

**ORDINANCE NO. 2020 - 2**

**AN ORDINANCE OF THE TOWNSHIP OF DERRY, MIFFLIN COUNTY, PENNSYLVANIA, GRANTING A NON-EXCLUSIVE CABLE FRANCHISE TO ATLANTIC BROADBAND (PENN) LLC, ITS SUCCESSORS AND ASSIGNS, AUTHORIZING THE EXECUTION OF A CABLE FRANCHISE AGREEMENT AND CONTAINING SEVERABILITY AND REPEALER CLAUSES.**

**NOW THEREFORE, BE IT ORDAINED AND ENACTED BY THE TOWNSHIP SUPERVISORS OF THE TOWNSHIP OF DERRY, MIFFLIN COUNTY, PENNSYLVANIA, AND IT IS HEREBY ORDAINED AND ENACTED BY THE SUPERVISORS OF THE TOWNSHIP OF DERRY, MIFFLIN COUNTY, PENNSYLVANIA, AS FOLLOWS:**

**SECTION 1: SHORT TITLE.** This Ordinance shall be known as and may be cited as the Derry Township Atlantic Broadband Cable Franchise Agreement Ordinance of 2020.

**SECTION 2: APPLICABLE LAW.** This Ordinance is ordained and enacted in accord with the provisions of the Cable Communications Policy Act of 1984, as amended, 47 U.S.C. Sections 521- 613, inclusive (the "Cable Act"), the Second Class Township Code, Section 101 *et seq.*, as amended (53 P.S. Section 65101 *et seq.*, as amended) and otherwise per law.

**SECTION 3: APPROVAL OF EXECUTION GRANT OF CABLE TELEVISION FRANCHISE.** The Supervisors of the Township of Derry hereby authorize and approve the entry into and execution of that Cable Franchise Agreement by the Township of Derry, Mifflin County, Pennsylvania, with Atlantic Broadband (Penn) LLC, in the form attached hereto as Exhibit "A" and incorporated herein by reference. The Chairman of the Board of Supervisors, or in his absence of disability, the Vice Chairman of the Board of Supervisors, together with the Township Secretary, or in her absence or disability, the Assistant Secretary of the Township, are hereby authorized and directed to execute and attest, as applicable, the Agreement and counterparts thereof on behalf of the Township of Derry.

**SECTION 4: EXECUTION OF DOCUMENTS.** The authority and direction to execute the Agreement shall be authorized, approved and carried out even if changes are made after the enactment of this Ordinance, provided that, the Agreement upon execution is substantially in the form approved hereby and that such changes are only editorial in nature and do not affect the meaning, intent, substance or effect of the Agreement as approved by this Ordinance.

**SECTION 5: SEVERABILITY.** If any section, subsection, sentence, clause, phrase or portion of this Ordinance (and the Agreement adopted hereby) is for any reason declared invalid, in whole or part, by any court, agency, commission, legislative body, or other authority of competent jurisdiction, such portion shall be deemed a separate, distinct and independent portion. Such declaration shall not affect the validity of the remaining portions hereof, which other portions shall continue in full force and effect.


**SECTION 6: REPEALER.** As of the effective date of this Ordinance, all Ordinances, parts of Ordinances, Resolutions, parts of Resolutions in relation to a Cable Franchise within the Township of Derry, Mifflin County, Pennsylvania, granted to Atlantic Broadband (Penn) LLC, or its predecessors, are and shall be deemed repealed and ended upon execution of the new Cable Franchise Agreement.

**SECTION 7: EFFECTIVE DATE.** This Ordinance shall be effective five (5) days after adoption and the Cable Franchise Agreement shall be effective in accordance with the terms thereof.

**ORDAINED AND ENACTED,** this 20<sup>th</sup> day of July, 2020.


**TOWNSHIP OF DERRY,**  
Mifflin County, Pennsylvania

Attest:

  
Township Secretary  
(SEAL)

By: ABSENT  
Chairman – Board of Supervisors

  
Vice Chairman -Supervisor

  
Supervisor

# Exhibit A



**Atlantic Broadband (Penn) LLC**

**Cable Franchise Agreement**

**with the**

**TOWNSHIP OF DERRY**

**(PA1410)**

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## Cable Franchise Agreement

THIS CABLE FRANCHISE AGREEMENT ("Agreement") is entered into on this \_\_\_\_ day of \_\_\_\_\_ 2020, by the **Township of Derry**, Mifflin County, Pennsylvania, with municipal offices located at 73 Reserve Lane, Lewistown, PA 17044 ("Issuing Authority") and **Atlantic Broadband (Penn) LLC**, a Delaware limited liability company with its principal place of business at 2 Batterymarch Park, Suite 205, Quincy, MA 02169 ("Franchisee").

### Recitals

**A. Authority to Grant Franchise.** The Issuing Authority, pursuant to Section 621 of the Cable Communications Policy Act of 1984 as now in effect ("Federal Cable Act"), is authorized to grant one or more nonexclusive franchises to construct, operate and maintain a cable television system within the municipal boundaries of the Issuing Authority ("Service Area").

**B. Investigation of Franchisee.** The Issuing Authority has analyzed and considered the technical ability, financial condition and legal qualifications of Franchisee.

**C. Determination of Franchisee's Qualifications.** The Issuing Authority, after such consideration, analysis and deliberation as are required by applicable law, has approved and found sufficient the technical, financial and legal qualifications of Franchisee to provide cable television service within the municipality.

**THEREFORE**, the parties agree as follows:

#### 1. Grant of Franchise

**a. Grant and Term.** The Issuing Authority grants to Franchisee for the term ("Term") of ten (10) years commencing on the Effective Date (as defined below) the nonexclusive right and franchise ("Franchise") to construct, use, operate, own and maintain a cable system to provide "Cable Services" (as defined in the Federal Cable Act) ("Cable System") subject to all applicable local, state and federal laws and regulations. For purposes of this Agreement, the term "Effective Date" is sixty (60) working days following the approval of this Agreement by the Issuing Authority and Franchisee. The Term shall automatically extend for one (1) additional terms of five (5) years provided Franchisee references this section in writing to the Issuing Authority at most thirty-six (36) months and no later than three (3) months before the expiration date, unless the Issuing Authority notifies Franchisee in writing during the same time period of its desire to enter into renewal negotiations as provided under the Cable Act, in which case there shall be no such automatic extension.

**b. Easements and Rights-of-Way.** Without reducing its police powers to adopt and enforce ordinances of general applicability necessary to the health, safety and welfare of the public, the Issuing Authority grants to Franchisee the authority to use the Issuing Authority's streets, sidewalks, easements and rights-of-way for the

purposes of this Agreement, and the Franchise shall be construed to authorize the construction of a Cable System over such rights-of-way and through compatible-use easements in accordance with Section 621(a)(2) of the Federal Cable Act, and to grant access to such easements whether or not such easements specifically contemplate or designate "Cable TV" and to include this grant in future easements and rights-of-way as they are created. The parties acknowledge and agree that the purpose of the Franchise is to authorize Franchisee to construct, maintain and operate a Cable System and offer cable service and any other services Franchisee may provide, not governed by the Cable Act, as it may be amended, superseded or supplemented, and which are not prohibited by Federal or State law, over the facilities of the Cable System in, along, among, upon, across, above, over or under the public rights-of-way within the Issuing Authority's boundaries as they may now exist, or as they may be extended through annexation, and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain, or retain in, on, over, under, upon, across, or along any public right-of-way or bridges such poles, wires, cables, conductors, ducts, conduits, manholes, amplifiers, attachments and equipment as may be necessary or pertinent to the Cable System.

**c. Authority Not Exclusive.** The Franchise and the grant of authority for use of streets, sidewalks, easements and rights-of-way as conferred in this Section 1 are nonexclusive. Franchisee shall respect the rights and property of the Issuing Authority and other authorized users of streets, sidewalks, easements and rights-of-way, and property owners. Except as otherwise required by applicable law, disputes between Franchisee and parties other than the Issuing Authority over the use, pursuant to this Agreement, of the street, sidewalks, easements and other rights-of-way shall be submitted to the Issuing Authority for resolution.

## **2. Franchise Fees**

From and after the Effective Date of this Agreement and throughout the full Term of the Franchise, Franchisee shall pay to the Issuing Authority a franchise fee equal to five percent (5%) of annual Gross Revenues from the provision of cable service within the Township ("Franchise Fee"). Annual "Gross Revenues" shall be defined, unless preempted by applicable Federal and State law, as the revenue derived by the Franchisee from the operation of the Cable System in the Franchise Area to provide Cable Services, calculated in accordance with Generally Accepted Accounting Principles ("GAAP"), including, but not limited to: (1) basic service fees, (2) fees charged for any service tier other than basic service, (3) premium and pay per view service fees, (4) fees charged to Subscribers for any optional, per channel or per program Cable Services, (5) fees for downgrading of any level of Cable Service programming, (6) charges for installation, additional outlets, relocation, disconnection, reconnection and change in Cable Service fees for video or audio programming, (7) fees for cable service calls, (8) charges based on the sale or lease of any portion of the Cable System for Cable Service, (9) fees for leased access channels, (10) rental or sales of any and all Subscriber equipment, including converters, remote control devices and digital video recorders ("DVRs"), (11) any and all locally derived advertising revenues, (12) revenues or commissions from any and all locally derived home shopping channels, (13) revenue from interactive Cable Services, (14) fees for any and all music services which are deemed to be Cable Service, (15) fees for video on demand, (16) cable video late payment fees, (17) not sufficient funds check charges or fees, (18) convenience

fees, (19) franchise fees and (20) revenue from the provision of any other Cable Services.

Gross Revenue shall not include (i) Federal, State or local excise taxes, sales taxes or utility taxes or (ii) refundable deposits, bad debt or investment income. Nonetheless, any such part of actual bad debt that is written off, but subsequently collected, shall be included as Gross Revenue in the period collected. Franchisee shall pay the Franchise Fee to the Issuing Authority on an annual basis, with such Franchise Fee payable on or before February 28<sup>th</sup> of each year.

### **3. Construction and Maintenance of Cable System**

**a. Maintenance.** Franchisee shall maintain all wires, conduits, cables and other real and personal property and facilities owned by Franchisee and used in the operation of the Cable System in good condition, order and repair.

**b. Permits and General Obligations.** The Franchisee shall be responsible for obtaining all generally applicable permits, licenses, as may be required in order to perform construction or maintenance on the Cable System, prior to the commencement of any activity that disturbs the surface of any street, curb, sidewalk or other public improvement in the Public Right-of-Way, or impedes or impacts vehicular traffic. Franchisee shall pay any and all required permit, license or other applicable fees therefor. The issuance of such permits shall not be unreasonably withheld or delayed. Construction, installation, and maintenance of the Cable System shall be performed in accordance with industry standards. Notwithstanding the requirements herein, Franchisee shall not be required to obtain a permit for drop connections to Subscribers, servicing or installing pedestals or other similar facilities, or other instances of routine maintenance or repair to its Cable System that does not disturb the surface of the grade or impede or impact vehicular traffic. All transmission and distribution structures, poles, other lines, and equipment installed by the Franchisee for use in the Cable System in accordance with the terms and conditions of this Franchise Agreement shall be located so as to minimize the interference with the proper use of the Public Rights-of-Ways and the rights and reasonable convenience of property owners who own property that adjoins any such Public Right-of-Way.

#### **c. Conditions of Street Occupancy.**

(1) **New Grades or Lines.** If the grades or lines of any Public Right-of-Way within the Franchise Area are lawfully changed at any time during the term of this Franchise Agreement, then the Franchisee shall, upon reasonable advance written notice from the Issuing Authority (which shall not be less than thirty (30) business days) and at Franchisee's own cost and expense, protect or promptly alter or relocate the Cable System, or any part thereof, so as to conform with any such new grades or lines. If public funds are available to any other user of the Public Right-of-Way for the purpose of defraying the cost of any of the foregoing, the Issuing Authority shall notify Franchisee of such funding, if the Issuing Authority is actually aware of the same.

(2) **Relocation at Request of Third Party.** The Franchisee shall, upon reasonable prior written request of any Person holding a permit issued by the Issuing Authority to move any structure, temporarily move its wires to permit the moving of such



structure: provided (i.) the Franchisee may impose a reasonable charge on any Person for the movement of its wires, and such charge may be required to be paid in advance of the movement of its wires: and (ii.) the Franchisee is given not less than thirty (30) business days advance written notice to arrange for such temporary relocation.

(3) **Restoration of Public Rights-of-Way.** If in connection with the construction, operation, maintenance, or repair of the Cable System, the Franchisee disturbs, alters, or damages any Public Right-of-Way, the Franchisee agrees that it shall, at its own cost and expense, replace and restore any such Public Right-of-Way to a condition reasonably comparable to the condition of the Public Right-of-Way existing immediately prior to the disturbance.

(4) **Safety Requirements.** The Franchisee shall undertake all necessary and appropriate efforts to maintain its work sites in a safe manner in order to prevent failures and accidents that may cause damage, injuries or nuisances. All work undertaken on the Cable System shall be performed in substantial accordance with applicable Federal Communications Commission (FCC) or other Federal and State regulations. The Cable System shall not unreasonably endanger or interfere with the safety of Persons or property in the Franchise Area.

(5) **Trimming of Trees and Shrubbery.** The Franchisee shall have the authority to trim trees or other natural vegetative growth encroaching or overhanging any of its Cable System in the Franchise Area so as to prevent contact with the Franchisee's wires, cables, or other equipment. All such trimming shall be done at the Franchisee's sole cost and expense. The Franchisee shall be responsible for any collateral, real property damage caused by such trimming.

(6) **Aerial and Underground Construction.** At the time of Cable System construction, if all of the transmission and distribution facilities of all of the respective public or municipal utilities in any area of the Franchise Area are underground, the Franchisee shall place its Cable System transmission and distribution facilities underground, provided that such underground locations are actually capable of accommodating the Franchisee's cable and other equipment without technical degradation of the Cable System's signal quality. In any region(s) of the Franchise Area where the transmission or distribution facilities of the respective public or municipal utilities are both aerial and underground, the Franchisee shall have the discretion to construct, operate, and maintain all of its transmission and distribution facilities, or any part thereof, aerially or underground. Nothing in this Agreement shall be construed to require the Franchisee to construct, operate, or maintain underground any ground-mounted appurtenances such as customer taps, line extenders, system passive devices, amplifiers, power supplies, pedestals, or other related equipment.

d. **Compliance with Law.** Franchisee shall comply with all applicable Federal, State and Local laws and regulations governing the construction, installation, operation and maintenance of a Cable System. Such laws and regulations shall include, without limitation, the requirements of Section 621(a)(2)(A) of the Federal Cable Act, as it may be amended.

e. **Standard Installation. Drops Exceeding 125 Feet.** Where the drop to the customer's premise is more than 125 feet in length, in addition to the prevailing standard installation or activation charge, Franchisee may charge the customer the actual difference between Franchisee's cost of installing a 125-foot- drop and the cost of installing the longer drop required by the customer.

f. **Ownership of Installed Cable.** Franchisee shall own all cable installed by Franchisee within the Service Area.

g. **Municipal Facilities.** During the Term, Franchisee shall provide in accordance with FCC Rules & Regulations as amended from time to time, at no cost to the Issuing Authority, one above-ground cable drop of up to 125 feet, expanded basic service (excluding premium and pay-per-view services) to each Municipal Facility (as set forth in the attached Exhibit 3) within the Service Area. If the Issuing Authority requests that a particular Municipal Facility receive either a cable drop which exceeds 125 feet in length and/or an underground installation, Franchisee may charge the Issuing Authority the actual difference between Franchisee's cost of installing a 125-foot above-ground drop and Franchisee's actual cost of installing the drop as requested by the Issuing Authority. For purposes of this Agreement, the term "Municipal Facilities" means: (1) the public school buildings within the municipal limits, (2) one public library within the municipal limits, (3) the Issuing Authority's city hall (or comparable building), (4) one police facility within the municipal limits, and (5) one fire facility within the municipal limits

#### 4. **Indemnification; Insurance; Performance and Completion Security**

##### a. **Indemnification**

(1) **General Duty.** Except with respect to the negligent or intentional act or omission of the Issuing Authority, its agents, employees or representatives, Franchisee agrees to defend, indemnify and save harmless the Issuing Authority and its employees, agents, servants, officers, directors, shareholders, elected officials, contractors, subcontractors and representatives (collectively, "Indemnified Party") against all damages, losses and expenses (including, without limitation, reasonable attorneys' fees and costs of suit or defense) arising from any claims, demands and suits for personal injury (fatal or nonfatal), property damage or claims of any other nature, to the extent such damages, losses or expenses arise out of or are caused by the

negligent act or omission, the intentional act or omission or other wrongful acts or failures to act of Franchisee or its employees, agents, servants, officers, directors, shareholders, officials, contractors, subcontractors or representatives in the construction, operation and maintenance of the Cable System. Notwithstanding the foregoing, this Subsection shall not apply to any liability which may accrue to the Issuing Authority with regard to the Issuing Authority's use of any channel provided for the Issuing Authority's use, arising out of the use of the emergency override capability required pursuant to this agreement or other local ordinance or regulation, or arising out of any act of commission or omission, or any negligence of the Issuing Authority, or its officers, elected or appointed officials, servants, agents, employees or contractors.

(2) **Notice and Defense.** The Indemnified Party shall give Franchisee reasonably prompt written notice of any claim, demand, action or proceeding for which indemnification will be sought under this provision of the Agreement. If such claim, demand, action or proceeding is a third-party claim, demand, action or proceeding, Franchisee will have the right at its expense to assume the defense of such claim, demand, action or proceeding. Franchisee and the Indemnified Party shall cooperate with each other and provide each other with access to relevant books and records in their possession. No such third-party claim, demand, action or proceeding shall be settled without the prior written consent of the Indemnified Party, which consent the Indemnified Party shall not unreasonably withhold or delay.

**b. Liability Insurance and Workers' Compensation Insurance.**

Franchisee shall maintain in full force and effect, at its own cost and expense, during the Term of this Agreement, and any renewal thereof, Liability Insurance and Workers' Compensation Insurance in at least those coverages and the amounts as set forth on Exhibit 2, attached hereto and incorporated herein by reference.

**c. Maintenance of Insurance Coverage.**

Franchisee shall show to the reasonable satisfaction of the Issuing Authority that such insurance is in effect at all times.

**5. Customer Service Standards and Privacy**

**a. Invasion of Privacy Prohibited.** In the conduct of providing its services or pursuit of any collateral commercial enterprise resulting from its services, Franchisee shall take all action necessary to prevent an invasion of a customer's right to privacy as such right is defined by applicable law. The Franchisee shall comply with all applicable Federal and State privacy laws, including Section 631 [47 U.S.C. §551] of the Cable Act and regulations adopted pursuant thereto.

**b. Sale of Personalized Data Restricted.** Franchisee shall not sell or otherwise make available to unaffiliated third parties (including the Issuing Authority) lists of names and addresses of customers, or any list which identifies, by name, customer viewing habits, or personalized data pertaining to a customer's use of any of Franchisee's services without the express written consent of the customer to which the personalized data

pertains unless permitted by applicable law. For purposes of this Section, "personalized data" shall mean the name and/or address of an individual customer directly associated with data obtained on his or her use of specific services provided by or through Franchisee. Nothing in this Agreement shall be construed to prevent, as a normal incident of commercial enterprise, the sale or availability of "non-personalized" or "aggregate data" which is not personalized data as defined in this Agreement.

**c. Landlord/Tenant.** Franchisee shall be required, in accordance with this Agreement and applicable law, to provide service to individual units of a multiple housing facility with all services offered to other dwelling units within the Service Area, so long as the owner of the facility consents in writing, if requested by Franchisee, to the following:

- (1) To Franchisee's providing of the service to units of the facility;
- (2) To reasonable conditions and times for installation, maintenance and inspection of the system of the facility premises;
- (3) To reasonable conditions promulgated by Franchisee to protect Franchisee's equipment and to encourage widespread use of the system; and
- (4) To not demand or accept payment from Franchisee for permitting Franchisee to provide service to the facility and to not discriminate in rental charges, or otherwise, between tenants which receive cable services and those who do not.

**d. Customer Service Standards.** The Issuing Authority hereby adopts the customer service standards set forth in Title 47, Part 76, §76.309 of the FCC's rules and regulations, as amended and supplemented from time to time. The Franchisee shall comply in all respects with the customer service requirements established by the FCC, and as they may be amended and supplemented from time to time.

**e. Customer Bills.** Customer bills shall be designed in such a way as to present the information contained therein clearly and comprehensibly to Customers, and in a way that (A) is not misleading and (B) does not omit material information. Notwithstanding anything to the contrary above, the Franchisee may, in its sole discretion, consolidate costs on Customer bills as may otherwise be permitted by Section 622 (c) of the Cable Act [47 U.S.C. §542 (c)].

## **6. Taxes, Rates and Charges**

Franchisee shall pay any taxes required by applicable law to be paid by Franchisee, and Franchisee shall have the right to pass through to customers any applicable taxes and fees, including Franchise Fees. With respect to rates and charges, the parties agree that they will abide by federal law and Federal Communications Commission ("FCC") Regulations.

## **7. Maintenance of Books, Records, and Files**

**a. Books and Records.** Throughout the term of this Franchise Agreement, the Franchisee agrees that the Issuing Authority may review the Franchisee's books and records as are reasonably necessary to monitor Franchisee's compliance with the provisions of this Franchise Agreement, upon reasonable prior written notice to the Franchisee, at the Franchisee's business office, during normal business hours, and without unreasonably interfering with Franchisee's business operations. All such documents that may be the subject of an inspection by the Issuing Authority shall be retained by the Franchisee for a minimum period of thirty-six (36) months after Issuing Authority's receipt of any such document.

**b. File for Public Inspection.** In accordance with applicable law, throughout the term of this Franchise Agreement, the Franchisee shall maintain at its business office or other accessible location within the Commonwealth of Pennsylvania, in a file available for public inspection during normal business hours, those documents required pursuant to the FCC's rules and regulations.

## **8. Assignment, Transfer or Sale of Franchise**

**a. General.** There shall be no assignment of Franchisee's Franchise, in whole or in part, by Franchisee without the written notification of the Issuing Authority. As used in this Agreement, the terms "assigned" and "transferred" shall mean any transaction which involves a majority "transfer of ownership in a cable system" within the meaning of 47 U.S.C. 537(a), as implemented by 47 C.F.R. Section 76.502 (with the exception of those transactions exempted in 47 U.S.C. 537(c)(3), as implemented by 47 C.F.R. Section 76.502(f)(3)).

**b. Exception.** This Section shall not apply to any sale, assignment or transfer to one or more purchasers, assignees or transferees controlled by, controlling, or under common control with, Franchisee, and Franchisee shall be permitted to affect any such sale, assignment or transfer without prior notification to the Issuing Authority. Notwithstanding the foregoing, provided that there is a change in the following contact information, Franchisee shall provide Issuing Authority with the name, address, telephone number and relationship of the said transferee entity, together with an authorized "contact person's name" within sixty (60) days of the transfer.

## **9. Renewal of Franchise**

The Issuing Authority and Franchisee agree that any proceedings undertaken by the Issuing Authority that relate to the renewal of Franchisee's Franchise shall be governed by and comply with applicable federal law, including the renewal provisions in Section 626 of the Federal Cable Act as then in effect. The Issuing Authority acknowledges that Franchisee will make a substantial investment in providing facilities and services pursuant to this Franchise Agreement and that renewal of the Franchise, provided it meets the criteria specified in applicable law, is a significant factor in Franchisee's willingness to

assume its obligations hereunder.

#### **10. Franchise Requirements for Other Franchise Holders**

(a) Franchisee acknowledges and agrees that the Issuing Authority reserves the right to grant one or more additional franchises to construct, operate, and maintain a Cable System within the Township.

(b) The franchise granted to Franchisee is non-exclusive; however, if the Issuing Authority grants a subsequent Franchise that, when taken as a whole upon consideration of all of its material obligations, is more favorable or less burdensome to the subsequent franchisee than this Agreement is to Franchisee, then the Franchisee may request an amendment to this Agreement to provide Franchisee with competitive equity. If the Issuing Authority agrees with Franchisee that, when taken as a whole upon consideration of all of its material obligations, the subsequent Franchise is more favorable or less burdensome, then the Franchisee and Franchisee shall enter into discussions in order to modify this Agreement to the mutual satisfaction of both parties to provide Franchisee with such competitive equity.

(c) In the event an application for a new Franchise for Cable Service is submitted to the Issuing Authority proposing to serve Subscribers within the Township, then the Issuing Authority shall notify Franchisee in writing of the submission of the application.

#### **11. Force Majeure**

The Franchisee shall not be held in default under, or in non-compliance with, the provisions of the Franchise, nor suffer any enforcement or penalty relating to noncompliance or default (including termination, cancellation or revocation of the Franchise), where such non-compliance or alleged defaults occurred or were caused by acts of third parties outside of Franchisee's reasonable control and or acts of God: lightning strike, earthquake, flood, tidal wave, rain, ice or snow storm, hurricane, tornado, or other catastrophic or other acts of nature; riot, war, labor disputes, environmental restrictions, failure of utility service necessary to operate the Cable System, governmental, administrative or judicial order or regulation. Force Majeure also covers work delays caused by waiting for utility providers to service or monitor their own utility poles on which Franchisee's cable and/or equipment is attached.

#### **12. Franchise Fees Subject to Audit**

a. Upon reasonable prior written notice, during Normal Business Hours at Franchisee's principal business office, the Issuing Authority shall have the right to inspect the Franchisee's financial records used to calculate the Issuing Authority's franchise fees (the "Audit"); provided, however, that any such inspection shall take place within four (4) years from the date the Issuing Authority receives such payment, after which period any such payment shall be considered final. Upon written request, Franchisee shall provide Issuing Authority with copies of financial records related to the franchise fee audit or review.

b. Any franchise fee payment due to the Issuing Authority as a result of the Audit or franchise fee review shall be paid to the Issuing Authority by Franchisee within sixty (60) days from the date the Issuing Authority notifies Franchisee of its determination. If the matter is submitted to mediation or litigation, then the payment must be made within sixty (60) days from the final disposition of such action. If the Audit or franchise fee review shows that franchise fees have been underpaid, then Franchisee shall pay the underpaid amount plus monetary fines of ten percent (10%) of the underpayment within sixty (60) days following written notice from the Issuing Authority of the underpayment, or sixty (60) days after the notice of the final disposition of the matter if the Audit is mediated or litigated. If franchise fees have been underpaid by five percent (5%) or more, then Franchisee shall pay the documented and reasonable out-of-pocket costs of the Audit or review. If the Audit or franchise fee review shows that franchise fees have been overpaid, then Franchisee may offset the overpaid amount against future franchise fee payments until such time as the overpayment has been entirely recouped.

### 13. Revocation of Franchise

a. **Major Breach of Franchise.** When any event, act or omission on the part of Franchisee occurs which represents a substantial or repeated violation of a material provision of this Agreement, then such event, act or omission may be considered a "major breach" of this Agreement. Under such circumstances, the Issuing Authority shall notify Franchisee in writing by certified mail, of the specific breach, and direct Franchisee to comply with all provisions of this Agreement for which the Franchisee is in violation.

b. **Events of Defaults.** The events, acts and omissions referred to in this Section are the following: (1) bankruptcy; (2) insolvency; (3) a major breach of this Franchise (as noted in Subsection 13.a above) that remains uncured for the 60-day cure period described in Subsection 13.c below; (4) it is demonstrated that Franchisee practiced any fraud or deceit upon the Issuing Authority in its operation of its Cable System or in relation to other activities pursuant to this Franchise Agreement; (5) Franchisee repeatedly fails, after notice and opportunity to cure in accord with 13.c below to maintain signal quality pursuant to standards provided by the FCC and/or per the provisions of this Franchise Agreement. Events of Default do not include events in Section 11 above.

c. **Opportunity to Cure.** Issuing Authority shall provide Franchisee with written notice of the violation alleged to have occurred and the Franchisee shall have sixty (60) days in which to: (1) cure such violation; (2) in the case of any alleged violation which cannot reasonably be cured within such 60-day period, commence and diligently pursue a cure; or (3) notify the Issuing Authority in writing that it disputes the Issuing Authority's claim of an alleged violation. In the event that Franchisee disputes the Issuing Authority's claim, the Issuing Authority shall, upon reasonable prior written notice, set a hearing before the Council at which the Issuing Authority, Franchisee and any interested party may present evidence relating to the alleged violation. Following the hearing, the Issuing Authority shall make a determination as to whether a violation has occurred. In the event that the Authority reasonably determines that a violation has occurred, the Issuing Authority shall notify Franchisee in writing of its finding, and shall provide Franchisee thirty (30) days in which to cure such violation, or in the case of a violation which cannot reasonably be cured with such 30-day period, such reasonable amount of time to allow Franchisee commence and diligently pursue a cure.

**d. Public Hearing**

(1) **Scheduling and Procedures.** No sooner than Forty-Five (45) days after such written notice is sent by certified mail to Franchisee, the Issuing Authority may set a date for a public hearing on the matter. The hearing shall afford full due process to Franchisee and shall be held on the record. Both Franchisee and the Issuing Authority shall be permitted to compel the attendance of witnesses and the production or documents, to present evidence and to cross-examine witnesses. The public hearing may be cancelled at any time, if the Issuing Authority is satisfied that Franchisee has corrected and/or cured the violation.

(2) **Notice.** The Issuing Authority shall provide written notice, by certified mail, to Franchisee of the time and place of said hearing in a manner consistent with state law.

(3) **Procedure.** The public hearing shall be conducted in accordance with the Pa. Local Agency Law [2 Pa.C.S.A. Sections 551-555] as it may be amended and supplemented from time to time. Accordingly, the hearing shall afford the Issuing Authority's Board of Supervisors, the Franchisee and members of the public fair opportunity for full participation; and, shall include the right to be represented by counsel, to introduce evidence relevant to the purpose of the hearing, to require the production of evidence, and to examine and cross-examine witnesses. Unless waived by the Franchisee and the Issuing Authority's Board of Supervisors, a stenographic record shall be made at the public hearing. A transcript shall be provided to the Township and/or Franchisee at the expense of the party making the request. Within forty-five (45) days after the public hearing (or the last of the public hearings if the hearing was continued or postponed), the Issuing Authority's Board of Supervisors shall:

(i) take action on the case by rescinding its preliminary determination (that the Franchise should be revoked for cause), or by revoking the Franchise absolutely or on condition, or by imposing such lesser disciplinary sanctions or penalties as are determined by the Board of Supervisors to be fair and just under all the circumstances; and

(ii) pursuant to the Pa. Local Agency Law, as aforementioned, issue a written decision containing its findings of fact, its conclusions, and the reasons for its decision.

(4) **Notice of Decision.** A copy of the decision shall be mailed to the Franchisee and to any entity or person who entered an appearance as a party of record at the public hearing.

(5) **Appeal.** An appeal to the appropriate court of competent jurisdiction must be taken within thirty (30) days of the issuance of the determination of the Issuing Authority.

(6) **Other Lawful Actions.** The Issuing Authority may, at its sole discretion, take any lawful action which it deems appropriate to enforce the Issuing Authority's rights under the Franchise in lieu of revocation of the Franchise.



#### 14. Continuity of Service

As to continuity of service, subject to Franchisee's federal and state constitutional and statutory rights which the parties are deemed not to have waived under this Agreement, the parties agree as follows:

**a. Service After Revocation, Termination, Nonrenewal, Abandonment or Withdrawal.** Subject to applicable federal and state law, Franchisee shall provide service for an interim period of up to six (6) months beyond:

- (1) Any then-existing Term of this Franchise Agreement or any renewal of the Term;
- (2) Sixty (60) days' notice from Franchisee to the Issuing Authority of Franchisee's proposed abandonment, withdrawal or cessation of service; and
- (3) The effective date of any revocation, termination or nonrenewal/expiration (absent renewal) of this Agreement.

**b. Issuing Authority Assistance.** During such interim period, the Issuing Authority will cooperate with Franchisee in providing a satisfactory basis for Franchisee to continue providing service under this Agreement.

**c. Revenues.** During any such interim period in which Franchisee continues to provide service, Franchisee is entitled to all revenues collected, less any Franchise Fees or other moneys owed to the Issuing Authority.

#### 15. Severability

If any provision of this Agreement or any related agreement is held by any court or by any Federal, State or County agency of competent jurisdiction to be invalid as conflicting with any federal, state or county law, rule or regulation now or later on in effect, or is held by such court or agency to be modified in any way in order to conform to the requirements of any such law, rule or regulation, that provision shall be considered as a separate, distinct and independent part of this Agreement or such other agreement, and such holding shall not affect the validity and enforceability of all other provisions of this Agreement or such other agreement. In the event that such law, rule or regulation is subsequently repealed, rescinded, amended or otherwise changed so that the affected provision of this Agreement (or such other agreement) which had been held invalid or modified is no longer in conflict with the law, rules and regulations then in effect, that provision shall immediately return to full force and effect and shall afterwards be binding on the parties to this Agreement, *provided* that the Issuing Authority shall give Franchisee Sixty (60) days' written notice of such change before requiring compliance with that provision.

## 16. Compliance with Laws

a. Notwithstanding any other provisions of this Agreement to the contrary the Franchisee shall at all times comply with all applicable laws and regulations of the Federal, state, county and township governments and all administrative agencies thereof, including but not limited to judicial orders; provided, however, that if any such Federal, state, township, or county law or other applicable regulation shall require the Franchisee to perform any service, or shall permit the Franchisee to perform any service, or shall prohibit the Franchisee from performing any service, in conflict with the terms of this Agreement or of any law or regulation of the Issuing Authority, then as soon as possible following knowledge thereof the Franchisee shall notify the Issuing Authority of the point of conflict believed to exist between such regulation or law and the laws or regulations of the Issuing Authority of this Agreement, and the Franchisee shall be excused from performance hereunder, provided that it acts in good faith reliance thereon, pending resolution of such conflict; provided, further, that, from the date of this Agreement through and until the expiration of the Term of the Franchisee granted under this Agreement, no change made by the Issuing Authority in its ordinances or regulations which shall amend the Franchise or this Agreement without the Franchisee's written consent. In the event of a conflict between this Agreement and any local law, rule or regulation (including, without limitation, any ordinance authorizing the grant of a cable television franchise), the terms of this Agreement shall prevail.

b. If the Issuing Authority determines that a material provision of this Agreement or any related agreement is effected by such action of a court or of the Federal, state or county government, the Issuing Authority and Franchisee shall have the right to modify any of the provisions hereof or in such related agreements to such reasonable extent as may be necessary to carry out the full intent and purpose of this Agreement and all related agreements.

## 17. Miscellaneous

**Entire Agreement; Amendment.** This Agreement, the documents that are referred to in this Agreement and the documents that are to be delivered pursuant to this Agreement constitute the entire agreement among the parties pertaining to the subject matter of this Agreement, and supersede all prior and contemporaneous agreements, understandings, negotiations and discussions of the parties, whether oral or written, and there are not representations or other agreements among the parties in connection with the subject matter of this Agreement, except as specifically set forth in this Agreement. No amendment, supplement, modification, waiver or termination of this Agreement shall be binding unless executed in writing by the party to be bound by such amendment, supplement, modification, waiver or termination. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision of this Agreement, whether or not similar, nor shall such waiver constitute a continuing waiver unless otherwise expressly provided in writing by the waiving party.

### a. Notice

**1. To Issuing Authority.** All notices require or permitted to be given to the Issuing Authority under any provisions of this Agreement shall be in writing and shall be deemed served:

(a) When delivered by hand or by U.S. Mail, Federal Express, UPS or similar service to the Issuing Authority's offices during normal business hours; or

(b) When mailed to any other person designated in writing in this Agreement to receive such notice, via certified mail, return receipt requested.

**2. To Franchisee.** All notices required to be given to Franchisee under any provision of this Agreement shall be in writing and shall be deemed served when delivered by one of the methods described above.

**3. Addresses.** Notice shall be given to the following addresses:

**If to Issuing Authority:** Derry Township  
73 Reserve Lane  
Lewistown, PA 17044

**If to Franchisee:** Atlantic Broadband  
Two Batterymarch Park, Suite 205  
Quincy, MA 02169  
Attn: General Counsel

**With Copy to:** Atlantic Broadband  
2200 Beale Avenue  
Altoona, PA 16601  
Attn: VP and General Manager

Either party may change its address for notice purposes at any time by giving notice of such address change on accordance with the foregoing.

b. **Successors.** Subject to the requirements of Section 8 of this Agreement, this Agreement shall inure to the benefit of, and be binding upon, the parties and their respective successors and assigns.

c. **Interpretation.** Unless the context requires otherwise, all words used in this Agreement in the singular number shall extend to and include the plural, all words in the plural number shall extend to and include the singular, and all words in any gender shall extend to and include all genders.

IN WITNESS OF THIS AGREEMENT, the parties have signed below by their duly authorized representatives.

**ATTESTED:**

**TOWNSHIP OF DERRY**

\_\_\_\_\_

By \_\_\_\_\_

Printed \_\_\_\_\_

Title \_\_\_\_\_

Date: \_\_\_\_\_

**WITNESSED:**

**ATLANTIC BROADBAND (PENN) LLC**

\_\_\_\_\_

By \_\_\_\_\_

Printed Leslie J. Brown

Title SVP & General Counsel

Date: \_\_\_\_\_

**EXHIBIT 1**  
**CUSTOMER SERVICE OBLIGATIONS**

1. **OFFICE HOURS AND TELEPHONE AVAILABILITY**
  - a. Franchisee will maintain a local, toll-free, or collect call telephone access line, which will be available to its customers 24 hours a day, seven days a week.
    - i. Trained representatives will be available to respond to customer telephone inquiries during normal business hours.
    - ii. After normal business hours, the access line may be answered by a service or any automated response system, including an answering machine. Inquiries received after normal business hours must be responded to by a trained representative on the next business day.
  - b. 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 not less than ninety percent (90%) of the time under normal operating conditions, measured on a quarterly basis.
  - c. Franchisee 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 clear failure to comply.
  - d. Under normal operating conditions, the customer will receive a busy signal less than three percent (3%) of the time.
  - e. 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 five standards will be met no less than ninety-five percent (95%) of the time, measured on a quarterly basis:

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

- b. Excluding conditions beyond its control, Franchisee will begin working on "service interruptions" promptly and in no event later than 24 hours after the interruption becomes known. Franchisee must begin actions to correct other service problems the next business day after notification of the service problem.
- c. The "appointment window" alternatives for installations, service calls, and other installation activities will be either a specific time or, at a maximum, a four-hour time block during normal business hours. (Franchisee may schedule service calls and other installation activities outside of normal business hours for the express convenience of the customer.)
- d. Franchisee may not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment.
- e. If a 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 FRANCHISEE AND CABLE SUBSCRIBERS**

- a. Notifications to subscribers
  - i. Franchisee 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 Franchisee's cable office.

- b. Customers will be notified of any material changes in rates, programming services or channel positions as soon as possible. Notice must be given to subscribers a minimum of thirty (30) days in advance of such changes if the change is within the control of Franchisee. In addition, Franchisee shall notify subscribers thirty (30) days in advance of any significant changes in the other information required by FCC regulation. Notwithstanding any other provision of Part 76, Franchisee shall not be required to provide prior notice of any rate change that is the result of a regulatory fee, Franchise Fee, or any other fee, tax assessment, or charge of any kind imposed by any Federal agency, State, or Issuing Authority on the transaction between the operator and the subscriber.
- c. Billing
  - i. Bills will be clear, concise and understandable. Bills must be fully itemized, with itemizations including, but not limited to, basic and premium service charges and equipment charges. Bills will also clearly delineate all activity during the billing period, including option charges, rebates and credits.
  - ii. In case of a billing dispute, Franchisee must respond to a written complaint from a customer within thirty (30) days.
- d. Refunds. Refund checks will be issued promptly, but no later than either:
  - i. The customer's next billing cycle following resolution of the request or thirty (30) days, whichever is earlier, or
  - ii. The return of the equipment supplied by Franchisee if service is terminated.
- e. 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

- a. **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.

- b. **Normal Operating Conditions.** The term “normal operating conditions” means those service conditions, which are within the control of Franchisee. Those conditions which are not within the control of Franchisee 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 Franchisee, 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.
- c. **Service Interruption.** The term “service interruption” means the loss of picture or sound on one or more cable channels.

- 5. **COMPLIANCE WITH FEDERAL AND STATE LAW AND REGULATIONS:** Franchisee shall, at all times relevant, comply with customer service obligations and standards as adopted, set forth and established by Federal and State laws and regulations as may be adopted from time to time provided that there is nothing to the contrary herein.



**EXHIBIT 2**  
**INSURANCE SCHEDULE**  
**LIABILITY AND WORKERS' COMPENSATION INSURANCE REQUIREMENTS**

The liability insurance required to be carried by Atlantic Broadband (Penn) LLC.. its successors and assigns, at a minimum, shall be written for at least the following hazards, liability or coverages and for not less than the following limits of liability:

A. Workers Compensation Insurance

Limits of Liability

- |     |  |                                  |
|-----|--|----------------------------------|
| (1) | Pennsylvania (pursuant to "The Pa. Workers Compensation Act" and "The Pa. Occupational Disease Act") Statutory |                                  |
| (2) | Employers Liability  | \$100,000 Each Accident          |
|     |  | \$500,000 Disease — Policy Limit |
|     |  | \$100,000 Disease—Each Employee  |

B. Comprehensive Commercial General Liability Insurance covering all operations of the Company within the Township of Derry, Mifflin County, Pennsylvania. This coverage shall include the following:

- (1) Liability for Bodily Injury due to Operations
- (2) Liability for Property Damage due to Operations
- (3) Explosion Hazard and Collapse Hazard
- (4) Underground Property Damage Hazard

Limits of Liability for Bodily Injury and Property Damage combined  
Each Occurrence \$1,000,000  
Aggregate (Policy) Limit of Liability \$2,000,000

- (5) Products Liability and Completed Operations Hazard  
Limit of Liability for Bodily Injury and Property Damage combined  
Aggregate (Policy) Limit of Liability \$2,000,000

(6) Broad Form Hold Harmless – Contractual Liability Insurance, for the same coverages and the same limits of liability as set forth in Clauses (1) through (5) above – with no exclusion for Explosion Hazard and Collapse Hazard and with no exclusion for Underground Property Damage Hazard.

C. Comprehensive Motor Vehicle Liability Insurance covering:

- (1) Owned Vehicles
- (2) Hired Vehicles
- (3) Non-Owned Vehicles

|                             |             |
|-----------------------------|-------------|
| Limits of Liability         |             |
| Bodily Injury               | \$1,000,000 |
| (All persons) Each Accident | \$ 500,000  |

|   |             |
|---|-------------|
| Property Damage   |             |
| Each Accident   | \$ 250,000  |
| OR. In the alternative, Bodily Injury and Property<br>Damage combined |             |
| Each Accident, combined single limit                                  | \$1,000,000 |

**EXHIBIT 3**

**Municipal Facilities**

**Limited and Value Video Services**

Chief Logan Volunteer Fire Department  
(Name subject to change)  
1800 Glenwood Ave.  
Lewistown, PA 17044