

# **CABLE TELEVISION RENEWAL FRANCHISE**

**Granted By:**

**TOWN OF PELHAM,  
NEW HAMPSHIRE**

**Granted To:**

**COMCAST OF CONNECTICUT / GEORGIA /  
MASSACHUSETTS / NEW HAMPSHIRE / NEW YORK  
/ NORTH CAROLINA / VIRGINIA / VERMONT, LLC.**

**Term: MARCH 21, 2023 – MARCH 20, 2033**

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## **TOWN OF PELHAM, NH FRANCHISE**

### **INTRODUCTION**

WHEREAS, the Franchising Authority of the Town of Pelham, New Hampshire, pursuant to RSA Chapter 53-C and the Cable Act, is authorized to grant one or more nonexclusive, revocable Cable Television Renewal Franchises to construct, upgrade, operate and maintain a cable television system within the Town of Pelham; and

WHEREAS, The Franchising Authority determined that the proposed Renewal Franchise is adequate to meet the future cable-related community needs and interests of Pelham pursuant to 47 U.S.C. Section 546(a), conducted a public hearing and there has been opportunity for public comment on the proposed Renewal Franchise, on March 21, 2023; and

WHEREAS, the Franchising Authority has determined that the financial, legal, and technical ability of Franchisee is reasonably sufficient to provide services, facilities, and equipment necessary to meet the future cable-related needs of the community, and desires to enter into this Franchise with Franchisee for the construction and operation of a cable system on the terms and conditions set forth herein;

WHEREAS, insofar as the State of New Hampshire has delegated to the Town the authority to grant a Franchise for cable system operation within the Town's territorial boundaries, the Town hereby exercises its authority to grant a non-exclusive Franchise permitting the operation of a cable communications system within the Town of Pelham.

NOW THEREFORE, after due and full consideration, the Franchising Authority and Franchisee agree that this Franchise is issued upon the following terms and conditions:

## ARTICLE 1

### DEFINITIONS

#### SECTION 1.1 - DEFINITIONS

For the purpose of this Franchise, capitalized terms, phrases, words, and abbreviations shall have the meanings ascribed to them in the Cable Communications Policy Act of 1984, as amended from time to time, 47 U.S.C. §§521 et seq. (the “Cable Act”), and the Revised Statutes Annotated of New Hampshire, as amended from time to time, unless otherwise defined herein.

(a) Basic Cable Service – means the lowest tier of service which includes the retransmission of local television broadcast signals, PEG Access Programming channels and other signals or services required by the FCC or the Cable Act.

(b) Cable Act – means the Cable Communications Policy Act of 1984, Public Law No. 98-549, 98 Stat. 2779 (1984), 47 U.S.C. § 521 et. seq., amending the Communications Act of 1934, as further amended by the 1992 Cable Consumer Protection and Competition Act, Public Law No. 102-385 and the Telecommunications Act of 1996, Public Law No. 104-458, 110 Stat. 56 (1996) and as may be further amended.

(c) Cable Television System or Cable System – means the facility owned, constructed, installed, operated and maintained by Franchisee in the Town of Pelham, 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 a community, but such term does not include (a) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (b) a facility that serves subscribers without using any public right-of-way; (c) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Cable Act, except that such facility shall be considered a cable system (other than for purposes of section 621(c) of the Cable Act) to the extent such facility is used in the transmission of video programming directly to subscribers unless the extent of such use is solely to provide interactive on-demand services; or

(d) an open video system that complies with Section 653 of the Cable Act, or (e) any facilities of any electric utility used solely for operating its electric utility systems.

(d) Cable Service – means the one-way transmission to subscribers of (i) video programming, or (ii) 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) Drop – means the coaxial cable that connects a home or building to the Subscriber Network or Video Return Line.

(f) Digital Starter Service – means the tier of service which currently includes Basic Cable Service and expanded basic programming.

(g) Dwelling Unit - means a structure or the part of a structure that is used as a home, residence or sleeping place by one person who maintains a household.

(h) Effective Date – means March 21, 2023.

(i) FCC – means the Federal Communications Commission or any successor governmental entity.

(j) Franchising Authority – means the Select Board of the Town of Pelham, New Hampshire, or the lawful designee thereof.

(k) Franchise – means this Agreement and any amendments or modifications in accordance with the terms herein.

(l) Franchise Fee – has the meaning set forth in Section 622(g) of the Cable Act, 47 U.S.C. Section 542(g).

(m) Franchisee – means Comcast of Connecticut / Georgia / Massachusetts / New Hampshire / New York / North Carolina / Virginia / Vermont, LLC., or any successor or transferee in accordance with the terms and conditions in this Franchise.

(n) Gross Annual Revenue – means the subscriber revenue received by the Franchisee from the operation of the Cable System in the Town of Pelham to provide Cable Services, calculated in accordance with generally accepted accounting principles, including but not limited to monthly Basic Cable Service, premium and pay-per-view fees, installation fees, equipment

rental fees, leased access fees and net advertising (less agency fees) on a pro rata basis and home shopping revenue on a pro rata basis. Gross Annual Revenue shall not include refundable deposits, bad debt, late fees, investment income, or any taxes, fees or assessments imposed or assessed by any governmental authority and collected by Franchisee on behalf of such entity.

(o) Multichannel Video Programming Distributor – means a person such as, but not limited to, a cable operator, a multichannel multipoint distribution service, a direct broadcast satellite service, Internet Protocol video service (“IPTV”) or a television receive-only satellite program distributor, who makes available for purchase, by subscribers or customers, multiple channels of video programming.

(p) Outlet – means an interior receptacle that connects a television set to the Cable Television System.

(q) PEG Access Programming or Access Programming – means (i) “Educational”: Non-commercial programming produced by the Town of Pelham Public Schools, or other educational organizations as designated by the Franchising Authority, and other non-commercial educational programming offered by them which is not ordinarily offered by operators of cable systems; (ii) “Governmental”: Non-commercial programming produced by Town of Pelham departments or agencies and other non-commercial programming offered by them or a duly authorized designee which is not ordinarily offered by operators of cable systems; (iii) “Public”: non-commercial programming produced by the residents of the Town of Pelham, or produced by an access corporation or non-profit corporation operating within the Town of Pelham, and other non-commercial programming not ordinarily offered by operators of cable systems.

(r) Person - means any natural person or any association, firm, partnership, joint venture, corporation, or other legally recognized entity, whether for-profit or not-for profit, but shall not mean the Franchising Authority.

(s) Public Buildings – means those buildings owned or leased by the Franchising Authority for government administrative purposes or a public school district, for educational or administrative purposes, and shall not include buildings owned by Franchising Authority or a

school district but leased to third parties or buildings such as storage facilities at which government or school employees are not regularly stationed.

(t) Public Way – means the surface of, and the space above and below, any public street, highway, freeway, bridge, land path, alley, court, boulevard, sidewalk, way, lane, public way, drive, circle or other public right-of-way, including, but not limited to, public utility easements, dedicated utility strips, or rights-of-way dedicated for compatible uses and any temporary or permanent fixtures or improvements located thereon now or hereafter held by the Franchising Authority in the Town of Pelham, which shall entitle Franchisee to the use thereof for the purpose of installing, operating, repairing, and maintaining the Cable System. Public Way shall also mean any easement now or hereafter held by the Franchising Authority within the Town of Pelham for the purpose of public travel, or for utility or public service use dedicated for compatible uses, and shall include other easements or rights-of-way as shall within their proper use and meaning entitle Franchisee to the use thereof for the purposes of installing, operating, and maintaining Franchisee’s Cable System over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments, and other property as may be ordinarily necessary and pertinent to the Cable System.

(u) Signal – mean any transmission which carries Programming from one location to another.

(v) Standard Installation – means the standard three-hundred-foot (300) aerial Drop connection to the existing distribution system.

(w) Subscriber – means a Person or user of the Cable System who lawfully receives Cable Service with Franchisee’s express permission.

(x) Subscriber Network – means the trunk and feeder signal distribution network over which video and audio signals are transmitted to Subscribers.

(y) Town – means the Town of Pelham, New Hampshire.

(z) Video Programming or Programming – means the Programming provided by, or generally considered comparable to programming provided by, a television broadcast station.



## **ARTICLE 2**

### **GRANT OF FRANCHISE**

#### **SECTION 2.1 - GRANT OF FRANCHISE**

(a) Pursuant to the authority of RSA Chapter 53-C and the Cable Act, the Franchising Authority hereby grants a non-exclusive Franchise to Comcast of Maine / New Hampshire, Inc., authorizing and permitting Franchisee to construct, operate and maintain a Cable Television System in the Public Way within the municipal limits of the Town of Pelham. Nothing in this Franchise shall be construed to prohibit Franchisee from offering any service over its Cable System that is not prohibited by federal or state law.

(b) This Franchise is granted under and in compliance with the Cable Act and RSA Chapter 53-C of the Laws of New Hampshire, and in compliance with all rules and regulations of the FCC and other applicable rules and regulations in force and effect during the period for which this Franchise is granted.

(c) Subject to the terms and conditions herein, the Franchising Authority hereby grants to Franchisee the right to construct, upgrade, install, operate and maintain a Cable Television System within the Public Way.

#### **SECTION 2.2 - TERM: NON-EXCLUSIVITY**

The term of this non-exclusive Franchise shall be for a period of ten (10) years and shall commence on March 21, 2023 and shall expire at midnight on March 20, 2033. The term of this Franchise is subject to all provisions of New Hampshire law and applicable federal laws, as such laws may be from time to time amended.

### **SECTION 2.3 – RENEWAL OF FRANCHISE**

The renewal of this Franchise shall be governed by applicable federal law and regulations promulgated thereunder and by applicable New Hampshire law as such laws may be from time to time amended.

### **SECTION 2.4 - NON-EXCLUSIVITY OF FRANCHISE**

Franchisee acknowledges and agrees that the Franchising Authority reserves the right to grant one or more additional franchises to other Cable Service providers within the Town for the right to use and occupy the Public Ways; provided, however, that in accordance with RSA Chapter 53-C as it may be amended, no such franchise agreement shall contain terms or conditions more favorable or less burdensome than those in any existing Franchise within the Town, when such terms are taken as a whole.

### **SECTION 2.5 - RESERVATION OF AUTHORITY**

Nothing in this Franchise shall (i) abrogate the right of the Franchising Authority to perform any public works or public improvements of any description, (ii) be construed as a waiver of any codes or bylaws/ordinances of general applicability and not specific to the Cable Television System, Franchisee, or this Franchise, or (iii) be construed as a waiver or release of the rights of the Franchising Authority in and to the Public Ways. Any conflict between the terms of this Franchise and any present or future exercise of the municipality's police and regulatory powers shall be resolved by a court of appropriate jurisdiction.

### **SECTION 2.6 - POLE AND CONDUIT ATTACHMENT RIGHTS**

(a) Franchisee must comply, if applicable, with all the requirements of RSA 231:160, et seq. for obtaining conduit or pole licenses for any conduits or poles that Franchisee wishes to install. Pursuant to RSA 231:161, permission is hereby granted to Franchisee to attach or otherwise affix including, but not limited to cables, wire, or optical fibers comprising the Cable Television System to the existing poles and conduits on and under public streets and ways, provided

Franchisee secures the permission and consent of the public utility companies to affix the cables and/or wires to their pole and conduit facilities. By virtue of this Franchise, the Franchising Authority grants Franchisee equal standing with power and telephone utilities in the manner of placement of facilities on Public Ways, subject to the lawful exercise of the authority of the Town to approve the location of all installations in the Public Ways, and subject to the Town's lawful use of the Public Ways.

(b) To the extent permitted by applicable law and to the extent Franchisee is not already subject to tax assessment in the Town under RSA 72:23, l(b), Franchisee using or occupying property of the state or of a Town, school district or village district pursuant to this Franchise shall be responsible for the payment of, and shall pay, all properly assessed current and potential personal and real property taxes, if any, for such use or occupation and all properly assessed current and potential personal and real property taxes, if any, on structures or improvements made by Franchisee pursuant to this franchise. Pursuant to the provisions of this section and subject to the provisions of Section 9.8 herein, failure of the Franchisee to pay the duly assessed personal and real estate taxes when due shall be cause to terminate this Cable Television Renewal Franchise Agreement by the Franchising Authority. Accordingly, this is a material term of the franchise and failure to pay duly assessed personal and real property taxes when due shall be cause for Franchising Authority to provide a written notice to Franchisee, pursuant to Section 9.8, to show cause by a date certain specified in the notice as to why this Franchise should not be revoked pursuant to Section 9.7 of the Franchise. To the extent applicable law provides authority for the Franchising Authority to assess taxes on Franchisee, pursuant to RSA 72:23, l(b), 72:8-a, 73:10 and/or 48-B:4 or otherwise, the Franchising Authority shall be authorized to impose such taxes and Franchisee shall be obligated to pay such properly assessed taxes. However, Franchisee reserves all rights to appeal any assessment of personal or real property taxes.

(c) Nothing in this Franchise shall be deemed a waiver or relinquishment of any rights, defenses or claims that Franchisee may have with respect to the application of any law referenced in this Section 2.6 to Franchisee's services or the operation of its Cable System. Franchisee shall

have the right to pass through to Subscribers and to itemize separately on Subscribers' monthly bills any tax imposed on Franchisee by the Franchising Authority.

## ARTICLE 3

### SYSTEM SPECIFICATIONS & CONSTRUCTION

#### SECTION 3.1 - AREA TO BE SERVED

(a) The Franchisee, subject to Section 3.1 (c) below, shall make Cable Service available in the Town, upon request, to residents in Dwelling Units on Public Ways and private roads.

(b) The Franchisee shall make Cable Service available to every residential Dwelling Unit in the Town in accordance with Section 3.1 (c) and (d) below, provided that the Franchisee is able to obtain any necessary easements and/or permits and subject to the completion of make-ready work. The Franchisee shall make every reasonable effort to obtain private rights-of-way and multiple dwelling unit (“MDU”) access agreements and will comply with applicable State laws and regulations.

(c) The Cable System shall be extended upon request, at the Franchisee's sole cost and expense, to any and all remaining areas of the Town containing twenty (20) Dwelling Units or more per aerial mile or thirty (30) Dwelling Units or more per underground mile of Cable System plant or fractional proportion thereof, both as measured from termination of the existing Trunk and Distribution System from which a usable signal can be obtained. However, if there is suitable available conduit to be used for the underground Cable Plant extension, then the density for underground installation will be twenty (20) Dwelling Units per underground mile. For purposes of this section, a home shall only be counted as a “Dwelling Unit”, if such home is within three hundred (300’) feet of the Public Way.

(d) Installation charges shall be non-discriminatory. A standard aerial installation charge shall be established by the Franchisee which shall apply to any residence located not more than three hundred feet (300') from the existing aerial trunk and distribution system and additions thereto. The Franchisee may charge residents located more than three hundred (300') feet from the existing aerial trunk and distribution system, and additions thereto, time and materials charges including a rate of return in accordance with applicable law in addition to the standard installation

charge. The Franchisee shall have ninety (90) days to survey, design and install non-standard installations that are more than three hundred (300') feet from the existing Trunk and Distribution System, subject to Force Majeure. Underground installations are considered non-standard installations and may be subject to additional charge(s).

(e) The Cable Television System shall be further extended to all remaining areas in the Town that do not meet the requirements of Section 3.1(c) above upon the request of Dwelling Unit owners in such areas and based upon the following cost calculation:

$$(C/LE) - (CA/P) = SC$$

- \* C equals the cost of construction of new plant measured from termination of the existing Cable System plant;
- \* LE equals the number of Dwelling Units requesting Service in the line extension area and who subsequently pay a contribution in aid;
- \* CA equals the average cost of construction per mile in the Town;
- \* P equals the twenty (20) Dwelling Units per aerial or thirty (30) Dwelling Units per underground mile of aerial plant or twenty (20) Dwelling units per underground mile if there is suitable available conduit; and
- \* SC equals the per Dwelling Unit contribution in aid of construction in the line extension area.

(f) Any Dwelling Unit owner located in an area of the Town without Cable Service may request such Service from the Franchisee. In areas meeting the requirements of Section 3.1 (c) and (d) above, the Franchisee shall extend Service to the area subject to Force Majeure and the performance of make ready. In those areas with less than twenty (20) Dwelling Units per aerial or thirty (30) Dwelling Units per underground mile or twenty (20) Dwelling Unites underground if there is suitable available conduit, both as measured from termination of the existing Trunk and Distribution System, the Franchisee shall, within thirty (30) days following a request for Service, conduct a survey to determine the number of Dwelling Units in the area and shall inform the requesting Dwelling Unit owner of the contribution in aid of construction (see Section 3.1 (d) above) that will be charged. The Franchisee shall apply for all necessary permits and pole

attachment licenses within thirty (30) days of receiving the contribution in aid of construction from all participating Dwelling Units. Cable Service(s) shall be made available and fully activated to all requesting Dwelling Units who made a contribution in aid of construction within ninety (90) days of receipt of all necessary permits and pole attachment licenses by the Franchisee, subject to Force Majeure (including the performance of make-ready work).

(g) The Franchising Authority shall make its best efforts to provide the Franchisee with written notice of the issuance of building permits for planned housing developments in the Town.

### **SECTION 3.2 - SUBSCRIBER NETWORK**

(a) Franchisee shall maintain a Cable Television System, fully capable of carrying a minimum bandwidth of 750MHz.

(b) Notifications to Subscribers and the Franchising Authority regarding changes in rates, Programming services or channel positions shall be made in accordance with applicable FCC regulations, currently 47 C.F.R. Part 76, at §§ 76.1601, 76.1602, 76.1603 and 76.1619, as they may be amended.

(c) Franchisee shall also comply with the requirements of N.H. RSA 53-C:3-d, as it may be amended, regarding annual notices to Subscribers and the Franchising Authority.

### **SECTION 3.3 - PARENTAL CONTROL CAPABILITY**

(a) Pursuant to federal law and upon request, and at no separate additional charge (except as authorized by federal law), the Franchisee shall provide Subscribers with the capability to control the reception of any channels on the Cable System.

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

### **SECTION 3.4 - EMERGENCY OVERRIDE**

The Cable System shall comply with the FCC Emergency Alert System (“EAS”) regulations.

### **SECTION 3.5 - DELIVERY OF SIGNALS**

The Franchisee will abide by the applicable provisions of the Consumer Electronics Equipment Compatibility provision of federal law (currently 47 U.S.C. § 544a), as such provisions may apply from time to time.

### **SECTION 3.6 – GOVERNMENT CABLE DROPS TO THE CABLE SYSTEM**

The parties agree that Franchisee will provide basic cable service to the locations identified in **Exhibit A** and has the right in accordance with applicable law to deduct the value of those services from franchise fees. Franchisee will notify the Town if it intends to implement said offset and the value of those services at least sixty (60) days prior to doing so.

Subject to the provisions herein the Franchisee shall provide, as directed in writing, by the Franchising Authority, (i) one cable drop connected to the Cable System within the standard installation requirements of Section 3.1(d), (ii) one Outlet, and (iii) the Basic Cable Service to all municipal and public school buildings which are listed in **Exhibit A** hereto and are located along the Cable System trunk and distribution system. The obligation of Franchisee to provide drops, Outlets and Basic Cable Service shall pertain throughout the life of this Renewal Franchise and shall apply specifically to municipal and public school buildings newly constructed or acquired subsequent to the commencement of this Renewal Franchise, which shall be wired within ninety (90) days of delivery of a written request from the Franchising Authority to Franchisee. The Franchisee shall consult with the Franchising Authority or its designee to determine the appropriate location of each Drop and Outlet prior to the installation of the service.



## **ARTICLE 4**

### **TECHNOLOGICAL & SAFETY STANDARDS**

#### **SECTION 4.1 - SYSTEM MAINTENANCE**

(a) In installing, operating and maintaining equipment, cable and wires, Franchisee shall avoid damage and injury to trees, structures and improvements in and along the routes authorized by the Franchising Authority, except as may be approved by the Franchising Authority if required for the proper installation, operation and maintenance of such equipment, cable and wires.

(b) The construction, maintenance and operation of the Cable Television System for which this Franchise is granted shall be done in conformance with all applicable laws, bylaws/ordinances of general applicability, codes and regulations, including but not limited to OSHA, the National Electrical Safety Code, and the rules and regulations of the FCC as the same exist or as same may be hereafter changed or amended.

(c) Operating and maintenance personnel shall be trained in the use of all safety equipment and the safe operation of vehicles and equipment. Franchisee shall install and maintain its equipment, cable and wires in such a manner as shall not interfere with any installations of the Town or any public utility serving the Town.

(d) All structures and all equipment, cable and wires in, over, under, and upon streets, sidewalks, alleys, and public rights of ways of the Town, wherever situated or located shall at all times be kept and maintained in a safe and suitable condition and in good order and repair.

(e) The signal of any broadcast station carried on the Cable Television System shall be carried without material degradation in quality at all subscribing locations within the limits imposed by the technical specifications of the Cable System and as set forth by the FCC. The Cable System shall be operated and maintained so as to comply with the technical standards set forth in the FCC's rules and regulations as they apply to cable television systems.

(f) The Town reserves the right to reasonably inspect all construction and installation work for compliance with applicable laws, codes, ordinances and regulations and with provisions

of the Franchise. The Franchising Authority or its designee(s) shall have the right to inspect the plant or equipment of the Franchisee in the Town at reasonable times and under reasonable circumstances in order to verify compliance with the terms and conditions of this Franchise. The Franchisee shall fully cooperate in such inspections; provided, however, that such inspections are reasonable and do not interfere with the operation or the performance of the Cable System or Franchisee's interconnected network, and that such inspections are conducted after reasonable written notice to the Franchisee. The Franchisee shall be provided prior written notice of said inspections and shall be entitled to have a representative present during such inspections. All inspections shall be at the expense of the Town.

(g) All lines, cables and distribution structures and equipment, including poles and towers, constructed by Franchisee for use as a Cable System within the Town shall be located so as not to obstruct or interfere with the proper use of the Public Ways, as defined herein, and not to interfere with the existing public utility installation. Franchisee shall have no vested right in a location except as granted herein by the franchise, and such construction shall be removed by Franchisee at its own cost and expense whenever the same restricts or obstructs or interferes with the operation or location of said Public Ways, provided, however, that this standard shall apply to all Persons or entities owning lines, cables, and distribution structures, and equipment located in the Public Ways, and provided further that the Franchisee shall not be required to remove any such construction solely to accommodate needs of competing Cable Systems or other providers of Cable Services.

(h) Upon written notice from the Franchising Authority, Franchisee shall remedy a general deficiency with respect to the technical standards described herein within sixty (60) days of receipt of notice and a safety deficiency within forty-eight (48) hours of receipt of notice and shall notify the Franchising Authority when the deficiency has been corrected.

#### **SECTION 4.2 - REPAIRS AND RESTORATION**

(a) Franchisee shall adhere to the applicable performance standard set by the FCC.

(b) Whenever the Franchisee takes up or disturbs any pavement, sidewalk or other improvement of any public right of way or public place, the same shall be replaced and the surface restored in as good condition as reasonably possible as before entry as soon as practicable, subject to all permitting and code specifications of general applicability. If not so repaired or restored, the Franchising Authority shall notify the Franchisee in writing and such repair or restoration shall be made within thirty (30) days, unless delayed by weather or events beyond the reasonable control of Franchisee, unless otherwise agreed by Franchisee and the Franchising Authority. Upon failure of the Franchisee to comply within the time specified (unless the Franchising Authority sets an extended time period for such restoration and repairs) or if such damage presents an emergency situation presenting a threat to public safety, the Franchising Authority may cause proper restoration and repairs to be made and the reasonable expense of such work shall be paid by the Franchisee upon demand by the Franchising Authority.

(c) The Franchisee shall be subject to all laws of general applicability regarding private property in the course of constructing, installing, operating and maintaining the Cable System in the Town. The Franchisee shall, at its sole cost and expense, promptly repair or replace all private property, real and personal, damaged or destroyed as a result of the construction, installation, operation or maintenance of the Cable System.

### **SECTION 4.3 - CABLE LOCATION**

(a) In all areas of the Town where all of the transmission and distribution facilities of all public or municipal utilities are installed underground, Franchisee shall install its Cable System underground provided that such facilities are actually capable of receiving Franchisee's cable and other equipment without technical degradation of the Cable System's signal quality.

(b) In all areas of the Town where public utility lines are aerially placed, if subsequently during the term of the Franchise such public utility lines are required by local ordinance or State law to be relocated aerially or underground, Franchisee shall similarly relocate its Cable System if it is given reasonable notice and access to the public and municipal utilities facilities at the time

that such are placed underground. Franchisee shall be entitled to reimbursement on a pro rata basis for any costs incurred by Franchisee for relocating utility poles or trenching for the placement of underground conduits, in the event that such reimbursement from public or private funds are made available to other users of the public right of way. In the event that such public or private funds are not available for the project, Franchisee reserves the right to pass through such project costs in accordance with applicable law and regulation.

(c) In any area of the Town 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.

(d) Nothing in this Section 4.3 shall be construed to require 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.

#### **SECTION 4.4 - TREE TRIMMING**

Franchisee shall have authority to trim trees upon and overhanging public streets, alleys, sidewalks and ways and places of the Town so as to prevent the branches of such trees from coming in contact with the wires, cables and equipment of Franchisee, in accordance with applicable state law and any Town bylaws/ordinances and regulations. Notwithstanding the foregoing, the authority granted herein to trim trees is subject to state law, including, but not limited to, state laws governing scenic roads, including but not limited to New Hampshire RSA 231:157 and 158. In addition, Franchisee shall comply with all ordinances, laws or regulations of general applicability pertaining to designated historic districts in the Town.

#### **SECTION 4.5 - BUILDING MOVES**

In accordance with applicable laws, Franchisee shall, upon the written request of any person holding a building moving permit issued by the Town, temporarily raise or lower its wires to permit the moving of the building(s). Franchisee shall be given not less than thirty (30) days' advance written notice to arrange for such temporary wire changes. The cost to raise or lower wires shall be borne exclusively by the person(s) holding the building move permit.

#### **SECTION 4.6 - PLANT MAPS**

Upon written request by the Town, Franchisee shall provide to the Town a franchise area map of the Town, which will show those areas in which its facilities exist. Upon written request by the Town, Franchisee shall provide updated franchise area maps annually.

#### **SECTION 4.7 - DIG SAFE**

Franchisee shall comply with all applicable "dig safe" provisions, pursuant to RSA 374:51 of the New Hampshire Laws.

#### **SECTION 4.8 - DISCONNECTION AND RELOCATION**

(a) Franchisee shall, at its sole cost and expense, protect, support, temporarily disconnect, relocate in the same street, or other Public Right of Ways, or remove from any street or any other Public Ways and places, any of its property as required by the Franchising Authority or its designee by reason of traffic conditions, public safety, street construction, change or establishment of street grade, or the construction of any public improvement or structure by any Town department acting in a governmental capacity.

(b) In requiring Franchisee to protect, support, temporarily disconnect, relocate or remove any portion of its property, the Franchising Authority shall treat Franchisee the same as, and require no more of Franchisee, than any other similarly situated company.

(c) In either case, Franchisee shall have the right to seek reimbursement under any applicable insurance or government program for reimbursement.

**SECTION 4.9 - PROHIBITION AGAINST RESELLING OF SERVICE**

No Person shall resell, without the express prior written consent of Franchisee, any Cable Service, program or signal transmitted over the Cable System by Franchisee.

**SECTION 4.10 - EMERGENCY REMOVAL OF PLANT**

(a) If, at any time, in case of fire or disaster in the Town, it shall be necessary in the reasonable judgment of the Franchising Authority to cut or move any of the wires, cable or equipment of the Cable Television System, the Town shall have the right to do so without cost or liability, provided however that, wherever possible, the Franchising Authority gives Franchisee written notice and the ability to relocate wires, cable or other equipment.

(b) In either case, Franchisee shall have the right to seek reimbursement under any applicable insurance or government program for reimbursement. All cable operators or public or municipal utility companies shall be treated alike if reimbursed for such costs by the Town.

**SECTION 4.11 - EMERGENCY POWER**

The Cable System shall incorporate equipment capable of providing standby powering of the head end for a minimum of seventy-two (72) hours upon failure of the power furnished by the electric utility company, unless for reasons of Force Majeure.

## **ARTICLE 5**

### **PROGRAMMING**

#### **SECTION 5.1 - BASIC CABLE SERVICE**

Franchisee shall make available a Basic Cable Service tier to all subscribers in accordance with 47 U.S.C. § 534.

#### **SECTION 5.2 - PROGRAMMING**

(a) Pursuant to 47 U.S.C. § 544, Franchisee shall maintain the mix, quality and broad categories of Video Programming as set forth in Exhibit B. Pursuant to federal law, all Video Programming decisions, excluding PEG Access Programming, are at the sole discretion of Franchisee.

(b) Franchisee shall comply with 47 C.F.R. § 76.1603 of the FCC Rules and Regulations regarding notice of programming changes.

#### **SECTION 5.3 - REMOTE CONTROLS**

In accordance with applicable law, Franchisee shall allow Subscribers to purchase remote control devices which are compatible with the converter installed by Franchisee, if any, and allow the use of remotes. Franchisee takes no responsibility for changes in its equipment or services that might render inoperable the remote control devices acquired by Subscribers.

#### **SECTION 5.4 - STEREO TV TRANSMISSIONS**

All Broadcast Signals that are transmitted to Franchisee's head end in stereo shall be transmitted in stereo to Subscribers.

#### **SECTION 5.5 - CABLE CHANNELS FOR COMMERCIAL USE**

Pursuant to 47 U.S.C. § 532, Franchisee shall make available channel capacity for commercial use by persons unaffiliated with Franchisee. Rates for use of commercial access

channels shall be negotiated between Franchisee and the commercial user in accordance with federal law.



## ARTICLE 6

### PEG ACCESS CHANNEL & TECHNOLOGY FUNDING

#### SECTION 6.1 - PEG ACCESS PROGRAMMING

The Franchising Authority and/or its designee(s) shall be responsible for the provision of PEG Access Programming to Subscribers in the Town.

#### SECTION 6.2 - PEG ACCESS CHANNELS

(a) Subject to Section 6.2 (c) below, the Franchisee shall make available to the Franchising Authority and/or its designee(s) three (3) Downstream Channels for Pelham PEG Access use, as follows:

(b) The Franchisee shall provide the three (3) activated Downstream Channels for PEG Access use in standard definition (“SD”) format in the Franchisee’s Basic Service, the Franchising Authority and/or its designee(s) shall be responsible for providing the PEG Access Channel Signal(s) in SD format to the demarcation point at the designated point of origination for the PEG Access Channel(s). The Franchisee shall distribute the PEG Access Channels Signal(s) on its Cable System in SD format without substantial alteration or deterioration. The Cable System shall be capable of transmitting color video signals received at the Headend in color, stereo audio signals received at the Headend in stereo and properly formatted closed captioned signals received at the Headend.

(c) In order to provide PEG Access Programming to subscribers, Franchisee and Franchising Authority shall bring PEG Access programming content onto the System via direct connections provided by Franchisee from specified PEG origination locations as set forth below in Section 6.3.

(d) Said PEG Access Channels shall be used to transmit PEG Access Programming to Subscribers at no cost to the Town and/or PEG Access Users.

(e) The Franchisee shall not move or otherwise relocate the channel location(s) of the PEG Access Channel(s), once established, without the advance, written notice to the Franchising

Authority and/or its designee(s); such notice shall be at least thirty (30) days. The Franchisee shall use its best efforts, in good faith, to minimize any PEG Access Channel(s) relocations.

(f) The Franchising Authority and/or its designee(s) shall be responsible for the picture quality of PEG Access Programming at the input of the video transmission equipment that will be permanently located at each origination location listed below, which is the demarcation point between the video origination equipment owned, operated and maintained by the Franchisee and the Franchising Authority's and/or its designee(s) end-user equipment. The Franchisee may require access to said video transmission equipment for the purpose of testing, maintaining, and/or adjusting output levels of the video transmission equipment; the Franchisee shall test and adjust the levels of such output as reasonably necessary to ensure good picture quality. The Franchisee may request that the Franchising Authority and/or its designee(s) first test and determine if end-user equipment is the source of any Signal problems.

### **SECTION 6.3 - ORINATION POINTS**

- Pelham Fire Station, 36 Village Green
- Pelham Municipal Building, 6 Village Green
- Pelham Public Library, 24 Village Green
- Pelham Senior Center, 8 Nashua Road
- Pelham Elementary School, 61 Marsh Road
- Pelham Memorial School, 59 Marsh Road
- Pelham High School, 85 Marsh Road
- St Patrick's Church, 12 Main Street
- Congregational Church, 3 Main Street

### **SECTION 6.4 - PEG ACCESS CHANNEL(S) MAINTENANCE**

The Franchisee shall monitor the PEG Access Channels for technical quality and shall ensure that they are maintained at standards commensurate with those which apply to the Cable System's commercial channels; provided, however, that the Franchisee is not responsible for the technical quality of PEG Access Programming.

## **SECTION 6.5 - PEG ACCESS CAPITAL SUPPORT**

Franchisee shall provide a total capital payment of one hundred eighteen thousand dollars (\$118,000) to the Franchising Authority, or its designee, for PEG Access Channel facilities and equipment. Payments shall be made by Franchisee as follows:

- (i) within one hundred twenty (120) days of the Effective Date of this Renewal Franchise, Twenty-Eight Thousand Dollars (\$28,000),
- (ii) On or before each anniversary of the Effective Date of this Renewal Franchise, Ten Thousand Dollars (\$10,000).
- (iii) Franchisee reserve its rights to pass said costs through to its Subscribers, in accordance with applicable law.

## **SECTION 6.6 - CENSORSHIP**

The Franchisee shall not engage in any program censorship or any other control of the content of the PEG Access Programming on the Cable System, except as otherwise required or permitted by applicable law.

## **SECTION 6.7 - PEG ACCESS CABLECASTING**

(a) In order that PEG Access Programming can be cablecast over the PEG Access Downstream Channels, all PEG Access Programming shall be encoded and then transmitted from the PEG Access Origination Locations specified herein to the headend or hub, where such PEG Access Programming shall be retransmitted in the downstream direction on one of the PEG Access Downstream Channel(s).

(b) It shall be the Franchisee's sole responsibility to ensure that said PEG Access Programming is properly switched electronically to the appropriate PEG Access Downstream Channel(s), in an efficient and timely manner. Any manual switching shall be the responsibility of the Franchising Authority and/or its designee(s). The Franchisee shall not charge the Franchising Authority and/or its designee(s) for such switching responsibility. The Franchisee and the

Franchising Authority shall negotiate in good faith any difficulties that arise regarding cablecasting of PEG Access Programming.

(c) The Franchisee shall provide and maintain all other necessary switching and/or processing equipment located in its Headend facility in order to switch upstream PEG Access Signals from the Town and/or its designee(s) to the designated Downstream PEG Access Channel(s). Nothing herein shall require the Franchisee to provide any other switching equipment or any other end-user equipment.

(d) In accordance with applicable law, the Franchisee reserves the right to pass through or line-item costs associated with this Franchise, including the provision of PEG Access Programming to Subscribers.

#### **SECTION 6.8 – FRANCHISE RELATED COST**

The Franchising Authority acknowledges that under the Cable Act certain costs, including, but not limited to, costs of Public, Educational and Governmental Access; the cost to construct video return lines from video origination sites; the cost to activate a PEG Channel and the cost of other Franchise requirements may be passed through to the Subscribers in accordance with federal law.

### **ARTICLE 7**

#### **CUSTOMER SERVICE & CONSUMER PROTECTION**

##### **SECTION 7.1 - CUSTOMER SERVICE**

Franchisee shall comply with all applicable customer service regulations of the FCC (47 C.F.R. §§ 76.309; 1601, 1602, 1603 and 1619) as they exist or as they may be amended from time to time.

## **SECTION 7.2 - CONSUMER COMPLAINT**

Franchisee shall comply with RSA 53-C:3-d regarding Quality of Service and RSA 53-C:3-e regarding customer complaints.

## **SECTION 7.3 - SERVICE INTERRUPTIONS**

In the event that Franchisee's service to any Subscriber is completely interrupted for twenty-four (24) or more consecutive hours, Franchisee will upon request 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 then currently due. In the instance of other individual Subscriber service interruptions, credits shall be applied as described above after due notice to Franchisee from the Subscriber.

## **SECTION 7.4 - PROTECTION OF SUBSCRIBER PRIVACY**

Franchisee shall comply with all applicable federal and state privacy laws and regulations, including 47 U.S.C. 551 and regulations adopted pursuant thereto.

## **SECTION 7.5 - PROPRIETARY INFORMATION**

Notwithstanding anything to the contrary set forth in this Franchise, Franchisee shall not be required to disclose information which it reasonably deems to be proprietary or confidential in nature. The Franchising Authority agrees to treat any information disclosed by Franchisee as confidential and only to disclose it to those employees, representatives, and agents of the Franchising Authority that have a need to know in order to enforce this Franchise and who shall agree to maintain the confidentiality of all such information. Franchisee shall not be required to provide Subscriber information in violation of 47 U.S.C. 551 or any other applicable federal or state privacy law. For purposes of this Section, the terms "proprietary or confidential" include, but are not limited to, information relating to the Cable System design, customer lists, marketing plans, financial information unrelated to the calculation of franchise fees or rates pursuant to FCC rules,

or other information that is reasonably determined by Franchisee to be competitively sensitive. In the event that the Franchising Authority receives a request under a state “sunshine,” public records or similar law for the disclosure of information Franchisee has designated as confidential, trade secret or proprietary, the Franchising Authority shall notify Franchisee of such request and cooperate with Franchisee in opposing such request.

#### **SECTION 7.6 - EMPLOYEE IDENTIFICATION CARDS**

All of Franchisee’s employees and contractors, including repair and sales personnel, entering private property shall be required to carry an employee identification card issued by Franchisee. All of Franchisee’s vehicles or Franchisee’s contractors’ vehicles which have direct contact with customers shall be placarded to identify them. Agents and contractors hired by Franchisee to perform any substantial work on the Cable System in the Town shall reasonably inform the Town’s Police Department of the general work location within the Town and provide relevant vehicle identification prior to commencing such work.

#### **SECTION 7.7 - TERMINATION OF SERVICE**

(a) In the event a Subscriber’s Cable Service is terminated, monthly charges for service shall be pro-rated on a daily basis and, where advance payment has been made by a Subscriber, the appropriate refund shall be made by Franchisee to the Subscriber within forty-five (45) days of such termination provided, in the instance when the Subscriber is relocating, Subscriber has provided Franchisee a forwarding address and returned any equipment the subscriber has rented from the Franchisee has been returned.

(b) Franchisee shall have the right to disconnect a Subscriber for failure to pay an overdue account, for theft of services, or other violation of cable-related laws; provided that:

- (i) Franchisee’s billing practices and policy statement set forth the conditions under which an account will be considered overdue; and
- (ii) The Subscriber’s account is at least thirty (30) days delinquent.

## **ARTICLE 8**

### **PRICES & CHARGES**

#### **SECTION 8.1 - PRICES AND CHARGES**

All rates, fees, charges, deposits and associated terms and conditions to be imposed by Franchisee or any affiliated Person for any Cable Service as of the Effective Date shall be subject to regulation in accordance with applicable FCC's rate regulations and federal law, currently 47 U.S.C. § 543. Before any new or modified rate, fee, or charge is imposed, Franchisee shall follow the applicable FCC and State notice requirements and rules and notify affected Subscribers, which notice may be by any means permitted under applicable law. Nothing in this Franchise shall be construed to prohibit the reduction or waiver of charges in conjunction with promotional campaigns for the purpose of attracting or retaining Subscribers.

## ARTICLE 9

### REGULATORY OVERSIGHT

#### SECTION 9.1-FRANCHISE FEE PAYMENTS

(a) The Franchisee shall pay to the Franchising Authority, throughout the term of this Franchise, a Franchise Fee equal to five percent (5%) of Franchisee's Gross Annual Revenues, derived during each year of this Franchise.

(b) Franchisee's payments to the Town shall be made on a quarterly basis forty-five (45) days after the close of the previous quarter. The first and last payments shall be prorated, if necessary, to reflect the time period for which this Franchise is in effect.

(c) In accordance with Section 622(b) of the Cable Act (47 U.S.C. § 542(b)), Franchisee shall not be liable for a total financial commitment pursuant to this Franchise and applicable law in excess of five percent (5%) of its Gross Annual Revenues. That said five percent (5%) cap shall include (i) non-exempt PEG contributions whether in-kind or cash payments; and (ii) the marginal cost to Franchisee to provide the in-kind cable drops and services as enumerated within Exhibit A.

(d) Each payment shall be accompanied by a statement of the Gross Annual Revenues and a statement certifying the factual basis for payment, including a breakdown by category of Franchisee's Gross Annual Revenues upon which such payment is based. The Franchising Authority may designate in writing one or more particular accounts or funds, including any non-capital reserve fund duly established, to which Franchisee shall direct Franchise Fees due hereunder.

(e) The Franchising Authority may, within twelve (12) months of receipt of any Franchise Fee payment, conduct an audit of all of Franchisee's financial records relevant to the Gross Annual Revenue, and Franchisee shall make such information available to the Franchising Authority or its agent(s). If, after such audit an additional fee is owed to the Franchising Authority, such fee shall be paid within thirty (30) days after such audit and the Franchisee shall contribute to the costs of such audit in an amount not to exceed One Thousand Dollars (\$1,000.00). The interest on such



additional fee shall be charged from the due date at the rate of two percent (2%) above the Prime Rate during the period that such additional amount is owed. In the event any such audit reveals an overpayment, then the Town shall remit back to the Franchisee such overpaid amounts in a timely manner.

## **SECTION 9.2 - INDEMNIFICATION**

Franchisee shall indemnify, defend and hold harmless the Franchising Authority, its officers, employees, and agents from and against any liability or claims resulting from property damage or bodily injury (including accidental death) that arise out of Franchisee's construction, operation, maintenance or removal of the Cable System, including, but not limited to, reasonable attorney's fees and costs, provided that the Franchising Authority shall give Franchisee written notice of its obligation to indemnify and defend the Franchising Authority within timely (best efforts of ten (10) business days) receipt of a claim or action pursuant to this Section. If the Franchising Authority determines that it is necessary for it to employ separate counsel, the costs for such separate counsel shall be the responsibility of the Franchising Authority.

## **SECTION 9.3 - INSURANCE**

(a) Franchisee shall carry insurance throughout the term of this Franchise and any removal period with an insurance company authorized to conduct business in New Hampshire satisfactory to the Franchising Authority protecting, as required in this Franchise, Franchisee and listing the Town as an additional insured, against any and all claims for injury or damage to persons or property, both real and personal, caused by the construction, installation, operation, maintenance or removal of its Cable System. The amount of such insurance against liability for damage to property shall be no less than One Million Dollars (\$1,000,000) as to any one occurrence. The amount of such insurance for liability for injury or death to any person shall be no less than One Million Dollars (\$1,000,000) and Two Million Dollars (\$2,000,000) on account of

injury to or death of any number of Persons in any occurrence. The amount of such insurance for excess liability shall be Five Million Dollars (\$5,000,000) in umbrella form.

(b) Franchisee shall carry insurance against all claims arising out of the operation of motor vehicles and general tort or contract liability in the amount of One Million Dollars (\$1,000,000) combined single limit for bodily injury and consequent death and property damage per occurrence.

(c) All insurance coverage, including Workers' Compensation, shall be maintained throughout the period of this Franchise. All expenses incurred for said insurance shall be at the sole expense of Franchisee.

(d) Franchisee shall provide Franchising Authority with certificate(s) of insurance for all policies required herein upon written request.

#### **SECTION 9.4 - PERFORMANCE BOND**

(a) Franchisee has submitted and shall maintain throughout the duration of this Franchise and any removal period a performance bond in the amount of Fifty Thousand Dollars (\$50,000) running to the Town with a surety company satisfactory to the Franchising Authority to guarantee the following terms; subject to Section 9.8 herein (Notice and Opportunity to Cure):

- (i) The satisfactory completion of the construction and operation of the Cable System in the time schedule provided herein;
- (ii) The satisfactory restoration of pavements, sidewalks and other improvements;
- (iii) The satisfactory operation of the Cable System in compliance with the material terms and conditions of this Franchise;
- (iv) The indemnification of the Town; and
- (v) The satisfactory removal or other disposition of the Cable System.

Franchisee shall not reduce the amount of or cancel said bond, or materially change the terms of said bond from the provisions of Section 9.4(a) herein without the Franchising Authority's prior written consent. The Franchising Authority shall not unreasonably withhold its consent.

#### **SECTION 9.5 - REPORTS**

Franchisee shall maintain for public inspection all records required by the FCC and by N.H. RSA 53-C:3-e.

#### **SECTION 9.6 - EQUAL EMPLOYMENT OPPORTUNITY**

Franchisee is an Equal Opportunity Employer and shall comply with federal and state law and applicable FCC regulations with respect to Equal Employment Opportunities.

#### **SECTION 9.7 - REVOCATION OF FRANCHISE**

This Franchise may be terminated by the Select Board, after notice and opportunity to cure pursuant to Section 9.8 hereof and after a duly noticed public hearing, for any of the following reasons:

- (a) For failure to file and maintain the performance bond as described in Section 9.4 (Performance Bond) or to maintain insurance as described in Section 9.3 (Insurance);
- (b) A violation of any material obligation of Franchisee which remains uncured for thirty (30) calendar days after written notice from the Town Council, except as otherwise provided in this section;
- (c) Repeated failure to maintain signal quality under the standards required by this Franchise, or by the FCC, whichever is more stringent;
- (d) For any transfer or assignment of the Franchise made in violation of Section 9.9 herein;

- (e) For repeated failure to comply with the material terms and conditions of the Franchise;
- (f) For failure to pay the Franchise Fee within thirty days (30) calendar days after the due date.

The Town shall have given the Franchisee ninety (90) days' notice, in writing, of its intent to terminate. Except as to subsection (e) above:

- (i) If the Franchisee is contesting the validity of a claim of default in court, then any termination shall be delayed pending the outcome of the litigation;
- (ii) If the Franchisee has defaulted due to a Force Majeure beyond the control of the Franchisee, this Franchise shall not be terminated and shall remain in effect as long as the Franchisee demonstrates to the Franchising Authority that it is diligently working to correct the default and the Franchisee provides an acceptable schedule to cure said default.

#### **SECTION 9.8 - NOTICE AND OPPORTUNITY TO CURE**

In the event the Franchising Authority has reason to believe that Franchisee has defaulted in the performance of any or several provisions of this Franchise, except as excused by Force Majeure, the Franchising Authority shall notify Franchisee in writing, by certified mail, of the provision or provisions which the Franchising Authority believes may have been in default and the details relating thereto. Franchisee shall have ninety (90) days from the receipt of such notice to:

- (a) respond to the Franchising Authority in writing, contesting the Franchising Authority's assertion of default and providing such information or documentation as may be necessary to support Franchisee's position; or
- (b) cure any such default (and provide written evidence of the same), or, in the event that, by nature of the default, such default cannot be cured within such ninety (90) day period, take

reasonable steps to cure said default and diligently continue such efforts until said default is cured. Franchisee shall report to the Franchising Authority, in writing, by certified mail, at forty-five (45) day intervals as to Franchisee's efforts, indicating the steps taken by Franchisee to cure said default and reporting Franchisee's progress until such default is cured. The Franchising Authority shall issue a written acknowledgement after Franchisee's notice that it cured said default.

(c) In the event that (i) Franchisee fails to respond to such notice of default; and/or (ii) Franchisee fails to cure the default or to take reasonable steps to cure the default within the required ninety (90) day period; the Franchising Authority or its designee shall promptly schedule a public hearing no sooner than fourteen (14) days after written notice, by certified mail, to Franchisee. Franchisee shall be provided reasonable opportunity to offer evidence, question witnesses, if any, and be heard at such public hearing.

(d) Within thirty (30) days after said public hearing, the Franchising Authority shall issue a written determination of its findings. In the event the Franchising Authority determines that Franchisee is in such default, the Franchising Authority may determine to pursue any lawful remedy available to it.

(e) In the event that (i) the Franchising Authority fails to issue a written reply within 30 days accepting or rejecting Franchisee's response pursuant to Section 9.8(a) above; (ii) the Franchising Authority fails to issue a written acknowledgement after Franchisee's notice that it cured said default pursuant to Section 9.8(b) above; and/or (iii) the Franchising Authority fails to schedule a public hearing pursuant to Section 9.8(c) above; and/or (iv) the Franchising Authority fails to issue a written determination with thirty (30) days after the public hearing pursuant to Section 9.8(d) above, then the issue of said default against Franchisee by the Franchising Authority shall be considered null and void.

## **SECTION 9.9 - TRANSFER OR ASSIGNMENT**

This Franchise shall not be transferred or assigned without the prior written consent of the Franchising Authority, which consent shall not be arbitrarily or unreasonably withheld. No consent

shall be required, however, for a transfer in trust, by mortgage, hypothecation, or by assignment of any rights, title, or interest of the Franchisee in the Franchise or in the Cable System in order to secure indebtedness, or for a transfer of the Franchisee's interest in the Cable System to another entity directly or indirectly owned or controlled by Comcast Corporation. Within thirty (30) days of receiving a request for consent, the Franchising Authority shall, in accordance with FCC rules and regulations, notify Franchisee in writing of the additional information, if any, that it requires to determine the legal, financial, and technical qualifications of the transferee or new controlling party. If the Franchising Authority has not taken action on Franchisee's request for consent within one hundred twenty (120) days after receiving such request, consent shall be deemed given.

#### **SECTION 9.10 - REMOVAL OF SYSTEM**

Upon termination of this Franchise or of any renewal hereof by passage of time or otherwise, Franchisee shall remove its supporting structures, poles, transmission 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 restore the areas to their original condition. If such removal is not completed within six (6) months of such termination, the Franchising Authority shall cause all or part of same to be removed at Franchisee's expense.

#### **SECTION 9.11 - INCORPORATION BY REFERENCE**

(a) All presently and hereafter applicable conditions and requirements of federal, state and generally applicable local laws, including but not limited to the rules and regulations of the FCC and the State of New Hampshire, as they may be amended from time to time, are incorporated herein by reference, to the extent not enumerated herein. All such general laws, rules, and regulations, as amended, shall control the interpretation and performance of this Franchise to the extent that any provision of this Franchise conflicts with or is inconsistent with such laws, rules or regulations.

(b) Should the State of New Hampshire, the federal government or the FCC require the Franchisee to perform or refrain from performing any act the performance or non-performance of which is inconsistent with any provisions herein, the Franchising Authority and the Franchisee will thereupon, if they determine that a material provision herein is affected, modify any of the provisions herein to reflect such government action.

#### **SECTION 9.12- NO THIRD PARTY BENEFICIARIES**

Nothing in this Franchise is intended to confer third-party beneficiary status on any member of the public to enforce the terms of this Franchise.

#### **SECTION 9.13 - ANNUAL TOWN REVIEW AND REPORT**

(a) At the Town's written request the Franchisee will attend an annual meeting with the Town Council or its designee to review compliance with the terms of this Franchise and matters of interest to either party. No later than thirty (30) days prior to such meeting either party may submit a list of items to be reviewed.

(b) Additionally, at the Town's written request, Franchisee shall submit an annual report in the form attached as **Exhibit C**.

## **ARTICLE 10**

### **MISCELLANEOUS**

#### **SECTION 10.1 - SEVERABILITY**

If any section, subsection, sentence, clause, phrase, or other portion of this Franchise is, for any reason, declared invalid, in whole or in 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 10.2 - FORCE MAJEURE**

If for any reason of Force Majeure Franchisee is unable in whole or in part to carry out its obligations hereunder, said Franchisee shall not be deemed in violation or default during the continuance of such inability. Unless further limited elsewhere in this Franchise, the term "Force Majeure" as used herein shall have the following meaning: strikes; acts of God; acts of public enemies, orders of any kind of the government of the United States of America or of the State of New Hampshire or any of their departments, agencies, political subdivisions, or officials, or any civil or military authority; insurrections; riots, epidemics; landslides; lightning; earthquakes; tornados; fires; hurricanes; volcanic activity; storms; floods; washouts; droughts, arrests; civil disturbances; explosions; partial or entire failure of utilities; unavailability of materials and/or essential equipment; environmental restrictions or any other cause or event not reasonably within Franchisee's control.

#### **SECTION 10.3 - NOTICES**

(a) Every notice to be served upon the Franchising Authority shall be delivered or sent by certified mail (postage prepaid) or as allowed by applicable law to the following address or such other address as the Franchising Authority may specify in writing to Franchisee.

Town of Pelham  
Attn: Board of Selectmen



6 Village Green  
Pelham, NH 03076

(b) Every notice served upon Franchisee shall be delivered or sent by certified mail (postage prepaid) to the following address or such other address as Franchisee may specify in writing to the Franchising Authority:

Comcast Cable Communications, Inc.  
Attn: Vice President of Government Relations  
5 Omni Way  
Chelmsford, MA 01824

with copies to:

Comcast Cable Communications, Inc.  
Attn: Vice President, Government Relations  
676 Island Pond Road  
Manchester, NH 03109

Comcast Cable Communications, Inc.  
Attn: Government Affairs  
One Comcast Center  
Philadelphia, PA 19103

(c) Delivery of such notices shall be equivalent to direct personal notice, direction or order, and shall be deemed to have been given at the time of receipt.

#### **SECTION 10.4 - ENTIRE AGREEMENT**

This instrument contains the entire agreement between the parties, supersedes all prior agreements or proposals except as specifically incorporated herein, and cannot be changed without written amendment following publication of the proposed amendment in a manner consistent with the publication and notice provisions of RSA Chapter 43.

#### **SECTION 10.5 - CAPTIONS**

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

## **SECTION 10.6 - APPLICABILITY OF FRANCHISE**

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

## **SECTION 10.7 - WARRANTIES**

Franchisee warrants, represents and acknowledges that, as of the Effective Date of this Franchisee:

(a) Franchisee is duly organized, validly existing and in good standing under the laws of the State;

(b) Franchisee has the requisite power and authority under applicable law and its by-laws and articles of incorporation and/or other organizational documents, is authorized by resolutions of its Board of Directors or other governing body, and has secured all consents which are required to be obtained as of the date of execution of this Franchise, to enter into and legally bind Franchisee to this Franchise and to take all actions necessary to perform all of its obligations pursuant to this Franchise;

(c) This Franchise is enforceable against Franchisee in accordance with the provisions herein; and

(d) There is no action or proceeding pending or threatened against Franchisee which would interfere with performance of this Franchise.

**SIGNATURE PAGE**

In Witness Whereof, the Franchise is hereby issued as of March \_\_, 2023 by the Board of Selectmen of the Town of Pelham, New Hampshire, as Franchising Authority, and all terms and conditions are hereby agreed to by Comcast of Connecticut / Georgia / Massachusetts / New Hampshire / New York / North Carolina / Virginia / Vermont, LLC.

TOWN OF PELHAM, NH

By:

\_\_\_\_\_  
Heather Corbett, Chair

\_\_\_\_\_  
Jaie Bergeron, Vice Chair

\_\_\_\_\_  
Kevin Cote, Member

\_\_\_\_\_  
Charlene Takesian, Member

\_\_\_\_\_  
Jason Croteau, Member

Comcast of Connecticut / Georgia / Massachusetts / New Hampshire / New York / North Carolina / Virginia / Vermont, LLC.

By:

\_\_\_\_\_  
Anthony M. Bowling, Sr. Vice President  
Greater Boston Region

## **EXHIBIT A**

### **PUBLIC BUILDINGS**

#### **Municipal Buildings:**

- 1) Pelham Fire Station, 36 Village Green
- 2) Pelham Police Department, 14 Village Green
- 3) Pelham Municipal Building, 6 Village Green
- 4) Pelham Public Library, 24 Village Green
- 5) Pelham Highway Department, 33 Newcomb Field Road
- 6) Pelham Recycling Facility, 74 Newcomb Field Road
- 7) Pelham Senior Center, 8 Nashua Road

**EXHIBIT B**  
**PROGRAMMING**

Franchisee shall provide the following broad categories of Video Programming:

- News Programming;
- Sports Programming;
- Public Affairs Programming;
- Children’s Programming;
- Entertainment Programming;
- Local Programming; and
- Weather Programming.

**EXHIBIT C**  
**ANNUAL REPORT**

**TOWN of PELHAM for \_\_\_\_\_**  
*(Year)*

Location of and hours of Payment Center:

Location of and hours of Customer Service Office:

Customer Service Telephone Number:

Location of Head End (Reception Facility):

Franchise Fee Paid: \$ \_\_\_\_\_

Contact Person to Service Unresolved Customer Complaints:

Updated Labor/Material Costs (if applicable) for installation over 300 feet from existing plant:

Upon written request from the Franchising Authority, Franchisee shall also provide the following:

Customer Service Statistics:

- a) Number of reports of system outages and response time for such outages:
- b) A summary of written complaints and brief description re: resolution of such complaints: