

TOWN OF LEE  
Commonwealth of Massachusetts

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Renewal Cable Television License  
Issued To  
Time Warner Cable Northeast LLC

**May 2013**

**TOWN OF LEE  
COMMONWEALTH OF MASSACHUSETTS  
RENEWAL CABLE TELEVISION LICENSE**

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## **ARTICLE 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 Corporation:** The non-profit corporation known as Community Television for The Southern Berkshires Inc. (“CTSB”), or a successor agency, designated by the Issuing Authority to manage and operate public, educational and governmental access in the Town in accordance with this Agreement and 47 U.S.C. 531.

**Amplifier:** A device that boosts the strength of an electronic signal.

**Basic Cable Service:** Any service tier which includes the retransmission of local broadcast signals, and local PEG Access channels.

**Cable Act:** The federal Cable Communications and Policy Act of 1984, as amended by the Cable Television Consumer Protection and Competition Act of 1992, and subsequent amendments, 47 USC §521 et seq.

**Cable Television System or Cable System:** The Cable Television System owned, constructed, installed, operated and maintained in the Town for the provision of cable television services within said Town, in accordance with the terms and conditions in this License.

**Channel:** A frequency band which carries one television signal.

**Complaint:** Any customer inquiry regarding picture quality, service requests, other technical matters or billing.

**Conduit:** An enclosed channel of metal or nonmetallic materials designed expressly for holding wires and cables.

**Coax or Coaxial Cable:** A type of cable that has an inner conductor surrounded by a tubular insulating layer, surrounded by a tubular conducting shield.

**Department:** The Massachusetts Department of Telecommunications and Cable or “DTC”.

**Distribution Plant or Plant:** The hardware of a cable system—amplifiers, trunk cable and feeder lines, attached to utility poles or fed through underground conduits like telephone and electric wires.

**Downstream Channel:** A channel over which signals travel from the Cable System Headend to an authorized location within the System.

**Drop:** Cable that connects to a residence or service location from a feeder line.

**Educational Access:** Any channel or time thereon which has been allocated for non-commercial educational use in accordance with this Agreement and 47 U.S.C. 531.

**Effective Date:** As provided in Section 2.4.

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

**Feed line or Feeder line:** Cable that connects trunk lines to drop cables.

**Fiber:** A transmission medium composed of glass or plastic fibers, rather than copper wire, used to transport data, video and voice signals.

**Governmental Access:** Any channel or time thereon which has been allocated for non-commercial, local governmental use by the Town, the Issuing Authority or municipal agencies in accordance with this Agreement and 47 U.S.C. 531.

**Gross Annual Revenues:** Any and all revenues as determined in accordance with generally accepted accounting principles (GAAP) received by the Licensee from the provision of cable service over the cable television system within the Town provided, however, that Gross Annual Revenues shall not include any taxes on services furnished by the Licensee imposed directly or indirectly on any subscriber by any state, Town or other governmental unit or third party and collected by the Licensee on behalf of such entity; and, provided further, that Gross Annual Revenues shall not include adjustments to cash receipts and non-operating cash receipts such as bad debts, refunds, credit adjustments, returned checks and sales of assets.

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

**Leased Access:** Any channel available for lease for programming by persons other than Licensee in accordance with 47 U.S.C. 532.

**License:** The non-exclusive grant by the Issuing Authority to the Licensee of authority to build, own and operate a Cable System within the Town, represented by this instrument.

**Licensee:** Time Warner Cable Northeast LLC, a wholly owned indirect subsidiary of Time Warner Cable Inc., or any successor or transferee in accordance with the terms and conditions in this License and all governing laws and regulations.

**Outlet:** The receptacle through which cable service is provided to the customer.

**PEG Access:** Channel capacity designated for Public, Educational, and Governmental Access signals.

**Person:** Any natural person or any association, firm, partnership, joint venture, corporation, limited liability company or other legally recognized entity, private or public, whether for profit or not-for-profit.

**Private Roads:** Roads owned and maintained by private individuals or entities rather than by the Town or other government.

**Programming:** Programming generally considered comparable to programming provided by television broadcast stations which is carried over the Cable Television System.

**Public Access:** The availability for non-commercial use by any resident of the Town or any organization based in or serving the Town of designated public access facilities, equipment, training and/or channels of the Cable Television System, as provided in this License and in accordance with 47 U.S.C. 531.

**Public Way or Street:** The surface of, as well as the spaces above and below, any and all public streets, avenues, highways, alleys, sidewalks, lanes, boulevards, concourses, driveways, bridges, tunnels, parks, parkways, and public grounds and all other publicly owned real property or real property rights under the jurisdiction of the Town within or belonging to the Town, or over which the Town has an easement or right-of-way, or easements or rights of way within the Town which have been dedicated for compatible uses in accordance with 47 U.S.C. 541 (a)(2), or to which the Town has rights compatible with the installation of cable and ancillary equipment pursuant to this License, now or hereafter existing. Reference herein to "Public Way" or "Street" is not to be construed to be a representation or guarantee by the Town that the Licensee shall gain or be permitted to exercise any rights to use property in the Town greater than those possessed by the Town.

**Service Area:** The area within the entire Town in which a residence can be served by a Standard Cable Installation from the cable plant as indicated on the map attached as Exhibit A, which Exhibit (i.e. map) shall be updated to reflect additional cable plant (except drops) installed during the term of this License.

**Standard Cable Installation:** An aerial connection consisting of fiber and/or coaxial cable between the Trunk, Feeder Line and Distribution System and a residential or municipal governmental Outlet located within Two hundred fifty Feet (250') of the



existing System's Trunk, Feeder Line and Distribution System, and which does not require design changes or additional equipment (including but not limited to amplifiers or plant extensions) to provide acceptable Signal quality into the residence.

**Subscriber:** Any person, firm, corporation or other entity who or which elects to subscribe to, and is authorized to receive, for any purposes, Licensee's Cable Service provided by the Licensee by means of, or in connection with, the Cable Television System.

**Town:** Any/all of the Town of Lee, Massachusetts including all area geography within the boundaries of the Town.

**Towns:** The Towns of Great Barrington, Lee, Lenox, Sheffield and Stockbridge, Massachusetts.

**Trunk:** The major distribution cable used in cable television systems.

## **ARTICLE 2 - GRANT AND TERM OF LICENSE**

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

Pursuant to the authority of Chapter 166A, §1 of the General Laws of the Commonwealth of Massachusetts and the Cable Act, and subject to the terms and conditions set forth herein, the Board of Selectmen of the Town of Lee, (hereinafter “the Town”) acting as the Issuing Authority of the Town, hereby grants a non-exclusive, revocable cable television renewal license to Licensee, authorizing and permitting Licensee to construct, upgrade, install, operate and maintain a Cable Television System and provide cable service within the municipal boundaries of the Town.

### **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 Television System in, under, over, along, across or upon the public streets, lanes, avenues, alleys, sidewalks, bridges, highways and other Public Ways or places in the Town within the municipal boundaries and subsequent additions thereto, including property over which the Town has an easement or right-of-way, or which the Licensee may use pursuant to 47 U.S.C. 541(a)(2), for the purpose of Cable Television System reception, transmission, collection, amplification, origination, distribution, or redistribution of audio, video, text, data or other signals in accordance with the laws of the United States of America, the Commonwealth of Massachusetts and the Town. In exercising rights pursuant to this License, Licensee shall not endanger or interfere with the lives of persons, interfere with any installations of the Town, any public utility serving the Town, nor unnecessarily hinder or obstruct the free use of public ways and places.

### **Section 2.3 APPLICABLE LAW**

This License is granted under and in compliance with Chapter 166A of the General Laws and all other general laws and acts of the Legislature, and in compliance with all applicable federal law, including, but not limited to the Cable Act, and all rules of the Federal Communications Commission (“FCC”), and all other state and federal rules and regulations. This License is subject to all rules and regulations of the Massachusetts Department of Telecommunications and Cable.

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

This License shall commence upon the Effective Date which shall be the date on which the Licensee and all Towns shall have approved a license substantially similar to this License and shall terminate upon February 28<sup>th</sup>, 2023.

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

(a)    To the extent required by M.G.L. c. 166A, §7, 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 (any such transaction to be referred to for purposes of this Section as a “Transfer”), 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 therefore as provided by the Department and on forms prescribed by the Department. Any such consent process shall be consistent with the transfer requirements of M.G.L. c.166A, §7; 207 CMR §4.00 et seq.; the Cable Act; and FCC regulations, all as they may from time to time be amended. The application for transfer consent shall be signed by the Licensee and by the proposed transferee or assignee, or by their authorized representatives. To the extent it is consistent with any governing federal or state law, a mortgage or other grant of a security interest in this License to a banking or other financial institution, or a pledge or grant of other security interest in the stock of Licensee to a banking or other financial institution, shall not be a transfer requiring consent of the Issuing Authority. Should such mortgagee or other holder of a security interest or pledgee assume control of the cable system, such Issuing Authority consent shall be required in accordance with applicable law.

(b)    To the extent it is consistent with any governing federal or state law, no consent under subsection (a) shall be required if such sale, assignment or transfer is to an entity under common control with Licensee. In the event that Licensee deems a transfer to be internal in nature, not subject to applicable transfer law, and not described within the preceding sentence it may seek an advisory opinion from the Department requesting such interpretation and shall give written notice to the Issuing Authority of any such request.

(c)    In considering a request to transfer control of this License, the Issuing Authority may consider, subject to all applicable laws and regulations, such factors as the transferee’s financial qualifications, management and technical expertise, character qualifications, experience in the cable industry, performance in other communities and any other reasonable criteria allowable under applicable federal or state laws or regulations, and request such reasonable information as allowable under applicable law.

(d)    For purposes of this section, the word “control” shall be consistent with the definition of such term found in 207 CMR 4.03.

(e)    The consent or approval of the Issuing Authority to any assignment, lease, transfer, sublease, or assumption of control by a mortgagee of the License granted to the Licensee shall not constitute a waiver or release of the rights of the Town in and to the streets and Public Ways or any other rights of the Town under this License, and any such transfer shall, by its terms, be expressly subordinate to the other terms and conditions of this License.

(f)    The Licensee shall promptly notify the Issuing Authority of any action or proposed action requiring the consent of the Issuing Authority pursuant to this Section 2.5.

(g) The Licensee shall submit to the Issuing Authority an original and five (5) copies, unless otherwise directed, of the application and Form 100 requesting such transfer or assignment consent.

(h) Any proposed controlling or owning person or transferee approved by the Town shall be subject to all of the terms and conditions contained in this License. Any transferee shall agree to be bound by all of the terms and conditions of this License.

(i) Any transfer of the Cable System without complying with this Section 2.5 above or with any federal or state law or regulation, shall be deemed a material breach of this License.

(j) If the Issuing Authority lawfully denies its consent to any such action and a transfer has nevertheless been affected, the Issuing Authority may revoke and terminate this License subject to the procedures set forth in Section 7.

(k) The grant or waiver of any one or more of such consents shall not render unnecessary any subsequent consent or consents, nor shall the grants of any such consent constitute a waiver of any other rights of the Town.

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

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 Public Ways, or portions thereof, for the construction, installation, operation or maintenance of a Cable Television System within the Town or the right of the Issuing Authority to permit the use of the Public Ways for any purpose whatsoever. The issuance of any additional licenses shall be on the same or comparable terms and conditions contained in this License agreement, and such terms shall be no more favorable or less burdensome to any such additional licensee than the terms of this License agreement.

In the event any change to state or federal law occurring during the term of this License materially alters the regime of cable licensing applicable to any Persons desiring to construct, operate or maintain a Cable System in the Town in a way that reduces the regulatory or economic burdens for such Person when compared to the terms of this License, then, at Licensee's request, Issuing Authority shall agree with Licensee to amend this License as provided at 207 CMR §3.07 et seq. to similarly reduce the regulatory or economic burdens on Licensee. It is the intent of this section that, at Licensee's election, Licensee shall be subject to no more burdensome regulation or provided lesser benefits under this License than any other Persons that might construct, operate or maintain a Cable System in the Town.

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

By executing this Renewal License, the Town does not waive its rights to exercise the police powers of the Town to adopt and enforce general by-laws necessary to the safety and welfare of the public. Any conflict between the terms of this Renewal License and any present or future lawful exercise of the Town's police power shall be resolved consistent with applicable law.

## **Section 2.8     REMOVAL OR ABANDONMENT**

(a) Pursuant to M.G.L. ch. 166A, §. 5(f), upon termination of this License by passage of time or otherwise without right of renewal, and unless Licensee renews its License for another term or Licensee transfers its License to a transferee approved by the Issuing Authority, Licensee shall remove its supporting structures, poles, transmission and distribution systems and all other facilities, but, at the discretion of the Issuing Authority, not its underground cable and/or conduit, from the public ways and places and shall diligently restore all areas to the condition they were in immediately preceding removal, unless pursuant to Section 2.9 of this License, the Issuing Authority effects a transfer of the property. 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, and the Issuing Authority may dispose of the same in any way or manner it deems appropriate without liability of any type or nature to the Licensee. If such disposition results in a loss to the Issuing Authority, Licensee shall be liable to the Issuing Authority for the amount of such loss.

(b) Licensee shall not abandon its Cable System, its cable service or any of its facilities in any portion of the Town without the consent of the Issuing Authority.

## **Section 2.9     PROCEEDINGS UPON EXPIRATION OR REVOCATION OF LICENSE**

In the event that this License is revoked or that it expires without further renewal, the Issuing Authority and the Licensee may transfer the Cable System to the Town or a subsequent Licensee subject to §.627 of the Cable Act.

## **ARTICLE 3 - SYSTEM DESIGN, CONSTRUCTION AND OPERATION**

### **Section 3.1 RESIDENTIAL CABLE SYSTEM**

Licensee will maintain its Cable System in the Town at a minimum bandwidth of 860 MHz.

### **Section 3.2 LINE EXTENSION**

(a) Licensee shall install cable service within 14 days of a request at a standard installation charge to any residence in the Service Area currently served by the cable system as indicated on the map attached as Exhibit A, (as it may be supplemented upon additions to the plant) except that Licensee may charge for the costs of labor and materials necessary to provide service beyond 250 feet from the cable plant in the public way and/or to provide a customized installation, including any undergrounding, boring or trenching. For purposes of this Section, private roads (i.e. roads not serviced by the Town) and shared driveways are not in the public way.

(b) In order to fulfill a request for cable service to a residence, the Cable Television System shall be extended at Licensee's expense, from existing cable plant to any and all areas of the Town containing twenty (20) residences per aerial mile of cable plant or fractional proportion thereof necessary to provide service. Said service shall be made available and fully activated to requesting subscribers no later than sixty (60) days after the Licensee's receipt of permission to attach cable to poles. Density per aerial mile of cable plant shall be computed by dividing the number of residential dwelling units within 250 feet of the plant to be installed by the length, in miles or fractions thereof, of the total amount of new construction of aerial cable necessary to make service available to the residential dwelling units in such area in accordance with Licensee's system design parameters. The cable length shall be measured from the nearest point of access to the then-existing system, provided that extension is technically feasible from that point of access, and located within the public rights-of-way. The total cable length shall exclude the drop cable necessary to serve individual subscriber premises.

(c) The Cable Television System shall be further extended to all areas in the Town that do not meet the requirements of subsections (a) or (b) above upon request of the prospective subscribers in such areas and based upon the following cost calculation: If a request for an extension requires the construction of the cable system plant into an area which does not contain the twenty (20) residences per aerial mile of cable plant or a fractional part thereof, the Licensee and the potential subscriber(s) will each be responsible for their proportionate share of construction costs. Licensee's proportion of the cost will be determined by multiplying the cost of extending the cable system plant by a fraction, the numerator of which is the number of residences per cable mile in the area and the denominator of which is 20. The balance of the costs will be paid by the person(s) requesting the extension.

By way of example, if in order to serve a person requesting cable service, the Licensee must extend its plant by one mile of aerial cable that passes 15 homes, then the Licensee shall be

responsible for 15/20 or 75% of the costs of the extension and the person or persons requesting service shall be responsible for the remaining 5/20 or 25% of the cost.

(d) When Licensee has forty-five (45) day prior notice concerning the opening of residential subdivision trenching, or of the standard 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.

(e) The Licensee shall expeditiously seek all necessary permits.

### **Section 3.3 MAPS**

Upon request, the Licensee shall make available to the Issuing Authority for inspection accurate strand maps of all existing and newly constructed Cable System plant. The Town agrees to maintain the confidential nature of such maps.

### **Section 3.4 COMMERCIAL ESTABLISHMENTS**

The Licensee shall be required to make Cable Service available to any commercial establishment in the Town upon reaching a reasonable agreement with such commercial establishment regarding the terms and costs of initial installation and service in accordance with applicable law. It is herein acknowledged that certain programming service may not be available to commercial establishments pursuant to applicable law or the Licensee's agreements with its program suppliers.

### **Section 3.5 SERVICE TO BUILDINGS OTHER THAN PUBLIC SCHOOLS**

Licensee shall provide, free of charge, a Standard Installation (250 feet) and Basic Cable Service to all public libraries; police and fire stations; Town Hall; Senior Center; Non-Profit Municipally-owned Community Centers Town Highway Garages and public buildings as designated in writing by the Issuing Authority per MGL c. 166a, s.5(e). Such locations receiving free basic cable service as of the Effective Date will continue to receive it, regardless of the length of the drop.

### **Section 3.6 SERVICE TO PUBLIC SCHOOLS**

(a) The Licensee shall provide a Standard Installation (250 feet) and Basic Cable Service at no cost to all public schools within the Town. Licensee shall install additional cable television outlets in the public schools on an as needed basis as mutually agreed upon with the Issuing Authority. The Licensee shall discuss the location of each connection with the proper officials of the public schools prior to the installation of said service. Such locations receiving free Basic Cable Service as of the Effective Date will continue to receive it, regardless of the length of the drop.

(b) Licensee shall provide its full cooperation and free technical advice should the School District undertake to accelerate, at its own cost, the wiring of additional public classrooms for cable service. The School District shall insure that such wiring conforms to Licensee's technical standards and shall not result in signal leakage beyond acceptable FCC standards.

### **Section 3.7    EMERGENCY AUDIO ALERT**

The Licensee shall provide an Emergency Alert System (“EAS”) in accordance with the regulations of the FCC. The Town shall indemnify and hold the Licensee harmless for any acts of the Town in connection with the Town’s use of said emergency audio override.

### **Section 3.8    STAND-BY POWER**

The Licensee shall maintain twenty-four hour, standby power at the headend facilities and any sub-headends. Such stand-by 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.

### **Section 3.9    TREE TRIMMING AND CUTTING**

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. Licensee shall comply with all applicable regulations regarding trimming and cutting of trees. Licensee shall make reasonable efforts to secure the permission of the property owner prior to reasonable tree trimming.

### **Section 3.10   UNDERGROUND WIRING OF UTILITIES**

Upon receiving due notice of the installation of telephone, electric and all other utility lines underground, the Licensee shall likewise place its facilities underground. Underground cable lines shall be placed according to any Public Works, Highway Department or other Town by-law or regulation and in accordance with applicable state law. It is the policy of the Town that existing poles for electric and communication purposes be utilized wherever possible if available on reasonable terms and that underground installation is preferable to the placement of additional poles, provided that said underground placement is required of other utilities. When possible, Licensee shall use the underground conduit maintained by the Town provided that such use (i) is found by the Selectmen to be reasonable and at the sole cost and expense of the Licensee; and (ii) does not interfere with the Town’s use or anticipated use of said conduit(s). Any such use by the Licensee shall be subject to the advance notification and approval of the Town and the right of the Town to supervise any such use. Licensee shall maintain membership and participate in the Massachusetts “DIG-SAFE” program.

### **Section 3.11   PEDESTALS AND VAULTS**

In any case in which vaults or control boxes housing passive or active devices are to be utilized in the Town Public Ways or within the Town public lay-out, such equipment shall be placed in a low-profile, above-ground electronic control box in accordance with applicable regulations, and at Town approved locations to be determined when Licensee applies for permits, which permits shall not be unreasonably denied. All such equipment shall be shown on the maps submitted to the Town in accordance with Section 3.3 herein.



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

(a) Whenever the Licensee takes up or disturbs any pavement, sidewalk or other improvement of any public way or public place, it shall be replaced and the surface restored in as good condition as before entry but to such standards required of utilities operating within the Town and as soon as practicable. If the Licensee fails to make such restoration within a reasonable time, the Town may notify the Licensee in writing of the required restoration and the reasonable time for completion of the restoration. Upon failure of the Licensee to comply with the time specified, the Town may cause proper restoration and repairs to be made and the expense of such work shall be paid by the Licensee upon demand by the Issuing Authority. Any damages to private property shall be determined in accordance with M.G.L. ch. 166A, Section 22 and applicable law.

(b) Underground crossings of paved roads will be by boring under the road, not by trenching or opening the surface of the road except to the extent that boring is not feasible or is otherwise unreasonable to do.

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

The Licensee shall, on the 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 paid in accordance with law. The Licensee shall be given at least seven (7) days advance notice of any such move, except in emergencies.

### **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 reasons which are within the Town's police power, such as public safety, street construction, change or establishment of street grade or layout, installation of sewers, drains, water pipes, power or signal lines, setting of new or replacement utility poles and the construction of any public improvement or structure. In this respect, the Licensee shall be treated on par with any affected utilities.

### **Section 3.15 TOWN USE OF LICENSEE'S POLES AND CONDUIT**

The Town shall have the right to attach to any pole erected by Licensee and to place in any of Licensee's conduits, its own cable and equipment to be used for fire, police and other governmental communications purposes where space permits, excluding the commercial use of providing services competing with Licensee's services. All such placements by the Town shall conform with all applicable rules and regulations. The costs for such placements by the Town shall be borne by the Town and cause no additional expense to Licensee. Such placements by the Town shall not interfere with the routine operation by the Licensee of its Cable Television System. The Licensee shall notify the Town of any plans for installation of conduit and cooperate with the Town as to its type and location so as to best enable the Town to use it, again provided there is no additional expense to Licensee. If Licensee removes its installation from conduits where municipal equipment or cable is present, it shall provide fourteen (14) days prior notice to the Town. Licensee shall be held harmless from any resulting damages from its non-negligent removal of its own installations. The Town shall, after sixty (60) days written notice by Licensee, remove its facilities from any Licensee pole or conduit if Licensee has need of the space for its own facilities.

### **Section 3.16 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 3.17 SERVICE INTERRUPTION**

Except where there exists an emergency situation necessitating a more expeditious procedure, Licensee shall use reasonable efforts to interrupt service for the purpose of system construction, routine repairing or testing the Cable System only during periods of minimum use.

### **Section 3.18 RIGHT TO INSPECTION OF CONSTRUCTION**

The Issuing Authority or its designee shall have the right upon reasonable notice to inspect during normal business hours all construction performed in the rights-of-way subject to the provisions of this License, as it shall deem necessary to ensure compliance with the terms and conditions of this License and applicable law. Any such inspection(s) shall not interfere with the Licensee's operations, except in emergency situations. The Town shall give reasonable prior notice of any inspection to the Licensee, and Licensee shall have the right to accompany the Town's inspectors.

### **Section 3.19 UPGRADE, TECHNICAL AND MAINTENANCE STANDARDS**

(a) The Licensee shall operate and extend a Cable Television System and render efficient service to subscribers as required by this License and applicable laws and regulations during the term of this License. The construction, maintenance and operation of the Cable Television System for which this License is granted shall be in conformance with the applicable provisions of the National Electrical Code (Article 820), the Massachusetts Electrical Code, the National Electrical Safety Code, and the applicable rules and regulations of the Occupational Safety and Health Administration (OSHA), the Massachusetts DTC, Department of Public Utilities and the FCC and all Town building and zoning codes and all land use restrictions. All FCC regulations concerning technical standards are incorporated as independent standards of this License as well, including but not limited to 47 CFR 76.601 sub-part K, et seq. Copies of any technical performance tests that may be required under FCC rules and regulations shall be submitted forthwith, upon request, to the Issuing Authority. The Licensee's Cable Television System shall incorporate a technically-advanced design configuration and operation consistent with cable industry practice. If as a result of technological developments, the Licensee's Cable Television System could be greatly enhanced, the Licensee shall investigate the feasibility of implementing such new developments and shall implement such technological developments if such implementation (i) can be done without adding a financial burden to subscribers and (ii) is technically and economically feasible and viable for the Licensee as determined by Licensee at its sole discretion. In determining whether or not the

Licensee shall implement such new developments, the Licensee may consider, among other factors, the remaining term of this Renewal License; performance demonstrating the operational feasibility of the new developments; construction and other related costs; the adaptability of such developments to the Licensee's Cable Television System or any part thereof, the potential marketability of the new services and other factors affecting the economic feasibility and viability of implementation of the new developments; and adoption of such new developments by neighboring communities.

(b) Licensee, when possible, shall take appropriate measures to minimize audio variations within its control between channels in the cable systems as required by FCC Technical Standards.

(c) All Licensee's 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 3.20 MAINTENANCE LOG**

Licensee shall maintain an annual log or computerized listing, showing the date, approximate time and duration, type and probable cause of all Cable Television System outages, whole or partial, due to causes other than routine testing or maintenance. All entries in such log or computerized listing shall be retained by Licensee for two (2) additional years and shall be subject to inspection and copying in accordance with federal and state privacy laws, rules and regulations by the Issuing Authority or its designee during Licensee's regular business hours upon reasonable request, following reasonable notice.

### **Section 3.21 EMERGENCY REMOVAL OF PLANT**

If, at any time, in case of fire or disaster in the Town, it shall become necessary in the exercise of police powers of the Issuing Authority or any public safety or other designated public official, to cut or move any of the wires, cables, amplifiers, appliances or appurtenances of the Cable System, the Town shall have the right, within its police power, to do so at the sole cost and expense of Licensee. In such case, the Town shall notify Licensee of the cables or other equipment which have been cut or removed.

### **Section 3.22 PRIVATE PROPERTY**

Licensee shall be subject to all generally applicable laws, by-laws or regulations regarding private property in the course of constructing, upgrading, installing, operating and maintaining the Cable System in the Town including, but not limited to, M.G.L. ch .166A, § 22, as it may from time to time be amended. 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 Television System at its sole cost and expense. The installation and operation of Licensee's cable plant shall not create any disturbance of, or nuisance to, private property in the Town.

**Section 3.23    QUALIFICATIONS OF CONSTRUCTION PERSONNEL**

Licensee shall, if requested by the Issuing Authority provide the Issuing Authority with the names and addresses of any construction companies, or if operating as individuals, the names and addresses of such individuals, who will contract or sub-contract with the Licensee to perform construction obligations of the Licensee under this License. Furthermore, Licensee shall, upon request of the Issuing authority, furnish the names, addresses and telephone numbers of persons who can serve as references for such construction contractors and sub-contractors.

## **ARTICLE 4 - RATES AND PROGRAMMING**

### **Section 4.1 BASIC SERVICE**

The Licensee shall provide Basic Cable Service which shall include at least the Designated Market Area ("DMA") broadcast television signals which it carries as required by Federal law and the downstream channels, for public, educational and governmental access use.

### **Section 4.2 PROGRAMMING**

(a) Licensee has offered and shall provide the following cable services: (i) All broadcast stations required to be carried by federal law; (ii) All public, educational and governmental access channels required by Article 5 of this Agreement;

(b) The Town has expressed to Licensee its interest in the carriage on the system of broadcast stations licensed in Massachusetts and Licensee has acknowledged that expression of interest by the Town.

### **Section 4.3 LEASED ACCESS**

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

### **Section 4.4 STEREO TV TRANSMISSIONS**

All TV signals that are received by Licensee in stereo shall be transmitted to subscriber homes in stereo.

### **Section 4.5 CHANNEL LINE-UP**

In accordance with applicable federal law, Licensee shall notify the Issuing Authority and the subscribers, in advance, each time its channel line-up 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 thirty (30) days of such changes.

### **Section 4.6 REMOTE CONTROL DEVICES**

To the extent required by applicable law, Licensee shall allow subscribers to purchase from parties other than the Licensee and to utilize remote control devices which are compatible with the converter installed by Licensee.

### **Section 4.7 REBATES**

In accordance with 207 CMR 10.09, Licensee shall grant a pro rata credit or rebate to any subscriber whose entire cable service is interrupted for twenty-four (24) or more consecutive hours, if the interruption was not caused by the subscriber and the Licensee knew or should have known of the service interruption. If an entire tier or premium service of a subscriber's cable service is interrupted for twenty-four (24) or more consecutive hours, the Licensee shall provide a pro rata credit or rebate for each tier or premium service interruption as provided in 207 CMR 10.09(1).

**ARTICLE 5 - LOCAL ACCESS PROGRAMMING,PUBLIC, EDUCATIONAL,  
AND GOVERNMENTAL ACCESS FACILITIES AND SUPPORT**

**Section 5.1 PUBLIC, EDUCATIONAL AND GOVERNMENTAL ACCESS (PEG)**

The Licensee will make available to the Town and other franchising authorities served by the system, three channels for PEG Access purposes. These channels will be included in the Licensee's basic service tier.

The Issuing Authority may authorize an Access Corporation to provide services to Public Educational and Governmental Access users as follows:

- (1) Schedule, operate and program the PEG channels;
- (2) Manage the annual funding;
- (3) Purchase and/or lease equipment, with the funds allocated for such purposes;
- (4) Conduct training programs in the skills necessary to produce quality PEG programming;
- (5) Establish rules, procedures and guidelines for use of the PEG channels;
- (6) Provide publicity, outreach, referral and other support services to PEG users; and
- (7) Accomplish such other tasks relating to the operation, scheduling and/or management of channels, facilities and equipment as appropriate and necessary.

**Section 5.2 PUBLIC ACCESS TO THE CABLE SYSTEM**

Any resident of the Town, or any organization based in or servicing the Town, shall have the right to place programming on the PEG Access channel(s) dedicated to public use. The parties recognize that any PEG Access channel facilities, equipment and training shall be available on a shared basis to each of the Towns pursuant to their respective Licenses.

**Section 5.3 GOVERNMENT ACCESS TO THE CABLE SYSTEM**

Any PEG Access channel(s) provided herein and dedicated to Government Access shall be available to the Issuing Authority, for the purposes of non-commercial municipal access television programming in accordance with 47 U.S.C. 531. Such channel may be used by government departments and agencies to inform subscribers about Town government and services. Government Access programming shall be coordinated and managed by the Access Corporation, unless the Town decides to operate Government Access under a government department.

#### **Section 5.4 EDUCATIONAL ACCESS**

Any PEG Access channel(s) provided herein and dedicated to Educational Access use shall be available to any School District serving the Town for the purposes of non-commercial Educational Access television programming in accordance with 47 U.S.C. 531. Educational Access programming shall be coordinated and managed by the Access Corporation in cooperation with any such School District.

#### **Section 5.5 PEG ACCESS CHANNELS**

The Licensee shall not move or otherwise relocate the channel location of a PEG Access channel, once established, without the advance, written notice to the Issuing Authority and the Access Corporation. Such notice shall be provided at least thirty (30) days in advance unless Licensee is legally required to move the PEG Access channel sooner.

#### **Section 5.6 ANNUAL SUPPORT FOR PEG ACCESS**

(a) Subject to subsection (d) hereof, the Licensee shall provide an annual payment to the Town or the Access Corporation, for PEG Access purposes, equal to five percent (5%) of the Licensee's Gross Annual Revenues less the amount paid by Licensee under Section 7.8. The Issuing Authority may, in its discretion, delegate the responsibility to the Access Corporation for receipt of said annual payment. The Issuing Authority may, in its discretion, delegate responsibility to the Access Corporation for the control and management of the access channels. The Issuing Authority shall notify Licensee of such delegation in writing no later than 30 days after the effective date of said delegation. Said annual payments shall be used for salary, operating and other related expenses connected with PEG Access programming and operations and for any other purpose allowed by law.

(b) Said annual five percent (5%) PEG Access payment shall be made to the Town or the Access Corporation on an annual basis, on or before March 15, of each year based on the Licensee's prior year Gross Annual Revenues.

(c) In no event shall the total PEG Access operating support, including but not limited to the obligations enumerated in the license fee in Section 7.8, exceed five percent (5%) of Licensee's Gross Annual Revenues.

(d) The Licensee may withhold from the payment under subsection (a) above an amount equal to five percent (5%) of Gross Annual Revenues derived from sources other than cable subscribers and apply such amount against the costs incurred by Licensee in installing the connection required in the Towns under Section 5.10(b) of this License until such time as the costs of the connections in the Towns under Section 3.5 have been recouped.

(e) Unless otherwise required by applicable law, if services included within the definition of Gross Annual Revenues are provided to subscribers in conjunction with services not within the definition for a single aggregate price, and the total cost of such bundle reflects a discount from the aggregate retail prices of the services contained therein when provided separately, the five percent (5%) shall be applied to the retail price (when sold separately) of the services within the definition of Gross Annual Revenues in the bundle, reduced by no more than a proportionate share of the overall discount.

## **Section 5.7 PEG ACCESS CAPITAL FUNDING**

(a) Issuing Authority may, in its discretion, delegate the responsibility to the Access Corporation for receipt and usage of a capital facilities payment. The Issuing Authority shall notify Licensee of such delegation in writing no later than 30 days after the Effective Date of such delegation. The Licensee shall provide a combined total of \$212,000 to be used for PEG capital equipment to the five Towns (Lee, Lenox, Stockbridge, Great Barrington, Sheffield) or the Access Corporation, as designated by the Issuing Authority in writing to the Licensee no later than ninety (90) days prior to such payment date. The total capital/facilities payment will be made in one payment, 90 days after the Effective Date of this license. The equipment purchased with the capital funding provided under this Section will be generally comparable to the equipment listed on Exhibit F.

(b) In the event that payments required to be made herein are not tendered on or before the dates fixed herein, interest due on such required payments shall accrue at the Prime Rate and be paid to the Town or the Access Corporation from the date due.

(c) In no case shall said capital funding be counted against or included in the five percent (5%) PEG access funding pursuant to Section 5.7(a) above.

## **Section 5.8 RECOMPUTATION**

Tender or acceptance of any payment shall not be construed as an accord that the amount paid is correct, nor shall such acceptance of payment be construed as a release of any claim that the Issuing Authority or the Access Corporation may have for additional sums including interest payable under this Article 5. The Issuing Authority and/or an independent certified public accountant hired by the Issuing Authority shall have the right to inspect records necessary to verify Gross Annual Revenues, as defined herein, in order to establish the accuracy of the payments tendered hereunder. If after such inspection, an additional payment is owed, such payment shall be paid within thirty (30) days after any recomputation. The interest on such additional payment shall be charged at the Prime Rate from the date that the Licensee is notified that such additional amount is owed.

## **Section 5.9 EQUIPMENT OWNERSHIP**

The Issuing Authority may, in its discretion, delegate responsibility to the Access Corporation for the control and management of the PEG Access channels. The Issuing Authority shall notify Licensee of such delegation in writing no later than 30 days after the effective date of said delegation. The Town, or the Access Corporation, shall own all PEG access equipment purchased with funding pursuant to Section 5.7 supra. The Licensee shall have no obligation to maintain or insure any such PEG access equipment.

## **Section 5.10 REMOTE ORIGINATION POINTS**

(a) Licensee shall continue to maintain such equipment at the origination sites listed in Exhibit B as necessary to transmit programming signals from these origination sites for carriage on PEG Access channels.

(b) Licensee shall install and maintain a fiber connection to its system from each of the origination points at the locations set forth in Exhibit C, in order that programming signals can be transmitted from said origination points for carriage on PEG Access channels. The costs of such



connections shall be paid initially by Licensee but reimbursed to Licensee by the Towns as described in Section 5.6(d).

### **Section 5.11 PEG ACCESS CHANNELS MAINTENANCE**

The Licensee shall monitor the PEG access channels for signal technical quality as it does other channels and shall ensure that they are maintained at standards commensurate with those which apply to the Cable System's commercial channels. The Town or the Access Corporation shall be responsible for maintaining the picture quality of PEG Access programming delivered to Licensee. The Licensee shall be responsible for maintaining the return infrastructure up to the point of connection for the PEG Access channel modulators and demodulators.

### **Section 5.12 CENSORSHIP**

Neither the Issuing Authority, the Licensee nor the Access Corporation shall engage in any program censorship or any other control of the content of PEG Access programming on the Cable System, except as otherwise required or permitted by applicable law.

### **Section 5.13 PEG ACCESS PROGRAMMING COSTS**

(a) There shall be no direct charges to the Town, the Access Corporation or PEG Access users by the Licensee for use of the PEG Access facilities required herein, provided, however, that the Licensee may line-item and/or otherwise pass-through such PEG access annual funding costs to subscribers strictly in compliance with applicable laws and/or regulations.

(b) If the Licensee is subject to rate regulation, upon request, the Licensee shall provide the Town with appropriate FCC forms in accordance with applicable FCC regulations showing any such externalized, line-itemed and/or passed-through PEG access costs.

## **ARTICLE 6 - SUBSCRIBER RIGHTS AND CONSUMER PROTECTION**

### **Section 6.1 BUSINESS OFFICE**

Licensee shall maintain and operate a conveniently located local customer service center and bill payment location as required by FCC customer service standards. Currently, Licensee maintains such a location in the Town of Lee. In the event that Licensee moves or closes that facility it will give the Town at least 120 days notice and will, if requested, meet with representatives of the Towns to discuss and explain its decision to move or close the office.

### **Section 6.2 CUSTOMER SERVICE STANDARDS**

Licensee shall comply with FCC Customer Service Standards, which standards are incorporated into this License. The current standards are attached as Exhibit D.

### **Section 6.3 COMPLAINT RESOLUTION PROCEDURES**

(a) In compliance with applicable law(s), the Licensee shall establish a procedure for resolution of billing and privacy disputes and complaints by subscribers. To the extent required by applicable law, the Licensee shall provide, on an annual basis, a written description of said procedures, including telephone numbers to call for complaints and other services, to all subscribers, and the Issuing Authority.

(b) The Licensee shall in the 6-month period before the third anniversary and before the sixth anniversary of the Effective Date of this License send customer survey forms to all cable subscribers in the Service Area. Licensee, upon request will make survey results available (in aggregate form) to the Issuing Authority or its designee. Survey forms may solicit customer opinions regarding timeliness of installations and repairs, frequency of repeat repairs, billing issues, programming satisfaction and any other issues which may be of local interest at any-given time.

(c) If the Issuing Authority determines it to be in the public interest, the Issuing Authority or its designee(s) may investigate any Complaints or disputes brought by subscribers to the Issuing Authority arising from the operations of the Licensee.

(d) In the event that the Issuing Authority finds a pattern of multiple unresolved subscriber Complaints, the Issuing Authority may request appropriate and reasonable amendments to the Licensee's procedures for the resolution of complaints.

#### **Section 6.4 SUBSCRIBER INFORMATION**

Licensee will provide subscribers with such information as required by FCC regulations which are attached as Exhibit E.

#### **Section 6.5 PARENTAL CONTROL CAPABILITY**

The Licensee shall provide subscribers, upon request, with the capability to control the reception of any channels on the Cable Television System, by means of a mechanical or electronic “Lock” in the set top converter or similar device.

#### **Section 6.6 BILLING AND TERMINATION PROCEDURES**

Licensee will comply with the consumer protection regulations of the Department, 207 CMR 10.00 et seq., as in effect at the time.

#### **Section 6.7 ADVANCE BILLING**

Subscribers shall not be billed in advance by more than a one month period except with the subscriber’s consent.

#### **Section 6.8 PROTECTION OF SUBSCRIBER PRIVACY**

Licensee will comply with all privacy provisions of applicable federal and state laws including, but not limited to, the provisions of Section 631 of the Cable Communications Policy Act of 1984, 47 USC §551, and Title 18 United States Code, Section 2520.

#### **Section 6.9 EMPLOYEE IDENTIFICATION CARDS**

All of Licensee’s employees, including repair and sales personnel, entering private property shall be required to show an employee photo identification card issued by the Licensee.

#### **Section 6.10 NON-DISCRIMINATION**

Licensee shall not discriminate against any person in its solicitation, service or access activities on the basis of race, color, creed, religion, ancestry, national origin, gender, sexual 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 6.11 INSIDE WIRING**

Licensee shall abide by applicable laws and regulations with respect to inside wiring.

**Section 6.12 VOLUNTARY DISCONNECTION OF SERVICE**

Subscribers who request full disconnection of Cable Service shall not be responsible for charges for such service for the time period occurring after the requested date of disconnection, provided they have returned Licensee's equipment. Licensee shall make a good faith effort to fully disconnect service as soon as possible after requested to do so by a subscriber. Any credit due to subscriber upon full termination of a service shall be paid to subscriber within thirty (30) full days.

**Section 6.13 ELECTRONIC NOTICE**

Any bill, notice or other communication provided or issued by Licensee to any subscriber may be provided or issued, if such subscriber so consents, solely by electronic means.

## **ARTICLE 7 - LICENSE ADMINISTRATION**

### **Section 7.1 INDEMNIFICATION**

The Licensee shall defend, indemnify and hold the Town and its officials, Boards, Commissions, employees or agents, harmless at all times during the term of this License from any and all claims arising out of the actions of Licensee, its agents, affiliates and contractors in the construction, installation, operation, maintenance and/or removal of any structure, equipment, wire or cable authorized to be installed pursuant to the 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 reasonable out-of-pocket expenses, such as attorney's fees. Licensee shall not be required to indemnify the Town for negligence or willful misconduct on the part of the Town or its officials, Boards, Commissions, agencies or employees.

### **Section 7.2 INSURANCE**

At all times during the term of this License, including the time for removal of facilities provided for herein, Licensee shall obtain, pay all premiums for, and if requested in writing, file with the Issuing Authority insurance company certificates of the following insurance:

(a) A general comprehensive and property liability policy naming the Town and all related parties as additional insureds on all claims on account of injury to or death of a person or persons occasioned by the construction, upgrade, maintenance or operation of the Licensee's Cable Television System, with a minimum liability of two million dollars (\$2,000,000.00) for injury or death to any one person in any one occurrence and four million dollars (\$4,000,000.00) for injury or death to two (2) or more persons in any one occurrence.

(b) It is hereby understood and agreed that this policy shall not be cancelled or materially changed until forty-five (45) days after receipt by the Issuing Authority by certified mail of one (1) copy of a written notice of such intent to cancel or materially change the policy. In the event of any such cancellation or change, License remains subject to the obligations of subsection (a) above.

### **Section 7.3 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 in the amount of ten thousand (\$10,000.00). The condition of said bond shall be 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 material 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 material term or condition in this License, provide that first Licensee has been notified of such failure and given an opportunity to cure and be heard.

(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 on the condition that in

the event that Licensee shall fail to comply with any one or more material term or condition of this License, or to comply with any material order, permit or direction of any department, agency, commission, board, division or office of the Town having jurisdiction over its acts pursuant to this License, or to pay any claims, liens or taxes due the Town which arise pursuant to this License by reason of the construction, upgrade, maintenance, operation or removal of the Cable Television System, the Town shall recover from the surety of such bond all damages up to the limit insured by such bond, suffered by the Town as a result thereof; in accordance with the procedures set forth below. 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 hereto, or any damages recovered thereunder shall limit the liability of Licensee under this License.

(c) If the Licensee fails, after thirty (30) days notice, to pay to the Issuing Authority any material compensation or payments, or fails, after thirty (30) days notice to pay to the Issuing Authority any material fees, taxes or penalties, damages, costs or expenses required pursuant to this License; or fails, after thirty (30) days notice or such longer period as is reasonably necessary as determined by the Issuing Authority, to comply with any material provision of this License and to effect a cure of such non-compliance, the Issuing Authority may, in its discretion, recover from the Performance Bond provided the Issuing Authority gives Licensee thirty (30) days notice of its intention to recover from the Performance Bond.

(d) The rights reserved to the Issuing Authority with respect to the Performance Bond 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 Performance Bond shall affect any other right the Issuing Authority may have. Notwithstanding the foregoing, the Issuing Authority shall not seek compensation from the Performance Bond or any other source of compensation resulting in duplicative coverage for any loss or injury.

#### **Section 7.4 ADMINISTRATION OF THE CABLE SYSTEM, CABLE ADVISORY COMMITTEE, AND REGIONAL CABLE ADVISORY COMMITTEE**

(a) At the discretion of the Issuing Authority, the Cable Advisory Committee may be vested by the Issuing Authority with such power and authority as may lawfully be delegated, including participation in the regional advisory committee of Great Barrington, Lee, Lenox, Sheffield and Stockbridge ("Five Town Cable Advisory Committee"). However, only the Board of Selectmen may grant a License; agree to amend a License; grant or deny consent to a transfer of a License; find the Licensee in breach of the License; or revoke the License.

(b) The Licensee shall meet with the Issuing Authority or the Cable Advisory Committee or the Five Town Cable Advisory Committee to review the Licensee's compliance to the License as well and to review other issues related to this License. Such meetings may be requested by the Issuing Authority, the Cable Advisory Committee, the Five Town Cable Advisory Committee, or the Licensee.

## **Section 7.5 PERFORMANCE EVALUATION SESSIONS**

(a) The Issuing Authority may, at its discretion, hold performance evaluation sessions as it may from time to time deem necessary. All such evaluation sessions shall be open to the public. The purpose of said evaluation sessions shall be to review Licensee's compliance with the terms and conditions of this License. The Issuing Authority shall have the right to question Licensee concerning the operation, maintenance and extension of the Cable Television System and any other matters regulated by this License. The Licensee shall be given twenty-one (21) days prior written notice of any and all topics to be discussed. 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 reasonably related to compliance with the License. The Issuing Authority shall arrange for announcement of each evaluation session on a PEG access channel.

(b) At any time after March 1, 2016, upon request either party, the Issuing Authority and Licensee shall engage in good faith negotiations with respect to any matter covered by this License and/or any amendment to this License proposed by either party. This License may be amended only in writing executed by both parties.

## **Section 7.6 INFORMATION REQUESTS AND RIGHT TO INSPECT RECORDS AND FACILITIES**

(a) Upon request of the Issuing Authority, the Licensee shall promptly submit to the Town information regarding the Licensee, its business and operations, or any affiliated Person with respect to the Cable System, in such form and containing such detail as may be specified by the Town pertaining to the subject matter of this License which may be reasonably required to establish the Licensee's compliance with its obligations pursuant to this License.

(b) If the Licensee believes that any documentation requested by the Issuing Authority pursuant to this Agreement involves proprietary or confidential information, then the Licensee need not disclose the information to the Town, however, the Licensee shall confer with the Town Counsel to explain the basis of the Licensee's claim of a proprietary interest and to attempt to implement a mutually acceptable method of confidential treatment of such records such that they shall not become public records.

(c) Upon reasonable notice, the Issuing Authority may visit the places of business and other premises and examine the records and facilities of the Licensee during normal business hours to determine Licensee's compliance with (1) all provisions of this License and (2) all other legal requirements relating to this License.

## **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 provision of this License shall not be deemed a waiver of its right to insist upon the subsequent performance of that provision.

## **Section 7.8 LICENSE FEE**

Subject to applicable law, Licensee shall, on or before March 15<sup>th</sup> of each year, submit a license fee to the Issuing Authority equal to fifty cents (\$.50) (“License Fee”) per subscriber per year 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.

## **Section 7.9 TAXES**

Payment of the License Fee made by Licensee to the Town pursuant to the provisions of this License shall not be considered in the nature of a tax, but shall be in addition to any and all taxes of general applicability which are now or may be required hereafter to be paid by any law of the Commonwealth of Massachusetts or the United States.

## **Section 7.10 ANNUAL PERFORMANCE TEST**

Proof of performance tests shall be made as required by FCC regulations to ensure compliance with the F.C.C. Technical Specifications referenced in §3.19 herein. The costs of such test(s) shall be borne by Licensee.

Proof of performance tests shall be submitted to the Issuing Authority, upon request, on an annual basis within ten (10) calendar days after completion of testing.

## **Section 7.11 SUBSCRIBER COMPLAINT REPORT**

The Licensee shall submit annually a completed copy of the Department’s Form 500B to the Issuing Authority, or its designee, no later than two (2) weeks after the date required by the Department. The Licensee shall record written and verbal complaints from its subscribers on said Form 500B as required by the Department.

## **Section 7.12 INDIVIDUAL COMPLAINT REPORTS**

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

## **Section 7.13 QUALITY OF SERVICE**

In the event that the Issuing Authority receives written complaints from at least eight subscribers within 21 days regarding signal quality, the Issuing Authority will notify Licensee in writing and Licensee will report in writing to the Town within 30 days of such notice about the nature of the problem and the corrective action to be taken, if any. Said notice to the Licensee shall include the details of each complaint. Subsequent to such report, if no corrective action is taken and the Issuing Authority has reliable, credible evidence to indicate that Licensee is not meeting FCC technical specifications, the Issuing Authority will have the right to require Licensee to test,



analyze and report on signal quality within 30 days. Prior to such test being conducted or contracted for by Licensee, Licensee shall provide an estimate of the cost of such test to the Issuing Authority. Should the tests show Licensee's non-compliance with FCC technical standards, Licensee shall bear the costs of such tests, otherwise the Town shall bear the costs.

#### **Section 7.14 SERVICE INTERRUPTION REPORT**

The Licensee shall submit a completed copy of DTC Form 500C to the Issuing Authority, or its designee as required by such DTC form.

#### **Section 7.15 FINANCIAL REPORTS**

(a) The Licensee shall furnish the Issuing Authority, or its designee(s) no later than one hundred twenty (120) days after the end of Licensee's Fiscal Year, DTC Forms 200 and 400, prepared in accordance with DTC Rules and Regulations.

(b) The Licensee shall furnish the Issuing Authority and/or its designee(s), no later than one hundred twenty (120) days after the end of the Licensee's Fiscal Year, a statement of its Gross Annual Revenues, upon which its PEG Access annual operations grant is based.

#### **Section 7.16 NUMBER OF SUBSCRIBERS**

Licensee shall file a report containing the number of subscribers in the Town with the Issuing Authority and the Cable Advisory Committee. Said report shall be filed annually with the Financial Reports required pursuant to Section 7.15 above.

#### **Section 7.17 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 except that monetary remedies shall not be duplicative of each other with respect to a single occurrence.

#### **Section 7.18 DUAL FILINGS**

The Licensee shall make available to the Town, and copy at the Licensee's expense, copies of any petitions or communications filed by the Licensee with any State or federal agency or commission pertaining to compliance with any material aspect of this License.

#### **Section 7.19 ADDITIONAL INFORMATION**

At any time during the term of this License, upon the reasonable request of the Issuing Authority, the Licensee shall not unreasonably deny any requests for further information which may be required to establish the Licensee's compliance with its obligations pursuant to this License.

## **Section 7.20 REVOCATION OF RENEWAL LICENSE**

(a) In addition to all other rights which the Issuing Authority has pursuant to law or equity, the Issuing Authority reserves the right to revoke, terminate or cancel this Agreement and the License and all rights and privileges pertaining thereto, after following the procedures outlined herein, in the event that Licensee substantially violates any material provision of this Agreement and fails to remedy such violation as required.

(b) Whenever the Issuing Authority has reason to believe that that Licensee has violated one or more material terms, conditions or provisions of this License, a written notice shall be given to Licensee. The written notice shall describe in reasonable detail the alleged violation so as to afford the Licensee an opportunity to investigate and/or remedy the alleged violation. Licensee shall have sixty (60) days subsequent to receipt of the notice in which to correct the violation. Licensee may, within thirty (30) days of receipt of notice, notify the Issuing Authority that there is a dispute as to whether a violation or failure has, in fact, occurred. Such notice by Licensee shall specify with particularity the matters disputed by Licensee and stay the running of the above-described time.

(c) Issuing Authority shall hear Licensee's dispute at a regularly scheduled or specially scheduled Board of Selectmen meeting of which Licensee has been given at least two weeks notice. Licensee shall have the right to examine witnesses and cross-examine any other witnesses. The Board of Selectmen may subpoena witnesses who have knowledge or expertise relevant to the dispute on their own initiative or at the request of Licensee. The Issuing Authority shall determine if Licensee has committed a violation and shall make written findings of fact relative to its determination and provide such findings to Licensee. If a violation is found, Licensee may petition for reconsideration within 60 days of the finding.

(d) If after hearing the dispute, the claim of non-compliance is upheld by the Issuing Authority, then Licensee shall have sixty (60) days from the date of receipt of Issuing Authority's written decision within which to remedy the violation.

(e) The time for Licensee to correct any alleged violation shall be extended by the Issuing Authority if the necessary action to correct the alleged violation is of such a nature or character as to require more than sixty (60) days within which to perform, provided Licensee commences corrective action and thereafter exercises due diligence to correct the violation.

(f) In the event that Licensee fails to remedy the violation within the time frame set herein, Issuing Authority may revoke the License by vote of its governing body after a public hearing of which Licensee has been given at least two weeks notice at which Licensee shall have the right to be heard; to subpoena and examine witnesses; and cross-examine any other witnesses. Issuing Authority shall state in writing the basis for any decision to revoke the License. Any revocation hereunder is subject to appeal by Licensee in a court of competent jurisdiction.

## **ARTICLE 8 - GENERAL PROVISIONS**

### **Section 8.1 ENTIRE AGREEMENT**

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

### **Section 8.2 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 8.3 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 8.4 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; lightening; earthquakes; fires, hurricanes; volcanic activity; storms; floods; washouts; droughts; arrests; civil disturbances; explosions; partial or entire failure of utilities; unavailability of materials such as fiber, or any other cause or event not reasonably within the control of the disabled party.

### **Section 8.5 LICENSE EXHIBITS**

The Exhibits to this License, attached hereto, and all portions thereof, are incorporated herein by reference and expressly made a part of this License.

## **Section 8.6     WARRANTIES**

The Licensee warrants, represents and acknowledges that, as of the Execution date of this License:

- (a)     The Licensee is duly organized, validly existing and in good standing under the laws of the State of Delaware;
- (b)     The Licensee has the requisite power and authority under applicable law and its by-laws and articles of incorporation and/or other organizational documents, is authorized by resolutions of its Board of Directors or other governing body, and has secured all consents which are required to be obtained as of the execution date of this License, to enter into and legally bind the Licensee to this License and to take all actions necessary to perform all of its obligations pursuant to this License;
- (c)     This License is enforceable against the Licensee in accordance with the provisions herein; and
- (d)     There is no action or proceeding pending or threatened against the Licensee which would interfere with the performance of this License.

## **Section 8.7     APPLICABILITY OF LICENSE**

All of the provisions in this License shall apply to the Town, the Licensee, and their respective successors and assigns.

## **Section 8.8     JURISDICTION**

Jurisdiction and venue over any dispute or judgment rendered pursuant to any Article herein shall be in a federal or state court or agency of appropriate venue and subject matter jurisdiction located in the Commonwealth of Massachusetts 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 8.9     NOTICE**

Every notice to be served under this agreement shall be delivered in hand and sent by certified mail (postage prepaid), or overnight delivery service, shall be deemed to have been given on the date of hand delivery or on the mailing date thereof and shall be addressed as follows:

- (a)     To the Issuing Authority:

Board of Selectmen  
Memorial Hall  
32 Main Street  
Lee, MA 01238

Or such other address as the Issuing Authority may specify in writing to the Licensee:

(b) To the Licensee:

Time Warner Cable  
1021 High Bridge Road  
Schenectady, NY 12303

Attention: Government Relations

With a copy to:

Time Warner Cable  
60 Columbus Circle  
New York, NY 10023

Attn: Law Department, Regulatory

Or such other address as the Licensee may specify in writing to the Issuing Authority.

#### **Section 8.10 TOWN'S RIGHT OF INTERVENTION**

The Town hereby reserves to itself, and the Licensee acknowledges the Town's right, to the extent authorized by applicable law or regulation, to intervene in any suit, action or proceeding directly relating to the provisions of this License, or any provision in this License.

#### **Section 8.11 RESERVATION OF RIGHTS**

Acceptance of the terms and conditions of this License will not constitute, nor be deemed to constitute, a waiver, either expressly or impliedly, by Licensee or by the Town of any constitutional or legal right which either party may have or may be subsequently determined to have, either by subsequent legislation or court decisions. The Town and Licensee acknowledge that each reserves all of their respective rights under applicable Federal and State Constitutions and laws.

#### **Section 8.12 INCORPORATION of M.G.L. c. 166A, §5**

The provisions of M.G.L. c. 166A, §5(a)-(o), as they presently exist and as they may from time to time in the future be amended, are incorporated into this license, and shall be governing on all parties.

#### **Section 8.13 NO THIRD PARTY BENEFICIARIES**

This License is not intended to, and does not create any rights or benefits on behalf of any person other than the parties to this License.

**WITNESS OUR HANDS AND OFFICIAL SEALS, THIS** \_\_\_\_\_

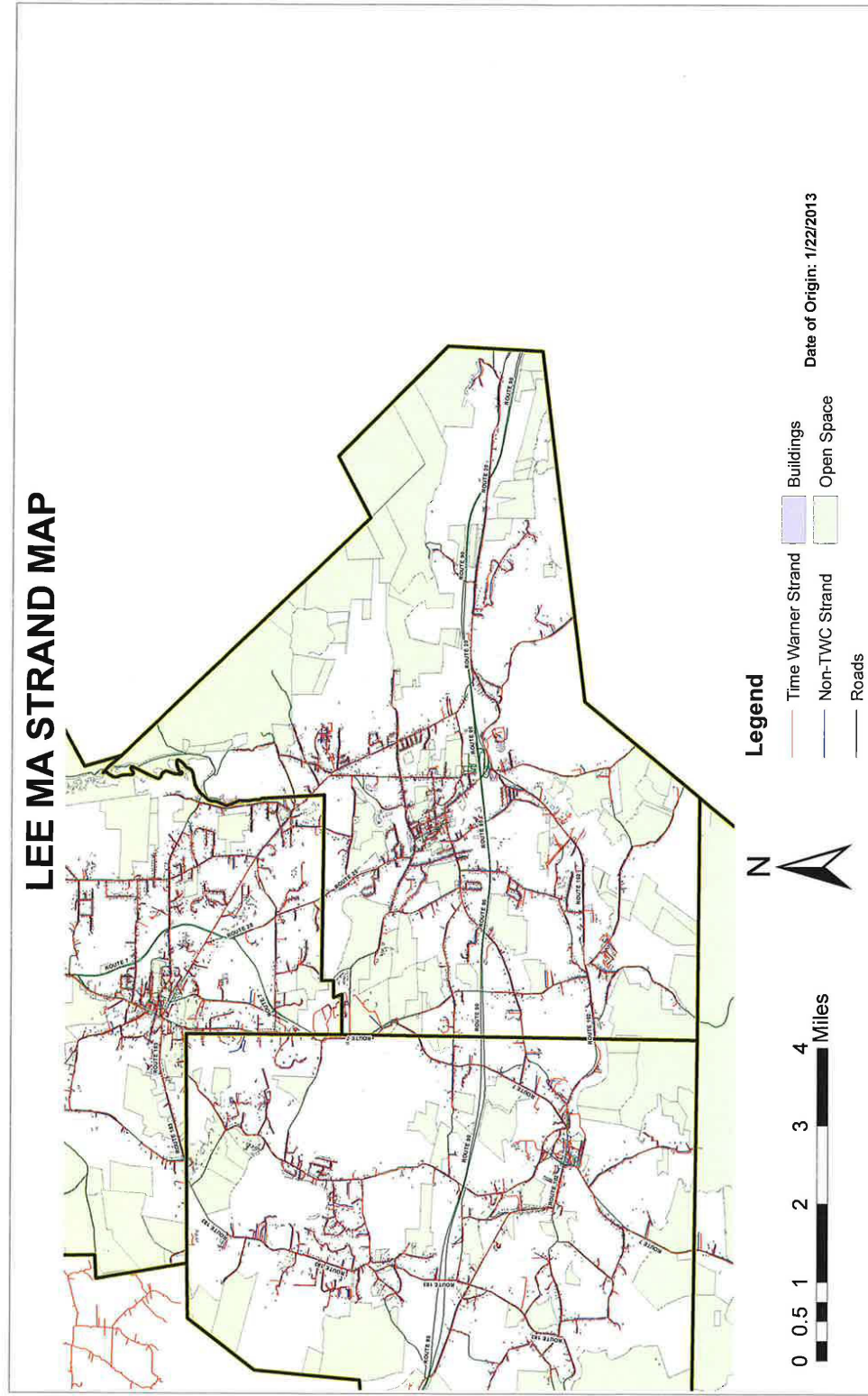
**For the Town of Lee:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**For Time Warner Cable Northeast LLC:**

\_\_\_\_\_  
\_\_\_\_\_

**Exhibit A**  
**Map**



**Exhibit B**

**(Existing Coax Local Origination Sites to be maintained)**

Lee High School  
300 Greylock St, Lee, MA 01238

Lee Senior Center (Crossway Tower)  
130 High St, Lee, MA 01238



## **Exhibit C**

### **(Coax Local Origination Sites to be Upgraded to Fiber Optic Sites)**

Lee Town Hall  
32 Main St., Lee, MA 01238

## Exhibit D

### FCC Regulations

§ 76.309 Customer service obligations.

(a) A cable franchise authority may enforce the customer service standards set forth in paragraph (c) of this section against cable operators. The franchise authority must provide affected cable operators ninety (90) days written notice of its intent to enforce the standards.

(b) Nothing in this rule should be construed to prevent or prohibit:

(1) A franchising authority and a cable operator from agreeing to customer service requirements that exceed the standards set forth in paragraph (c) of this section;

(2) A franchising authority from enforcing, through the end of the franchise term, pre-existing customer service requirements that exceed the standards set forth in paragraph (c) of this section and are contained in current franchise agreements;

(3) Any State or any franchising authority from enacting or enforcing any consumer protection law, to the extent not specifically preempted herein; or

(4) The establishment or enforcement of any State or municipal law or regulation concerning customer service that imposes customer service requirements that exceed, or address matters not addressed by the standards set forth in paragraph (c) of this section.

(c) Effective July 1, 1993, a cable operator shall be subject to the following customer service standards:

(1) Cable system office hours and telephone availability—

(i) The cable operator will maintain a local, toll-free or collect call telephone access line which will be available to its subscribers 24 hours a day, seven days a week.

(A) Trained company representatives will be available to respond to customer telephone inquiries during normal business hours.

(B) After normal business hours, the access line may be answered by a service or an automated response system, including an answering machine. Inquiries received after normal business hours must be responded to by a trained company representative on the next business day.

(ii) Under normal operating conditions, telephone answer time by a customer representative, including wait time, shall not exceed thirty (30) seconds when the connection is made. If the call needs to be transferred, transfer time shall not exceed thirty (30) seconds. These standards shall be met no less than ninety (90) percent of the time under normal operating conditions, measured on a quarterly basis.

(iii) The operator will not be required to acquire equipment or perform surveys to measure compliance with the telephone answering standards above unless an historical record of complaints indicates a clear failure to comply.

(iv) Under normal operating conditions, the customer will receive a busy signal less than three (3) percent of the time.

(v) Customer service center and bill payment locations will be open at least during normal business hours and will be conveniently located.

(2) Installations, outages and service calls. Under normal operating conditions, each of the following four standards will be met no less than ninety five (95) percent of the time measured on a quarterly basis:

(i) Standard installations will be performed within seven (7) business days after in order has been placed. "Standard" installations are those that are located up to 125 feet from the existing distribution system.

(ii) Excluding conditions beyond the control of the operator, the cable operator will begin working on "service interruptions" promptly and in no event later than 24 hours after the interruption becomes known. The cable operator must begin actions to correct other service problems the next business day after notification of the service problem.

(iii) The "appointment window" alternatives for installations, service calls, and other installation activities will be either a specific time or, at maximum, a four-hour time block during normal business hours. (The operator may schedule service calls and other installation activities outside of normal business hours for the express convenience of the customer.)

(iv) An operator may not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment.

(v) If a cable operator representative is running late for an appointment with a customer and will not be able to keep the appointment as scheduled, the customer will be contacted. The appointment will be rescheduled, as necessary, at a time which is convenient for the customer.

(3) Communications between cable operators and cable subscribers-

(i) Refunds - Refund checks will be issued promptly, but no later than either-

(A) The customer's next billing cycle following resolution of the request or thirty (30) days, whichever is earlier, or

(B) The return of the equipment supplied by the cable operator if service is terminated.

(ii) Credits—Credits for service will be issued no later than the customer's next billing cycle following the determination that a credit is warranted.

(4) Definitions—

(i) *Normal business hours* —The term “normal business hours” means those hours during which most similar businesses in the community are open to serve customers. In all cases, “normal business hours” must include some evening hours at least one night per week and/or some weekend hours.

(ii) *Normal operating conditions*—The term “normal operating conditions” means those service conditions which are within the control of the cable operator. These conditions which are *not* within the control of the cable operator include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Those conditions which *are* ordinarily within the control of the cable operator include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of the cable system.

(iii) *Service interruption* —The term “service interruption” means the loss of picture or sound on one or more cable channels. ‘

Note to §76309: Section 76.1602 contains notification requirements for cable operators with regard to operator obligations to subscribers and general information to be provided to customers regarding service. Section 76.1603 contains subscriber notification requirements governing rate and service changes. Section 76.1619 contains notification requirements for cable operators with regard to subscriber bill information and operator response procedures pertaining to bill disputes.

[58 FR 21109, Apr. 19, 1993, as amended at 61 FR 18977, Apr. 30, 1996; 65 FR 53615, Sept 5, 2000; 67 FR 1650, Jan. 14, 2002]

**Exhibit E**  
**FCC Regulations**

§ 76.1602 Customer service—general information.

(a) A cable franchise authority may enforce the customer service standards set forth in paragraph (b) of this section against cable operators. The franchise authority must provide affected cable operators 90 days written notice of its intent to enforce standards.

(b) Effective July 1, 1993, the cable operator shall provide written information on each of the following areas at the time of installation of service, at least annually to all subscribers, and at any time upon request:

- (1) Products and services offered;
- (2) Prices and options for programming services and conditions of subscription to programming and other services;
- (3) Installation and service maintenance policies;
- (4) Instructions on how to use the cable service;
- (5) Channel positions of programming carried on the system; and
- (6) Billing and complaint procedures, including the address and telephone number of the local franchise authority's cable office.
- (7) Effective May 1, 2011, any assessed fees for rental of navigation devices and single and additional CableCARDS; and,
- (8) Effective May 1, 2011, if such provider includes equipment in the price of a bundled offer of one or more services, the fees reasonably allocable to:
  - (i) The rental of single and additional CableCARDS; and
  - (ii) The rental of operator-supplied navigation devices.

(c) Subscribers shall be advised of the procedures for resolution of complaints about the quality of the television signal delivered by the cable system operator, including the address of the responsible officer of the local franchising authority.

[65 FR 53617, Sept. 5, 2000, as amended at 76 FR 40279, July 8, 2011]

## **EXHIBIT F**

### **PEG ACCESS CAPITAL FUNDING**

- Master Control
  - Blackmagic hub and equipment \$15,000
  - Tektronix Waveform Monitor \$7,000
  - Tightrope SX4 Server \$23,000
- Studio
  - JVC Studio cameras, \$71,000
  - Camera cables \$2,500
  - Camera tripod heads \$10,000
  - Teleprompters \$3,000
  - Telex base station \$7,000
  - Telex transceivers \$16,000
  - Mackie Audio Mixing Console \$2,000
  - JK telephone hybrid \$1,500
- Control Room
  - Granite Video Switcher \$27,000
  - Aja Video recorder \$4,000
- Editing Facilities
  - iMac \$15,000
  - External HDD \$2,000
  - Network Storage \$6,000