ DAY OF _____, 1999.

TOWN OF WAKEFIELD
BY THE BOARD OF SELECTMEN

Wayne M. Tarr, Chairman

Kevin T. Haggerty

Linda A. Swain

Peter G. Melanson

John B. Encarnacao

WAKEFIELD COMMUNITY ACCESS
TELEVISION

RCN-BECOCOM, L.L.C.

By: _____

By: _____

Michael J. Mahoney
President and Chief Operating Officer