

**TOWNSHIP OF UPPER NAZARETH  
NORTHAMPTON COUNTY, PENNSYLVANIA**

**ORDINANCE NO. 195**

**AN ORDINANCE**

**AUTHORIZING EXECUTION OF A CABLE FRANCHISE  
AGREEMENT BETWEEN THE TOWNSHIP AND RCN  
TELECOM SERVICES (LEHIGH), LLC**

WHEREAS, pursuant to the Cable Communications Policy Act of 1984, the Cable Television Consumer Protection and Competition Act of 1992, and the Telecommunications Act of 1996, the regulations of the Federal Communications Commission and Pennsylvania law, the Township of Upper Nazareth (hereinafter the "Township") is authorized to grant franchises to construct, operate and maintain a cable system utilizing public rights-of-way and properties within the Township's jurisdiction; and

WHEREAS, RCN Telecom Services (Lehigh), LLC ("RCN") currently holds a cable franchise from the Township originally granted to RCN; and

WHEREAS, RCN has requested that the Township renew RCN's franchise to maintain, construct, operate, and upgrade its Cable System over, under and along the aforesaid rights-of-way for use by the Township's residents; and

WHEREAS, the aforesaid rights-of-way used by RCN are public properties acquired and maintained by the Township and held in trust on behalf of citizens of the Township and the right to use said rights-of-way is a valuable property right; and

WHEREAS, the Township desires to protect and manage the aforesaid rights-of-way, require high standards of customer service, ensure future technical

improvements to maintain a technologically-advanced cable system, establish certain reporting requirements, obtain certain complimentary services, receive franchise fees for RCN's use of the Township's rights-of-way as provided by federal law, establish certain reporting requirements and provide for the current and future cable-related needs of its residents; and

WHEREAS, the Township held a public hearing on the subject of cable franchise renewal, including reviewing the cable operator's past performance and identifying the Township's future cable-related community needs; and

WHEREAS, the Township has determined that RCN has the financial, legal and technical ability to provide cable services to subscribers located in the Township; and

WHEREAS, the Township, after affording the public notice and opportunity for comments, has determined that the public interest would be served by renewing RCN's franchise according to the terms and conditions contained in the Cable Franchise Agreement negotiated between the Township and RCN.

NOW THEREFORE, BE IT ORDAINED by the Board of Supervisors of Upper Nazareth Township as follows:

**SECTION 1.** The Board of Supervisors of Upper Nazareth Township is hereby authorized to approve the Cable Franchise Agreement negotiated with RCN attached hereto and made a part hereof, marked Exhibit "A," including all of the terms and conditions contained therein, and does hereby authorize execution of such Agreement.

**SECTION 2.** All Ordinances or parts of Ordinances that are inconsistent with this Ordinance are hereby repealed.



**SECTION 3.** If any sentence, clause, section or part of this Ordinance is for any reason found to be unconstitutional, illegal or invalid, such unconstitutionality, illegality, or invalidity shall not affect or impair any of the remaining provisions, sentences, clauses or sections or parts of this Ordinance. It is hereby declared as the intent of the Township of Upper Nazareth that this Ordinance would have been adopted had such unconstitutional, illegal or invalid sentence, clause, section or part thereof, not been included herein.

ENACTED AND ORDAINED into law by the Township of Upper Nazareth, Northampton County, Pennsylvania, this 3 day of April, 2024.

**TOWNSHIP OF UPPER NAZARETH**

**ATTEST:**

**BY:** Scott Sylvainus  
**SCOTT SYLVAINUS, Chairman**

Lina K. [Signature]  
**, Secretary**

**CABLE FRANCHISE AGREEMENT**

**BETWEEN**

**UPPER NAZARETH TOWNSHIP**

**AND**

**RCN TELECOM SERVICES (LEHIGH), LLC**

**Exhibit "A"**

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## **CABLE FRANCHISE AGREEMENT**

This Cable Franchise Agreement (hereinafter referred to as the “Agreement”) is executed as of the 1<sup>st</sup> day of January, 2024, (hereinafter referred to as the “Effective Date”) by and between the Upper Nazareth Township, located in Northampton County, Pennsylvania (hereinafter referred to as the “Township”) and RCN Telecom Services (Lehigh), LLC, a Delaware limited liability company doing business as Astound Broadband (hereinafter referred to as “RCN”).

**WHEREAS**, pursuant to Title VI of the Telecommunications Act of 1934, *as amended*, the regulations of the Federal Communications Commission (hereinafter referred to as the “FCC”) and Pennsylvania law, the Township is authorized to grant franchises to construct, operate and maintain a Cable System utilizing Public Rights-of-Way and properties within the Township’s jurisdiction; and

**WHEREAS**, RCN has requested that the Township grant RCN a franchise to construct, operate, and maintain its Cable System over, under and along the aforesaid rights-of-way for use by the Township’s residents and commercial entities; and

**WHEREAS**, the aforesaid Public Rights-of-Way used by RCN are public properties acquired and maintained by the Township on behalf of the citizens of the Township, and the right to use said rights-of-way is a valuable property right; and

**WHEREAS**, the Township desires to protect and manage the aforesaid rights-of-way, establish standards of Subscriber service, maintain a technologically advanced Cable System, receive Franchise Fees for RCN’s use of the Township’s rights-of-ways as provided by federal law, reserve the right to request use of a public, educational and governmental channel, establish certain reporting requirements, obtain certain complimentary services, provide legal protections for the Township, and meet the current and future cable-related needs of its residents and commercial entities; and

**WHEREAS**, RCN has represented to the Township and the Township believes that RCN has the financial, legal and technical ability to provide Cable Services to Subscribers located in the Township;

**WHEREAS**, RCN has represented to the Township and the Township has a good faith belief that this Agreement and the process for consideration of this Agreement complies with all applicable federal, state and local laws and regulations; and

**WHEREAS**, the Township, after affording the public notice and opportunity for comment, has determined that the public interest would be served by granting RCN’s franchise according to the terms and conditions contained herein;

**NOW THEREFORE**, in consideration of the mutual promises contained herein and intending to be legally bound hereby, the Township and RCN agree as follows:

## SECTION 1

### DEFINITIONS

The following terms used in this franchise shall have the following meanings:

(a) Affiliated Entity - Any corporation, partnership or other business entity that owns or controls, is owned or controlled by, or is under common ownership or control with RCN, but does not include Affiliated Entities that are not involved with the use, management, operation, construction, repair and/or maintenance of RCN's cable systems.

(b) Basic Service - The service tier that includes at least the retransmission of local broadcast television signals and any Public, Educational and Governmental ("PEG") access channel.

(c) Cable Act - Title VI of the Communications Act of 1934, as amended by the Cable Communications Policy Act of 1984, the Cable Television Consumer Protection and Competitive Act of 1992 and the Telecommunications Act of 1996, as it may, from time to time, be further amended.

(d) Cable Service - The one-way transmission to Subscribers of video programming or other programming service and Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

(e) Cable System - A facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes video programming and which is provided to multiple Subscribers within the Township. Such term does not include (1) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (2) a facility that serves Subscribers without using any Public Right-of-Way; (3) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Communications Act, except that such facility shall be considered a Cable System (other than for purposes of Section 621 of the Cable Act) to the extent that facility is used in the transmission of video programming directly to Subscribers unless the extent of that use is solely to provide interactive on demand services; (4) an open video system that complies with Section 653 of the Cable Act; or (5) any facilities of any electric utility used solely for operating its electric utility systems.

(f) Channel - A portion of the electro-magnetic frequency spectrum which is used in a Cable System, and which is capable of delivering a television channel as a television channel is defined by FCC regulation and requires a corrective measure on the part of RCN or its Contractors or subcontractors.

(g) Commonwealth- The Commonwealth of Pennsylvania.

(h) Communications Act - The federal Communications Act of 1934, as amended, and as it may, from time to time, be further amended.

(j) Conveniently Located – Located within ten (10) miles of the jurisdictional limits of the Local Franchising Authority.

(k) Drop - The coaxial or fiber optic or other cable that connects a home or building to the Cable System.

(l) Emergency - A condition that either (1) constitutes a clear and immediate danger to the health, welfare, or safety of the public; or (2) has caused or is likely to cause the Cable System in the Public Rights-of-Way to be unusable and result in loss of the services provided.

(m) FCC - Federal Communications Commission.

(n) Force Majeure - Acts of God; acts of public enemies, including terrorist attacks; orders of any kind of the government of the United States of America or the Commonwealth of Pennsylvania or any of their departments, agencies, political subdivisions, or officials, or any civil or military authority; insurrections; riots; labor strikes, epidemics; landslides; lightning; earthquakes; fires; hurricanes; volcanic activity; storms; floods; washouts; drought; explosions; unavailability of equipment or materials, extraordinary make ready costs; partial or entire failure of utilities or other event that is reasonably beyond RCN's ability to anticipate or control.

(o) Franchise - The right granted by the Township to construct, operate and maintain a Cable System within the corporate limits of the Township as embodied in the terms and conditions of this Agreement.

(p) Franchise Fee - The fee that RCN remits to the Township pursuant to Section 622 of the Cable Act, 47 U.S.C. §542, and Section 6.1 of this Agreement.

(q) Gross Revenues - All revenue received by RCN or its Affiliated Entities arising from, attributable to, or in any way derived from the operation of RCN's Cable System in the Township to provide Cable Services, as calculated in accordance with generally accepted accounting principles ("GAAP") as promulgated and defined by the Financial Accounting Standards Board ("FASB"). Gross Revenues shall include, but are not limited to, the following:

- (1) Basic Service fees;
- (2) fees charged to Subscribers for any Cable Service tier other than Basic Service;
- (3) fees charged for premium Cable Services;
- (4) fees for all digital video tiers;
- (5) fees for video-on-demand;
- (6) fees charged to Subscribers for any optional, per-channel or per-program Cable Services;
- (7) revenue from the provision of any other Cable Services;
- (8) charges for installation, additional outlets, relocation, disconnection, reconnection and change-in-service fees for Cable Service;
- (9) fees for changing any level of Cable Service programming;
- (10) fees for service calls pertaining to Cable Service;



- (11) inside wire maintenance fees for Cable Services;
- (12) service plan protection fees for Cable Services;
- (13) convenience fees;
- (14) early termination fees on Cable Services;
- (15) fees for Leased Access Channels;
- (16) charges based on the sale or lease of any portion of the Cable System for Cable Service;
- (17) rental or sales of any and all equipment, including converters and remote control devices;
- (18) advertising revenues attributable to the local Cable System and Cable Services;
- (19) revenues or commissions from locally-derived home shopping channels;
- (20) broadcast retransmission fees;
- (21) late payment fees on Cable Services;
- (22) billing and collection fees Cable Services;
- (23) regional sports fees;
- (24) NSF check charges; and
- (25) Franchise Fees.

Gross Revenues shall not include bad debts, investment income, programming launch support payments, refundable deposits, or any taxes or other fees or assessments imposed or assessed by any governmental authority. Gross Revenues shall not include actual bad debt that is written off consistent with GAAP, provided however, that all or any part of any such actual bad debt that is written off, but subsequently collected, shall be included in the Gross Revenues in the period so collected. In the event of any dispute over the classification of revenue, the Township and RCN agree that reference should be made to GAAP.

(r) HD – High-definition format.

(s) Leased Access or Commercial Access Channel - Any channel on RCN's Cable System designated for use by any entity that is unaffiliated with RCN pursuant to Section 612 of the Cable Act, 47 U.S.C. §532.

(t) Multiple Dwelling Units or MDUs - Any building, buildings or area occupied by dwelling units, appurtenances thereto, grounds and facilities, which dwelling units are intended or designed to be owned, occupied or leased for occupation, or actually occupied, as individual homes or residences for three (3) or more households.

(u) Normal Business Hours - Those hours during which most similar businesses in the community are open to serve Subscribers. In all cases, "Normal Business Hours" must include some evening hours at least one night per week and/or some weekend hours.

(v) Normal Operating Conditions - Business conditions within RCN's service department which are within the control of RCN. Those conditions that are not within the control of RCN include, but are not limited to, natural disasters, civil disturbances, power outages,

telephone network outages and severe or unusual weather conditions, or other conditions of Force Majeure.

(w) Outlet - An interior receptacle that connects a television set to the Cable System.

(x) Public Buildings – shall mean the Township Building, police stations, fire companies, public works buildings, and water and sewer authorities. Public Buildings shall not include buildings owned by the Township but leased to third parties, or buildings, such as storage facilities, at which government employees are not regularly stationed, or to facilities used by a private service provider, such as a private ambulance company.

(y) Programming - Any video or audio signal carried over the Cable System that is generally considered comparable to programming provided by a television broadcast station.

(z) Public Rights-of-Way – The surface and the area across, in, over, along, under and upon the public streets, roads, lanes, avenues, alleys, sidewalks, bridges, highways and other rights-of-way, as the same now or may thereafter exist, which are under the jurisdiction or control of the Township.

(aa) Service Interruption - The loss of picture or sound on all Cable Service Channels.

(bb) Subscriber - A person or entity who contracts with RCN for, and lawfully receives, the video signals and Cable Services distributed by the Cable System.

## **SECTION 2** **GRANT OF FRANCHISE**

### **2.1 GRANT OF AUTHORITY**

Pursuant to the Cable Act, the regulations of the FCC and Pennsylvania law, the Township hereby grants a non-exclusive and revocable franchise to RCN. Subject to the terms and conditions contained herein, the Township hereby grants to RCN the authority to own, lease, sublease, construct, extend, install, operate, maintain, upgrade and rebuild a Cable System, including such wires, cables, fiber, conductors, ducts, conduits, amplifiers, pedestals, attachments and other equipment as is necessary and appropriate to the operation of the Cable System in the Public Rights-of-Way, including property over which the Township has a sufficient easement or right-of-way, for the purpose of providing Cable Services.

### **2.2 TERM OF FRANCHISE**

The term of this Agreement shall be for a period of ten (10) years commencing on the Effective Date and expiring on December 31, 2033, (the “Term”), unless the Franchise is terminated prior to the expiration date in accordance with the terms and conditions of this Agreement.

## **2.3 REPRESENTATIONS AND WARRANTIES**

(a) RCN represents, warrants and acknowledges that, as of the Effective Date:

(1) RCN is duly organized, validly existing and in good standing under the laws of the Commonwealth of Pennsylvania;

(2) RCN has the requisite approval from applicable federal and state agencies;

(3) This Agreement is enforceable against RCN in accordance with the provisions herein, subject to applicable state and federal laws and regulations;

(4) There is no action or proceeding pending or threatened against RCN which would interfere with its performance or its ability to perform the requirements of this Agreement;

(5) Pursuant to Section 625(f) of the Cable Act, as of the Effective Date, the performance of all terms and conditions in this Agreement is commercially practicable.

## **2.4 NON-EXCLUSIVITY**

This Franchise granted to RCN shall be non-exclusive. Nothing in this Agreement shall affect the right of the Township to grant other Franchises to construct, operate or maintain a Cable System, nor does it violate preexisting Franchise agreements.

## **2.5 FRANCHISE SUBJECT TO FEDERAL, STATE AND LOCAL LAWS**

This Franchise is subject to and shall be governed by all lawful and applicable provisions of federal, state and local laws and regulations. This Franchise is further subject to all applicable ordinances and resolutions of the Township.

## **2.6 COMPETITIVE EQUITY**

(a) RCN acknowledges and agrees that the Township 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 RCN is non-exclusive; however, if the Township grants a subsequent franchise or other authorization to provide similar wired video services, or amends any such existing franchise or authorization, that, when taken as a whole upon consideration of all of its material obligations, is more favorable or less burdensome to the subsequent provider than this Agreement is to RCN, then RCN may request an amendment to this Agreement to provide RCN with competitive equity. If, when taken as a whole upon consideration of all of its material obligations, the subsequent Franchise is more favorable or less burdensome, then the Township and RCN shall enter into good faith negotiations in order to modify this Agreement to the mutual satisfaction of both parties to provide RCN with such competitive equity.

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

**SECTION 3**  
**SYSTEM CONSTRUCTION, OPERATION AND MAINTENANCE**

**3.1 TECHNICAL REQUIREMENT**

(a) RCN shall operate, maintain, construct and extend the Cable System so as to offer Cable Services throughout all parts of the Township where the requirements of Section 3.2 are met. The Cable Service provided by the Cable System shall be delivered in accordance with applicable FCC standards and the Cable Act. The Cable System shall meet or exceed any and all applicable technical performance standards of the FCC, the National Electrical Safety Code, the National Electric Code and any other applicable federal laws and regulations and the laws, ordinances and construction standards of the Commonwealth of Pennsylvania and the generally applicable laws, ordinances and construction standards of the Township.

(b) Stand-by power at the headend(s) shall be provided in the event of a service interruption. Stand-by power must activate automatically upon the failure of commercial utility power.

**3.2 AREA TO BE SERVED**

(a) Service shall be provided to every dwelling occupied by a person requesting Cable Service provided that RCN is able to obtain from the property owners any necessary easements and/or permits in accordance with Section 621(a) (2) of the Cable Act. Subject to the other conditions contained in this Section, RCN shall extend the Cable System into all areas within the Township in which RCN's Cable System exists, where there is a minimum of fifty (50) dwelling units per mile of cable, calculated from the end of the nearest trunk line. RCN shall complete said extensions within three (3) months of notification to RCN by the Township that an area has met the minimum density standard set forth herein. RCN's obligation hereunder shall be subject to the timely performance of walk-out, make ready and location of all underground utilities.

(b) Any dwelling unit within one hundred twenty-five feet (125 ft.) aerial distance of the Cable System shall be entitled to a standard installation rate. For any dwelling unit in excess of one hundred twenty-five feet (125 ft.) aerial distance, or that requires an underground installation, RCN shall extend Cable Service at a rate not to exceed RCN's actual cost of installation from its main distribution system.

(c) All installations of wires and/or equipment by RCN shall be underground where required by the Township. In requiring such underground installations, the Township shall treat RCN the same as other similarly situated entities.

### **3.3 CABLE SYSTEM SPECIFICATIONS**

RCN will design, construct, and maintain a Cable System for digital television standards. RCN reserves the right to alter, adjust, modify, rebuild, upgrade, redesign, or otherwise reconfigure the Cable System at any time during the term of the Agreement, provided that no alteration, adjustment, modification, rebuild, upgrade, redesign or other reconfiguration of the Cable System shall have the effect of reducing the technical capabilities of the Cable System as set forth in this Section.

### **3.4 SYSTEM TESTS**

(a) RCN shall be responsible for ensuring that its Cable System is designed, installed and operated in a manner that fully complies with applicable FCC technical standards, including any modifications or amendments to those standards.

(b) Upon a showing of Subscriber complaints regarding signal quality or a determination of non-compliance related to signal quality through a compliance review under Section 5.2 herein, RCN, upon written request by the Township, shall perform applicable tests to determine compliance with FCC technical standards. RCN shall provide a report to the Township within thirty (30) days of completion of a Township-requested test that describes the results of the test. If any test under this Section indicates that the Cable System fails to meet applicable FCC requirements, RCN shall take such corrective measures as are necessary to correct any failure and to prevent their recurrence as far as is possible.

(c) Upon sixty (60) days' written request to RCN, the Township may inspect the Cable System at any time to ensure compliance with this Agreement and applicable law, including to ensure that the Cable System is constructed and maintained in a safe condition. The Township reserves the right, upon at least sixty (60) days' written notice to RCN, to conduct a technical audit of the Cable System.

### **3.5 EMERGENCY ALERT SYSTEM**

RCN shall comply with the Emergency Alert System requirements of the FCC.

### **3.6 SERVICES FOR SUBSCRIBERS WITH DISABILITIES AND LOW INCOME SENIOR DISCOUNT**

(a) RCN shall comply with all applicable federal regulations, including the Communications Act of 1934, as amended, that ensure the provision of Cable Services and related equipment are accessible to and usable by persons with disabilities.

(b) Township residents may qualify for low income senior discounts as set forth in Exhibit B.

**3.7 SERVICE TO MULTIPLE DWELLING UNITS (“MDUs”)**

RCN and the Township hereby acknowledge and agree that installation and provision of Cable Service to MDUs are subject to a separate negotiation between the landlord, owner or governing body of any such MDU and RCN, which negotiations shall be conducted in accordance with the procedures set forth in the Cable Act, as amended, applicable FCC regulations, the law of the Commonwealth.

**3.8 REPAIRS AND RESTORATION**

(a) Whenever RCN or any of its agents, including any contractor or subcontractor, takes up or disturbs any pavement, sidewalk or other improvement of any public or private property, the same shall be replaced and the surface restored in as good condition as before the disturbance within twenty (20) business days of the completion of the disturbance, weather permitting. Upon failure of RCN to comply within the time specified and the Township having notified RCN in writing of the restoration and repairs required, the Township may cause proper restoration and repairs to be made and the expense of such work shall be paid by RCN upon demand by the Township.

(b) Whenever RCN or any agent, including any contractor or subcontractor, shall install, operate or maintain equipment, cable, or wires, it shall avoid damage and injury to property, including structures, improvements and trees in and along the routes authorized by the Township if required for the proper installation, operation and maintenance of such equipment, cable, or wires. RCN shall promptly repair and restore any public or private property that is damaged as a result of construction, installation, repair or maintenance of the Cable System within twenty (20) business days, weather permitting.

(c) RCN’s operation, construction, repair and maintenance personnel, including all contractors and subcontractors, shall be trained in the use of all equipment and the safe operation of vehicles. Such personnel shall follow all safety procedures required by all applicable federal, Commonwealth and local laws and regulations. All areas of the Cable System shall be inspected in accordance with such applicable federal, Commonwealth and local laws and regulations so as to prevent hazardous conditions or risks to safety for the public and/or operating and maintenance personnel. RCN shall install and maintain its wires, cables, fixtures, and other equipment in such a manner as shall not interfere with any installations of the Township or any Public Utility serving the Township.

(d) Should a public safety emergency occur as a result of, incident to, or connected with operation, construction, repair, or maintenance activities by RCN personnel, including all contractors and subcontractors, then such personnel shall immediately contact the applicable public safety emergency dispatcher (e.g. 9-1-1).

(e) Whenever RCN or any agent, including any contractor or subcontractor, shall disturb any pavement, sidewalk or other public property in order to perform any underground activity, it shall utilize the Pennsylvania One Call System prior to any such disturbance. RCN shall adhere to any additional undergrounding requirements which the Commonwealth may

establish in the future. RCN shall adhere to all requirements of the Pennsylvania Underground Utility Line Protection Act.

(f) All structures and all lines, equipment and connections in, over, under, and upon streets, sidewalks, alleys, and public and private ways and places of the Township, wherever situated or located, shall at all times be kept and maintained in a safe and suitable condition and in good order and repair in accordance with customary industry standards and practices.

### **3.9 SERVICE AREA MAPS**

Upon no later than thirty (30) days' written notice, RCN shall permit the Township to review, at a mutually agreed time and location, a complete set of RCN service area strand maps of the Township on which shall be shown those areas in which its facilities exist and the location of streets. The strand maps shall also designate where the cable wires and other equipment are aerial and where they are underground. Should the Township require such strand maps for its exclusive use, RCN shall provide such maps within thirty (30) days of a written request, no more than once annually, and only after the Township and RCN have executed a non-disclosure agreement pertaining thereto, as such maps are confidential and proprietary in nature pursuant to Section 5.1 of this Agreement.

### **3.10 DISCONNECTION AND RELOCATION**

(a) RCN shall, at no cost to the Township, protect, support, temporarily disconnect, relocate in the same street, or other public way and place, or remove from any street or any other public way or place, any of its property as required by the Township or its designee by reason of traffic conditions, street construction, change or establishment of street grade, site distance visibility, the construction of any public improvement or structure, or any other reason related to public health, safety and welfare.

(b) In requiring RCN to protect, support, temporarily disconnect, relocate or remove any portion of its property, the Township shall treat RCN the same as, and require no more of RCN than, any similarly situated entity utilizing the Public Rights of Way, including with respect to potential reimbursement of costs.

### **3.11 EMERGENCY REMOVAL OF EQUIPMENT**

(a) If, at any time, in case of fire or other disaster in the Township, it shall be necessary, in the reasonable judgment of the Township or its agent, to cut or move any of the wires, cable or equipment of the Cable System, the Township shall have the right to do so without cost or liability, provided that, wherever possible, the Township shall give RCN notice and the ability to relocate wires, cable or other equipment.

(b) In cutting or moving any of the wires, cable or equipment of the Cable System in the event of fire or other disaster, the Township shall treat RCN the same as, and require no more of RCN than, any other similarly situated entity.



### **3.12 TREE TRIMMING**

(a) RCN, or its agents, including contractors and subcontractors, shall have the authority to trim trees upon and overhanging the Public Rights-of-Way so as to prevent the branches of such trees from coming in contact with the wires, cables, or other equipment of RCN. Any such tree trimming shall only be performed in accordance with applicable laws and regulations.

(b) If RCN or its agents, including contractors and subcontractors, wish to cut down and remove any tree or trees as may be necessary for the installation and/or maintenance of its equipment, it shall apply to the Township for permission, with the exception of Emergency situations as defined in Section 1(I), and if permission is granted, shall perform such cutting and removal in accordance with the regulations of the Township.

### **3.13 CHANNEL CAPACITY**

RCN shall meet or exceed programming and channel capacity requirements set forth in this Agreement and required by applicable federal and Commonwealth law and regulations.

### **3.14 BROADCAST CHANNELS**

To the extent required by federal law, RCN shall provide all Subscribers with Basic Service including, but not limited to, the following: (a) all broadcast television signals carried in fulfillment of the requirements of Section 614 of the Cable Act; (b) the signals of qualified non-commercial educational television signals carried in fulfillment of the requirements of Section 615 of the Cable Act; and c) any PEG Channel pursuant to Section 611 of the Cable Act. All such signals shall be delivered to Subscribers in accordance with FCC technical specifications.

### **3.15 SIGNAL SCRAMBLING**

RCN shall at all times comply with FCC regulations regarding scrambling or other encryption of audio and video signals.

### **3.16 CONTINUITY OF SERVICE**

Subscribers shall continue to receive Cable Service from RCN provided their financial and other obligations to RCN are honored. Subject to Force Majeure provisions in Section 9.1, RCN shall use its best efforts to ensure that all Subscribers receive continuous, uninterrupted service regardless of the circumstances. For the purpose of construction, routine repairing or testing of the Cable System, RCN shall use its best efforts to interrupt service only during periods of minimum use. When necessary service interruptions of more than twenty-four (24) hours can be anticipated, RCN shall notify Subscribers in advance of such service interruption along with providing Subscribers with a pro-rata credit for the time of such service interruption.



**SECTION 4**  
**SUBSCRIBER SERVICE STANDARDS**

**4.1 OFFICE HOURS AND TELEPHONE AVAILABILITY**

(a) RCN shall maintain a customer center office conveniently located, open during Normal Business Hours.

(b) RCN shall provide and maintain a toll-free telephone access line that will be available to Subscribers twenty-four (24) hours a day, seven (7) days a week. Trained representatives shall respond to Subscriber telephone inquiries during Normal Business Hours. After Normal Business Hours, the access line may be answered by a service or an automated response system. Inquiries received after Normal Business Hours must be responded to by a trained company representative on the next business day.

(c) Under Normal Operating Conditions and during Normal Business Hours, telephone answering time by a Subscriber representative, including wait time, shall not exceed thirty (30) seconds after 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 percent (90%) of the time, measured on a quarterly basis. Under Normal Operating Conditions, the Subscriber shall receive a busy signal less than three percent (3%) of the time.

(d) RCN will not be required to perform surveys to measure compliance with the telephone answering standards above unless a historical record of complaints indicate a clear failure to comply. If the Township determines, after receiving complaints itself and/or receiving a record of complaints made to RCN in accordance with Sections 4.5 and/or 5.7(a), that there is a clear failure to comply with the telephone answering requirements above, the Township shall notify RCN in writing that it must measure its compliance with these requirements for the next three months and report to the Township the results of such monthly average measurements.

**4.2 INSTALLATIONS AND SERVICE CALLS**

(a) RCN shall maintain a staff of employees sufficient to provide adequate and prompt service to its Subscribers. RCN shall require that any employee or agent, including any subcontractor, who personally visits any residential dwelling, shall display a photo identification badge. Any vehicle used for installation, operation or maintenance activities by any RCN employee or agent, including any subcontractor, shall prominently display the RCN logo.

(b) Standard installations will be performed within seven (7) business days after an order has been placed. "Standard" installations are those aerial installations that are located up to one hundred twenty-five (125) feet from the existing main distribution line.

(c) Upon scheduling of appointments with the Subscriber for installations, service calls and other activities, RCN shall provide the Subscriber with either a specific time or an "appointment window" of a maximum of four (4) hours during Normal Business Hours. RCN

may schedule service calls and installation activities outside of Normal Business Hours at a time that is convenient for the Subscriber.

(d) RCN may not cancel an appointment with a Subscriber after the close of business on the business day prior to the scheduled appointment. If, at any time, an installer or technician is running late, an attempt to contact the Subscriber must be made prior to the time of the appointment. If the appointment must be rescheduled, it must be done so at a time that is convenient for the Subscriber.

#### **4.3 NOTICES**

(a) RCN shall provide information to each Subscriber upon initial subscription, at intervals not less than one (1) per year thereafter to Subscribers, and at any time upon request, regarding each of the following areas:

- (1) Products and services offered;
- (2) Prices and options for programming services and conditions of subscription to programming and other services;
- (3) Channel positions of programming carried on the Cable System;
- (4) Installation and service maintenance policies;
- (5) Instructions on how to use the Cable Service and any converters;
- (6) Billing and Subscriber complaint procedures;
- (7) A notice of Subscriber privacy rights as required by federal law.

(b) In accordance with applicable law, RCN shall notify Subscribers and the Township in writing of any changes in rates, programming services or channel positions a minimum of thirty (30) days in advance of such changes provided that such change is within the control of RCN. RCN shall not be required to provide prior notice to Subscribers 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, the Commonwealth of Pennsylvania or the Township on the transaction between RCN and the Subscriber. Advance notice is not required for the launch of new channels when offered on a subscription basis or added to an existing service tier at no additional cost to the customer

(c) Written notices required by this section may be provided electronically as permitted by 47 C.F.R. § 76.1600.

#### 4.4 **BILLING**

(a) Bills shall be clear, concise and understandable. Bills must be fully itemized, and shall include all applicable service tiers, equipment charges and any installation or repair charges. Bills shall state the billing period, including an effective due date, the amount of current billing and any relevant credits or past due balances.

(b) The Township hereby requests that RCN omit the Township's name, address, and telephone number from Subscriber bills as permitted by 47 C.F.R. § 76.952.

#### 4.5 **SUBSCRIBER COMPLAINT PROCEDURES**

RCN shall establish clear written procedures for resolving all Subscriber complaints, which shall include at least the following:

(a) RCN shall provide the Subscriber with a written response to a written complaint within thirty (30) days of its receipt at the local business office. Such response shall include the results of its inquiry into the subject matter of the complaint, its conclusions based on the inquiry, and its decision in response to the complaint.

(b) If the Township is contacted directly about a Subscriber complaint, it shall notify RCN promptly and in writing. When RCN receives such notification, RCN shall respond in writing within the time period specified in Section 4.5(a).

(c) Any Subscriber who, in good faith, disputes all or part of any bill sent by RCN has the option of withholding the disputed amount, without a late fee or disconnection, until RCN has investigated the dispute in good faith and has made a determination that the amount is owed provided that:

(1) The Subscriber provides a written complaint to RCN in a timely fashion and includes identifying information;

(2) The Subscriber pays all undisputed charges; and

(3) The Subscriber cooperates in determining the appropriateness of the charges in dispute.

(d) It shall be within RCN's sole discretion to determine when the dispute has been resolved; and

(e) In accordance with applicable law, RCN shall maintain Subscriber complaint records for inspection by the affected Subscriber, which shall contain the date each complaint is received, the name and address of the affected Subscriber, a description of the complaint, the date of resolution of the complaint, and a description of the resolution.

#### **4.6 DISCONNECTION**

RCN may disconnect or terminate a Subscriber's service for cause:

(a) If at least thirty (30) days have elapsed from the due date of the bill that Subscriber has failed to pay; and

(b) If RCN has provided at least ten (10) days' notice to the affected Subscriber prior to disconnection, specifying the effective date after which Cable Services are subject to disconnection; and

(c) If there is no pending written dispute with RCN regarding the bill; or

(d) If at any time and without notice, RCN determines in good faith that Subscriber has tampered with or abused RCN's equipment or service or is engaged in theft of Cable Service or has exhibited violent or threatening behavior toward its employees.

#### **4.7 SERVICE INTERRUPTIONS**

(a) Excluding conditions beyond its control, RCN shall begin working on a Service Interruption promptly and in no event later than twenty-four (24) hours after the Service Interruption becomes known and shall diligently pursue to completion. Notice of a Service Interruption of a single Subscriber shall give rise to this obligation on behalf of RCN. All other service calls not affecting public health, safety or welfare shall occur within a maximum of forty-eight (48) hours after notice to RCN or scheduled at the convenience of the Subscriber.

(b) In the event that there is a Service Interruption to any Subscriber for six (6) or more consecutive hours and upon receipt of written or credible oral request, RCN shall grant such Subscriber a pro rata credit or rebate, on a daily basis, of that portion of the service charge during the next consecutive billing cycle, or, at its option, apply such credit to any outstanding balance that is currently due.

#### **4.8 PRIVACY**

(a) RCN shall at all times comply with the privacy provisions of Section 631 of the Cable Act and all other applicable federal and Commonwealth privacy laws and regulations.

(b) RCN shall at all times maintain adequate physical, technical and administrative security safeguards to ensure that personally-identifiable Subscriber information is handled and protected strictly in accordance with this policy and all applicable laws and regulations.

**SECTION 5**  
**REGULATION BY THE TOWNSHIP**

**5.1 RIGHT TO INSPECT AND PROTECTION OF PROPRIETARY INFORMATION**

(a) The Township shall have the option, upon thirty (30) business days' written notice and during Normal Business Hours, to inspect at the notice location for RCN specified in Section 10.3, all documents, records and other pertinent information maintained by RCN which relate to the terms of this Agreement for the purpose of verifying compliance with the terms and conditions of this Agreement and applicable law.

(b) In addition, RCN shall maintain for inspection by the public and the Township all records required by the FCC and as specified in 47 C.F.R. § 76.305 in the manner specified therein.

(c) Notwithstanding anything to the contrary set forth herein, all information specifically marked by RCN as proprietary or confidential in nature and furnished to the Township or its designated representatives shall be treated as confidential by the Township so long as it is permitted to do so under applicable law. Representatives and/or agents of the Township may be requested to execute a non-disclosure agreement prior to the provision by RCN of certain confidential information, provided such representatives and/or agents are permitted to do so under applicable law. Information and documentation marked by RCN as proprietary or confidential shall include a brief written explanation as to its proprietary nature or confidentiality subject to review by the Township. The Township and its officially designated representatives agree in advance to treat any such information or records which RCN reasonably deems would provide an unfair advantage for RCN's competitors (e.g. system design maps, engineering plans, programming contracts, etc.) as confidential so long as permitted to do so under applicable law and only to disclose it to Township employees, agents, or representatives who have a need to know or in order to enforce the provisions of this Agreement, unless required to do so under the law. In the event a request is made by an individual or entity not an employee, agent or representative of the Township acting in their official capacity for information related to the franchise and marked by RCN as confidential and/or proprietary, the Township shall timely notify RCN of such request and shall cooperate with RCN in protecting its proprietary and confidential information to the extent permitted by applicable law. RCN shall not be required to provide Subscriber information in violation of Section 631 of the Cable Act, or information which is not relevant to regulation of the franchise (e.g. employee files, tax returns, etc.).

**5.2 RIGHT TO CONDUCT COMPLIANCE REVIEW**

Not more than twice during the term of this Agreement, the Township or its representatives may conduct a full compliance review with respect to whether RCN has complied with the material terms and conditions of this Agreement so long as it provides RCN with forty-five (45) days written notice in advance of the commencement of any such review or public hearing. Such notice shall specifically reference the section(s) or subsection(s) of the Agreement that is (are) under review, so that RCN may organize the necessary records and documents for appropriate review by the Township. Within thirty (30) days of a written request, RCN shall provide the Township with copies of records and documents related to the cable compliance

review. The period for any such review shall be for not more than the sixty (60) months immediately previous to the notice. The Township shall promptly inform RCN in accordance with Section 8.1 of any alleged non-compliance issues that result from the compliance review.

### **5.3 RESERVED AUTHORITY**

The Township reserves the regulatory authority arising from the Cable Act and any other applicable federal or Commonwealth laws or regulations. Nothing in this Agreement shall remove, restrict or reduce the Township's authority, rights and privileges it now holds, or which hereafter may be conferred upon it, including any right to exercise its police powers in the regulation and control of the use of the Public Rights-of-Way.

### **5.4 POLICE POWERS**

RCN's rights under this Agreement are subject to the police powers of the Township to adopt and enforce general laws and regulations necessary for the safety and welfare of the public. Such laws and regulations are separate and distinct from the terms and conditions contained in this Agreement. If the Township's exercise of the police power results in a material alteration of the terms and conditions of this Agreement, then the parties shall negotiate amendments in good faith to this Agreement to the mutual satisfaction of both parties to ameliorate the negative effects on RCN of the material alteration.

### **5.5 NO LIMITATION ON TAXING OR FEE AUTHORITY**

Nothing in this section or in this Agreement shall be construed to limit the authority of the Township to impose any tax, fee or assessment of general applicability. Such taxes, fees or assessments shall be in addition to Franchise Fees.

### **5.6 PERMITS**

RCN shall apply to the Township for all generally applicable required permits and shall not undertake any activities in the Public Rights-of-Way subject to a permit without receipt of such permit, the issuance of which shall not be unreasonably withheld by the Township. RCN shall not be required to obtain permits for Cable Service drops for individual Subscribers or for servicing or installation of pedestals or routine maintenance that does not disturb surface grade or impact vehicular traffic. RCN shall pay any and all required permit fees.

### **5.7 REPORTING**

In addition to the other reporting requirements contained in this Agreement, upon written request RCN shall provide the following reports to the Township:

(a) Subscriber Complaint Reports

Within thirty (30) days of a written request, but not more than once per year, RCN shall submit to the Township a report showing the number of complaints, as defined in Section

1(g), that required a service call, originating from the Township and received during the previous 12-month reporting period, the dates they were received, summary descriptions of the complaints, the dates the complaints were resolved and summary descriptions of the resolutions.

In addition and upon written request, RCN shall provide a report containing at least the following statistical information for the previous 12-month period:

- (1) Number of repair service requests received;
  - (2) Breakdown by type of complaint received (i.e. complete outage, snowy picture, etc.);
  - (3) Breakdown by cause of problem (i.e. subscriber equipment, drop/converter, system, etc.);
  - (4) Number of known service interruptions in excess of thirty (30) minutes and the approximate length of time of each such interruption;
- (b) Government Reports

RCN shall provide to the Township, upon written request, copies of any and all communications, reports, documents, pleadings and notifications of any kind which RCN has submitted to any federal, Commonwealth or local regulatory agencies if such documents relate specifically to RCN's Cable System within the Township. RCN shall provide copies of such documents no later than thirty (30) days after their request.

## **SECTION 6**

### **COMPENSATION TO THE TOWNSHIP**

#### **6.1 FRANCHISE FEES**

RCN shall pay to the Township an amount equal to five percent (5%) of the Gross Revenues derived from the operation of its Cable System to provide Cable Service in the Township. RCN shall not deduct or otherwise credit against the Franchise Fee any tax, fee or assessment of general applicability unless required by law. The Township may amend the Franchise Fee upon written notice to RCN provided that the Franchise Fee may not exceed the maximum percentage permitted by law. A copy of the Resolution or Ordinance authorizing the Franchise Fee rate adjustment by the Township shall accompany such written notice. Any change in RCN's Franchise Fee obligation contained herein shall commence within ninety (90) days from such written notice.

RCN shall follow applicable FCC notice requirements and rules and notify affected Cable Service customers, which notice may be by any means permitted under applicable law.



## **6.2 QUARTERLY PAYMENTS**

Franchise Fee payments to the Township under this provision shall be computed at the end of each calendar quarter. Such payments shall be made within forty-five (45) days following the end of each calendar quarter. Specifically, payments shall be due and payable on or before May 15 (for the first quarter), August 15 (for the second quarter), November 15 (for the third quarter), and February 15 (for the fourth quarter). In the event that any Franchise Fee payment is not made on or before the date by which it is due, then interest calculated at the then-current prime rate, as published by the Wall Street Journal, shall be added to the amount of Franchise Fee revenue due to the Township. The interest rate shall be applied as described from the date such Franchise Fee payment was originally due. No acceptance of any payment shall be construed as an accord that the amount paid is in fact the correct amount, nor shall acceptance of any payment be construed as a release of any claim the Township may have for additional sums payable under this Agreement. Upon request and if mutually agreeable, RCN shall deposit the Franchise Fee payments electronically into an account as designated by the Township.

## **6.3 QUARTERLY REPORTS**

Within ten (10) days of each Franchise Fee payment, RCN shall provide a written report containing an accurate statement of RCN's Gross Revenues received for Cable Services for each calendar quarter in connection with the operation of RCN's Cable System and showing the basis for the computation of fees. Specifically, the report shall contain line items for sources of revenue received and the amount of revenue received from each source. The report shall be verified by a financial representative of RCN.

## **6.4 FRANCHISE FEE REVIEW**

(a) The Township shall have the right to conduct a Franchise Fee review or audit of RCN's records reasonably related to the sources, amounts and computation of Gross Revenues, provided that such review or audit shall occur no more than two times during the Term of this Agreement, and provided that any such review or audit shall apply only to the 60 months of the Term immediately preceding notice thereof. Within thirty (30) days of a written request, RCN shall provide the Township with copies of financial records related to the Franchise Fee review or audit.

(b) In the event of an alleged underpayment, the Township shall provide RCN with a written statement indicating the basis for the alleged underpayment. If the Franchise Fee review or audit reveals that there have been no underpayments, the Township shall provide written notice to RCN indicating that no underpayments were found and that the Franchise Fee review is closed. RCN shall have thirty (30) days from the receipt of the statement regarding an alleged underpayment to provide the Township with any written objection to the results of the Franchise Fee review, including any substantiating documentation. Based on this exchange of information, the Township shall make a final determination of the underpayment(s), if any, within thirty (30) days of RCN's objection and shall provide RCN with written notice of the determination. If RCN disputes the Township's final determination, it may submit the dispute to mediation or arbitration within thirty (30) days of receiving the Township's written notice of determination. In the event



that RCN fails to submit the matter to mediation or arbitration within the required time period, the Township's final determination shall be binding on RCN.

(c) Any Franchise Fee payment due to the Township as a result of the Franchise Fee review shall be paid to the Township by RCN within forty-five (45) days from the date the Township notifies RCN of its final determination or if the matter is submitted to mediation or litigation, within forty-five (45) days from the final disposition of such action. If the Franchise Fee review shows that Franchise Fees have been underpaid, then RCN shall pay the underpaid amount plus interest from the due date equal to the then-current prime rate of interest as published in The Wall Street Journal on the underpayment amount. If Franchise Fees have been underpaid by five percent (5%) or more, then RCN shall also pay up to three thousand dollars (\$3,000) of documented out-of-pocket costs of the Franchise Fee review.

## **6.5 BUNDLED SERVICES**

All revenue earned from bundled services shall be allocated to Cable Service and non-Cable Service in accordance with generally accepted accounting principles (GAAP). It is understood that in some cases equipment and other non-service charges may be allocated at full retail price due to requirements related to sales taxes or similar tax requirements. To the extent such allocations are discretionary or otherwise not addressed by GAAP, allocations of revenue from such bundles shall not be structured for the purpose of evading franchise fees applicable to Cable Services.

## **SECTION 7 SERVICES TO THE COMMUNITY**

### **7.1 SERVICES TO COMMUNITY FACILITIES**

Within three (3) months of the Effective Date, for any building identified in Exhibit A not already receiving complimentary service as set forth herein (in which case RCN shall continue to provide such complimentary service), RCN shall provide one (1) cable drop, outlet and Basic and Expanded Basic Services (or equivalent) package along with complimentary internet service (as expressly noted by RCN). No charge shall be made for standard installation or service, which is within a one hundred twenty-five foot (125 ft) distance of the cable plant and RCN may charge for installation and service for more than one (1) drop in each building.

### **7.2 EDUCATIONAL AND GOVERNMENTAL (EG) CHANNEL**

(a) Upon request, RCN shall make available to the Township the use of one (1) Educational and Governmental ("EG") Access Channel(s) in accordance with Section 611 of the Cable Act. Such EG Channel(s) shall be used for community programming related to educational and/or governmental activities. The Township shall have complete control over the content, scheduling, administration and all other programming aspects of the EG Channel(s), and may delegate such functions, or a portion of such functions, to a designated access provider. RCN shall not exercise any editorial control over EG Channel programming. RCN shall cablecast the activated EG Channel so that they may be received by all RCN Subscribers in the Township.

(b) To enable the Township to utilize the EG Channel, RCN shall maintain direct fiber links, including activation equipment capable of transmitting high quality video and audio between the video origination location and the RCN headend such that live programming can originate from this selected location and be distributed via the Cable System to Subscribers in the Township. This fiber link and equipment shall be collectively known as the "Return Line." RCN shall determine the engineering solution necessary to allow distribution of the EG Channel programming, via the Cable System, to Subscribers in the Township.

(c) RCN shall be responsible for maintaining the Return Line(s) to the origination site(s) of the EG Channel(s) so long as the Township provides RCN with access to such location and access to the EG Channel equipment within such locations. RCN shall provide, install and maintain in good working order the equipment and the cable necessary for transmitting the signal to the channel aggregation site for further processing and distribution to Subscribers. RCN shall maintain the EG Channel in accordance with the same FCC technical specifications that are comparable to the specifications used to maintain commercial channels transmitted to Subscribers on the Cable system, except that it shall not be responsible for the technical signal quality of programming produced by any EG channel programmer.

(d) Any expenditure made in connection with the construction of the Return Line shall be at the expense of the Township. The Township and RCN further agree that all costs incurred by RCN for supporting such EG Channel, including any and all equipment, and EG capital support grants may be designated as "costs of franchise requirements" or "external costs" as defined by the FCC and RCN reserves its right to pass these costs through to the Subscribers pursuant to federal law.

(e) The Township or its designee shall be responsible for providing any necessary production or playback equipment and shall be responsible for securing and supervising any trained/qualified personnel who conduct the operation of the EG channel. The Township and RCN agree to work cooperatively in implementing the EG channel through such means and in such manner as shall be mutually satisfactory.

(f) Within one hundred eighty (180) days of a written request by the Township, RCN shall, at the Township's expense, relocate the EG origination site and the associated Return Line as follows: (i) RCN's obligation shall be subject to the same terms and conditions that apply to the original EG origination site in this Section; and (ii) the Township shall provide access to such site at least ninety (90) days prior to anticipated use of the new EG origination site. The timeline for relocation of the EG origination site shall be subject to the timely granting of any and all required permits, walk-out, make ready, and the detection of all underground utilities.

(g) In the event the Township or its designee does not program any EG Channel, RCN may request the use of this channel subject to written approval by the Township. If the Township approves RCN's use of an EG Channel and, subsequent to such approval, the Township requests the utilization of the EG Channel being programmed by RCN, RCN shall relinquish such use no later than sixty (60) days after receipt of written notification from the Township that it requires such channel for educational and/or governmental use.

(h) RCN shall use its best efforts to maintain the channel assignments for the current EG Channel(s) as of the Effective Date. Notwithstanding the foregoing, in the event that RCN deems a change in any EG Channel assignment to be necessary and changes any channel assignment in accordance with this Section, RCN shall provide the Township thirty (30) days advance written notice of any change in EG Channel assignments.

**SECTION 8**  
**ENFORCEMENT, INSURANCE AND INDEMINIFICATION**

**8.1 VIOLATIONS AND OPPORTUNITY TO CURE**

(a) If the Township has reason to believe that RCN violated any material provision of this Agreement, it shall notify RCN in writing of the nature of such violation and the section(s) of this Agreement that it believes has been violated and the details relating thereto. The person providing such notice shall do so pursuant to the requisite authority of the Township.

(b) RCN shall have forty-five (45) days to cure such violation after written notice is received by taking reasonable steps to comply with the terms of this Agreement. If the nature of the violation is such that it cannot be fully cured within forty-five (45) days, the period of time in which RCN must cure the violation shall be extended by the Township in writing for such additional time necessary to complete the cure, provided that RCN shall have promptly commenced to cure and is diligently pursuing its efforts to cure in the reasonable judgment of the Township.

(c) If the violation has not been cured within the time allowed under Section 8.1(b) and, in the Township's judgment, RCN has not taken reasonable steps to cure the violation, then the Township may deem that RCN is liable for liquidated damages and/or any other right or remedy in accordance with Section 8.2.

**8.2 LIQUIDATED DAMAGES**

(a) Because RCN's failure to comply with material provisions of this Agreement will result in injury to the Township and because it will be difficult to measure the extent of such injury, the Township may assess liquidated damages against RCN in the amount of Two Hundred Fifty Dollars (\$250.00) per day for each day the violation continues, provided RCN has had an opportunity to cure in accordance with Section 8.1(b). Such damages shall not be a substitute for specific performance by RCN, but shall be in addition to such specific performance.

(b) The first day for which liquidated damages may be assessed, if there has been no cure after the end of the applicable cure period, shall be the day after the end of the applicable cure period, including any extension of the cure period granted by the Township. Liquidated damages may not be assessed for a time period exceeding one hundred and twenty (120) days per violation. The Township may commence revocation proceedings and/or initiate an action in law or equity in a court of competent jurisdiction after the assessment of liquidated damages or in lieu of liquidated damages. With respect to liquidated damages assessed, all similar violations or failures resulting from the same factual events affecting multiple Subscribers shall be assessed as a single violation.

### **8.3 REVOCATION**

(a) In addition to the other rights, powers and remedies retained by the Township under this Agreement, the Township reserves the separate and distinct right to revoke this Franchise if:

(1) It is demonstrated that RCN practiced any fraud or deceit upon the Township in the operation of its Cable System or any other activities pursuant to this Agreement;

(2) RCN repeatedly fails, after notice and opportunity to cure, to maintain signal quality pursuant to the standards provided for by the FCC or the technical requirements set forth in Section 3.1;

(3) RCN violates, after notice and opportunity to cure, one or more of the material terms or conditions of this Agreement; or

(4) RCN repeatedly violates, after notice and opportunity to cure, terms of this Agreement.

(b) The foregoing shall not constitute a violation of a material term or condition if the violation occurs without the fault of RCN or occurs as a result of circumstances beyond its control or by reason of Force Majeure as defined in Section 9.1. RCN shall not be excused from the performance of any of its obligations under this Franchise by mere economic hardship or by the misfeasance or malfeasance of its directors, officers or employees.

(c) A revocation shall be declared only by a written decision of the Township Council after an appropriate public hearing that shall afford RCN due process and full opportunity to be heard. This shall include the ability to introduce evidence, to question witnesses and to respond to any notice of grounds to terminate in accordance with the standards of a fair hearing applicable to administrative hearings in the Commonwealth of Pennsylvania. All notice requirements shall be met by providing RCN at least thirty (30) days prior written notice (via certified mail-return receipt requested) of any public hearing concerning the proposed revocation of this franchise. Such notice shall state the grounds for revocation. The Township, after a public hearing and upon finding the existence of grounds for revocation, may either declare this franchise terminated or excuse such grounds upon a showing by RCN of mitigating circumstances or good cause for the existence of such grounds. The Township shall issue such declaration and finding within thirty (30) days in a written decision which shall be sent via certified or overnight mail to RCN. If RCN appeals such determination to an appropriate court, the revocation shall be stayed.

### **8.4 PERFORMANCE BOND**

(a) RCN shall obtain and maintain, within thirty (30) days of the Effective Date and throughout the term of this Agreement, at its sole cost and expense, a performance bond with a surety company licensed to do business in the Commonwealth of Pennsylvania to ensure RCN's faithful performance of its obligations. The performance bond shall provide that the Township

may recover from the principal and surety any and all liquidated damages and/or compensatory damages incurred by the Township for RCN's violations of this Agreement, after notice and opportunity to cure, in accordance with Sections 8.1 and 8.2. An original copy of the bond shall be delivered to the Township.

(b) The performance bond shall be in the amount of Ten Thousand Dollars (\$10,000). RCN shall not reduce, cancel or materially change said bond from the requirement contained herein without the express prior written permission of the Township until such time as construction of RCN's Cable System in the Planned Build-out Area is complete. RCN shall restore the bond to its original level within thirty (30) days after any amount has been paid to the Township from the performance bond.

## **8.5 INSURANCE**

(a) RCN shall obtain and maintain, in full force and effect, at its sole cost and expense, during the Franchise term, the following minimum insurance coverage with an insurance company that is authorized to conduct business in Pennsylvania and which has an A.M. Best rating (or equivalent) no less than A-minus VII, indemnifying the Township from and against any and all claims for injury or damage to persons or property, both real and personal, caused by the construction, installation, reconstruction, operation, maintenance or removal of the Cable system by RCN or any of its contractors, subcontractors, agents or employees in the following amounts:

(1) The amount of such insurance against liability for damage to property shall be no less than One Million Dollars (\$1,000,000) as to any one (1) occurrence.

(2) The amount of such insurance against liability for injury or death to any person shall be no less than One Million Dollars (\$1,000,000).

(3) The amount of such insurance for excess liability shall be Three Million Dollars (\$3,000,000) in umbrella form.

(4) The amount of such insurance against all claims arising out of the operation of motor vehicles and general tort or contract liability shall be One Million Dollars (\$1,000,000).

(b) The Township, its officials and employees, shall be designated as additional insureds under each of the insurance policies required in this Section 8.5.

(c) RCN shall not cancel any required insurance policy without obtaining alternative insurance in conformance with this Section 8.5 and without submitting insurance certificates to the Township verifying that RCN has obtained such alternative insurance. RCN shall provide the Township with at least thirty (30) days prior written notice in the event the policies are cancelled or not renewed.

(d) RCN shall deliver to the Township Certificates of Insurance showing evidence of the required coverage within thirty (30) days of the Effective Date of the Agreement, on an annual basis.

## **8.6 INDEMNIFICATION**

(a) RCN shall indemnify, defend, save and hold harmless the Township, its elected and appointed officials, officers, agents and employees acting in their official capacities, from claims for injury, loss, liability, cost or expense arising in whole or in part from, caused by or connected with any act or omission of RCN, its officers, agents, contractors, subcontractors or employees, arising out of, but not limited to, the construction, installation, upgrade, reconstruction, operation, maintenance or removal of the Cable System. The Township shall give RCN timely written notice of its obligation to indemnify and defend the Township. The obligation to indemnify, defend, save and hold the Township harmless shall include, but not be limited to, the obligation to pay judgments, injuries, liabilities, damages, penalties, and reasonable attorneys' fees. If the Township determines that it is necessary for it to employ separate counsel, in addition to that provided by RCN, the cost for such separate counsel shall be the responsibility of the Township. RCN shall not indemnify the Township for any claims to the extent resulting from acts of willful misconduct or negligence on the part of the Township.

(b) Nothing in this Franchise Agreement is intended to express or imply a waiver of statutory provisions, of any kind or nature, as set for in state statutes, including the limits of liability of the Township as exists presently or may be increased from time to time by the state legislature.

## **8.7 WORKERS' COMPENSATION INSURANCE**

RCN shall obtain and maintain workers' compensation insurance for all of its employees, and in case any work is sublet, RCN shall require any subcontractor similarly to provide workers' compensation insurance for all of such subcontractors' employees, to the extent required under applicable Commonwealth laws.

## **SECTION 9 MISCELLANEOUS**

### **9.1 FORCE MAJEURE**

If for any reason of Force Majeure, RCN is unable in whole or in part to carry out its obligations hereunder, RCN shall not be deemed in violation of this Agreement during the continuance of such inability.

### **9.2 REMOVAL OF SYSTEM**

(a) Upon lawful termination or revocation of this Agreement, RCN shall remove its supporting structures, poles, transmissions and distribution systems and other appurtenances from the streets, ways, lanes, alleys, parkways, bridges, highways, and other public and private places in, over, under, or along which they are installed and shall reasonably restore the areas to their original condition. If such removal is not completed within six (6) months of such lawful termination or revocation, the Township or property owner may deem any property not removed as having been abandoned and the Township may remove it at RCN's cost.



(b) During the term of the Agreement, if RCN decides to abandon or no longer use all or part of its Cable System, it shall give the Township written notice of its intent at least ninety (90) days prior to the announcement of such decision, which notice shall describe the property and its location. Upon RCN's abandonment of the Cable System, the Township shall have the right to either require RCN to remove the property, remove the property itself and charge RCN with the costs related thereto.

(c) Notwithstanding the above, RCN shall not be required to remove its Cable System, or to relocate the Cable System, or to sell the Cable System, or any portion thereof as a result of revocation, denial of renewal, or any other lawful action to forbid or disallow RCN from providing Cable Services, if the Cable System is actively being used to facilitate any other services not governed by the Cable Act.

### 9.3 NOTICES

Every notice or payment to be served upon or made to the Township shall be sent to:

Upper Nazareth Township  
100 Newport Ave  
Nazareth PA 18064  
Attention: Township Manager

The Township may specify any change of address in writing to RCN. Every notice to be served upon or made to RCN shall be either by hand delivery or first class mail, registered or certified, return receipt requested, postage prepaid, or by reputable overnight courier service or electronic mail and addressed to:

RCN Telecom Services (Lehigh) LLC  
2124 Avenue C  
Bethlehem, PA 18017  
Attention: Sanford Ames, GM/SVP

With a copy to:

RCN Telecom Services (Lehigh) LLC  
650 College Road East, Suite 3100  
Princeton, NJ 08540  
Attention: General Counsel

RCN may specify any changes of address in writing to the Township. Each delivery to RCN or the Township shall be equivalent to direct personal notice, direction or order, and shall be deemed to have been given at the time of receipt.

**9.4 EQUAL EMPLOYMENT OPPORTUNITY**

RCN is an equal opportunity employer and shall comply with all applicable federal and state laws and regulations regarding equal opportunity employment.

**9.5 NO DISCRIMINATION**

Neither RCN nor any of its employees, agents, representatives, contractors, subcontractors, or consultants, nor any other Person, shall unlawfully discriminate or permit discrimination between or among any person in the planned build out area/available service area of the Township providing in connection with the Cable System; provided, however, RCN reserves the right to deny service for good cause, including but not limited to violations of its standard terms and conditions, acceptable use, and other applicable policies, such as non-payment or theft of service, vandalism of equipment, or harassment or abuse of RCN's employees or agents.

**9.6 CAPTIONS**

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

**9.7 GOVERNING LAW; VENUE**

This Agreement shall be governed and construed by and in accordance with the laws of the Commonwealth of Pennsylvania. If suit is brought by a party to this Agreement, the parties agree that trial of such action shall be vested exclusively in the state courts of Pennsylvania, County of Northampton, or in the United States District Court for the Eastern District of Pennsylvania.

**9.8 TRANSFER, ASSIGNMENT OR CHANGE IN CONTROL**

(a) Neither RCN nor its parent nor any Affiliated Entity shall transfer, assign or otherwise encumber, through its own action or by operation of law, its right, title or interest in the Cable System or in this Agreement without the prior written consent of the Township, provided that such consent shall not be unreasonably withheld.

(b) Neither RCN nor its parent nor any Affiliated Entity shall change, transfer or assign, through its own action or by operation of law, its control of the Cable System or of this Agreement without the prior written consent of the Township, provided that such consent shall not be unreasonably withheld.

(c) Neither RCN nor its parent nor any Affiliated Entity shall sell, convey, transfer, exchange or release more than fifty-one percent (51%) of its direct ownership in the Cable System without the prior written consent of the Township, provided that such consent shall not be unreasonably withheld.



(d) No such consent shall be required for (i) a transfer in trust, by mortgage, hypothecation, or by assignment to a financial institution of any rights, title or interest of RCN in the Franchise or in the Cable System in order to secure indebtedness; or (ii) a transfer to an entity owned and/or controlled by RCN.

(e) RCN shall make written application to the Township of any transfer, change in control or assignment as described above and shall provide all information required by FCC Form 394 and any other applicable federal, state, and local statutes and regulations regarding transfer or assignment. The Township shall have thirty (30) days from the receipt of FCC Form 394 to notify RCN of any additional information it needs to make an informed decision on the transfer or assignment. The Township shall have one hundred twenty (120) days from the receipt of all required information to take action on the transfer or assignment.

(f) Any consent by the Township for any transfer or assignment described above shall not be effective until the proposed transferee or assignee shall have executed a legally binding document stating that it shall be bound by all the terms and conditions contained in this Agreement.

## **9.9 ENTIRE AGREEMENT**

This written instrument contains the entire agreement between the parties, supersedes all prior agreements or proposals whether written or oral except as specifically incorporated herein, and cannot be changed without written amendment approved by both the Township and RCN. This Agreement supersedes all prior cable franchise agreements or cable ordinances, or parts of cable franchise agreements or cable ordinances, agreements, representations or understandings, whether written or oral, of the parties regarding the subject matter hereof that are in conflict with the provisions herein.

## **9.10 SEVERABILITY**

If any section, provision or clause of this Agreement is held by a court of competent jurisdiction to be illegal, invalid or unenforceable, or is pre-empted by federal or state laws or regulations, such section, provision or clause shall be deemed to be severable from the remaining portions of this Agreement and shall not affect the legality, validity or enforceability of the remaining portions of this Agreement.

## **9.11 NO WAIVER OF RIGHTS**

No course of dealing between the Township and RCN, nor any delay on the part of the Township in exercising any rights hereunder, shall operate as a waiver of any such rights of the Township or acquiescence in the actions of RCN in contravention of such rights, except to the extent expressly waived by the Township.

No course of dealing between RCN and the Township, nor any delay on the part of RCN in exercising any rights hereunder, shall operate as a waiver of any such rights of RCN or acquiescence in the actions of the Township in contravention of such rights, except to the extent expressly waived by RCN.

**9.12 CHANGE OF LAW**

In the event there is a change in a federal or state statute or regulation applicable to the Cable System or to this Agreement, the Township or RCN may notify the other party of its desire to amend this Agreement in order to comply with the change in statute or regulation. The Township and RCN may amend this Agreement to comply with such change in statute or regulation provided such amendment is approved by the Township and RCN.

**9.13 COMPLIANCE WITH LAWS**

RCN shall comply with all federal, state and generally applicable local laws and regulations.

**9.14 NO THIRD-PARTY BENEFICIARIES**

Nothing in this Agreement is or was intended to confer third-party beneficiary status on any person other than the parties to this Agreement to enforce the terms of this Agreement.

[SIGNATURE PAGE TO FOLLOW]

WITNESS our hands and official seals to this Cable Franchise Agreement.

**UPPER NAZARETH TOWNSHIP**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

**RCN TELECOM SERVICES (LEHIGH), LLC**

By: DocuSigned by:  
*Sanford Ames Jr.*  
975F1B511FB3435... \_\_\_\_\_

Name: Sanford Ames Jr. \_\_\_\_\_

Title: SVP \_\_\_\_\_

Date: 3/18/2024 \_\_\_\_\_

**EXHIBIT A**

**LIST OF DESIGNATED LOCATIONS FOR  
SERVICES TO COMMUNITY FACILITIES**

1. Police Office, 100 Newport Avenue - internet and video (cable service)
2. Administrative Offices, 100 Newport Avenue - internet and video (cable service)
3. Public Works Garage, 3151 Daniels Road - internet and video (cable service)
4. Tuskes Park Concession Stand, 6040 Bath Pike - internet and video (cable service)
5. Public Works Garage, 155 Friedenstahl Avenue - internet and video (cable service)
6. Upper Nazareth Volunteer Fire Dept., 25 Newport Avenue - internet and video (cable service)

EXHIBIT B

LOW INCOME SENIOR DISCOUNT

To qualify for this discount:

1. Applicant's name must be on the account.
2. Applicant must be the head of the household.
3. Applicant must be sixty-five (65) years of age or above.
4. Applicant must provide proof of age.
5. Applicant must provide proof of income eligibility by submitting one of the following documents:
  - a. Supplemental Security Income
  - b. Veterans Service Benefits
  - c. PACE or PACENET Medical Card
  - d. Medicaid Medical Card

Discount is not applicable to promotional rates, currently discounted rates and/or Bundled Services.

Discount is \$2.00 off monthly Lifeline Cable Service or \$4.00 off monthly Full Channel Lineup Cable Service.

We appreciate your patronage!

Please return the bottom portion in the enclosed envelope with the required documents.

I declare that there is not more than one (1) other person under the age of sixty-five (65) residing at the above address with me. I further, and finally, declare that the foregoing statements made by me are true. I am aware that if any of the statements I have made are willfully false, I am subject to punishment to the full extent allowed by law.

SOCIAL SECURITY NUMBER: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_