

**NEWSPAPER ADVERTISEMENT**

**DATE TO ADVERTISE: MARCH 29, 2024**

**REQUEST FOR BIDS**

**for the**

**WARREN COUNTY, KENTUCKY'S  
Cable Television and Telecommunications Franchises**

The Warren County, Kentucky is soliciting bids from parties interested in obtaining franchises to operate cable television and telecommunications systems within the confines of the Warren County, Kentucky, pursuant to Ordinance No. 18-05 WC. Franchise(s) awarded pursuant to this Request for Bids will be non-exclusive and will be for a term of twenty (20) years. Bids must meet all of the requirements of Ordinance No. 18-05 WC which is available in the office of the Fiscal Court Clerk, 429 East 10<sup>th</sup> Street, Bowling Green, Kentucky 42101.

Sealed bids must be received no later than 3 p.m., local time, April 5, 2024, at which time the bids will be opened publicly in the Fiscal Court Chambers, 429 East 10<sup>th</sup> Street, Bowling Green, Kentucky 42101. Sealed bid proposals should be sent to the Fiscal Court Clerk 429 East 10<sup>th</sup> Street, Bowling Green, Kentucky 42101.

Warren County, KY reserves the right to accept any bid, to reject any and all bids, and to waive any irregularities or informalities in awarding any franchises pursuant to Ordinance No. 18-05 WC.

ORDINANCE #18-05WC

AN ORDINANCE CREATING A COMPETITIVE FRANCHISE FOR THE OPERATION AND MAINTENANCE OF CABLE AND TELECOMMUNICATIONS SYSTEMS IN THE UNINCORPORATED PORTIONS OF WARREN COUNTY, KENTUCKY, SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OF FRANCHISE AND PROVIDING FOR THE REGULATION AND USE OF THE SYSTEMS

WHEREAS, Section 621(a)(1) of the Communications Act of 1934 (the "Cable Act") prohibits franchising authorities from unreasonably refusing to award competitive franchises for the provision of cable services (47 U.S.C. § 541(a)(1)), and

WHEREAS, the Federal Communications Commission ("FCC") in the FCC's Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 5101 (2006), in *Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as amended by the Cable Television Consumer Protection and Competition Act of 1992* ("FCC Order") has found that new entrant providers of cable television service, "face 'steep economic challenges' in an 'industry characterized by large fixed and sunk costs,' without the resulting benefits incumbent cable Franchisees enjoyed for years as monopolist in the video services marketplace," (FCC Order at 63), and

WHEREAS, the FCC's record indicates that "a competitive video provider who enters the market today is in a fundamentally different situation from that of the incumbent cable Franchisee" because the new entrant must "win every customer from the incumbent" and thus does not have "anywhere near the number of subscribers over which to spread the costs." (FCC Order at 63), and

WHEREAS, the FCC has determined that its construction of Section 621(a)(1) "best serves the [Communications] Act's purposes of promoting competition and broadband deployment." (FCC Order at 43), and

WHEREAS, the FCC has expressly recognized that it is unlawful for a franchising authority "to refuse to grant a competitive franchise on the basis of unreasonable build-out mandates," (FCC Order at 43), and

WHEREAS, the FCC has found that "[b]uild-out requirements . . . impose significant financial risks on competitive applicants, who must incur substantial construction costs to deploy facilities within the franchise area in exchange for the opportunity to capture a relatively small percentage of the market," (FCC Order at 43), and

WHEREAS, Warren County recognizes that a Cable System and Telecommunications System provide different services, and are therefore subject to different regulations;

THEREFORE, BE IT ORDAINED BY THE WARREN COUNTY FISCAL COURT:

That this Ordinance be and hereby is adopted as the "Telecommunications and Competitive Cable Television Ordinance":

1. Grant and Acceptance.

- (a) Any nonexclusive franchise granted by the Warren County Fiscal Court, pursuant to this Ordinance shall grant to the Grantee the right and privilege to erect, construct, operate, maintain and repair in, upon, along, across, above, over and under the Street any poles, wires, cables, underground conduits, manholes, and other television conductors and fixtures necessary for or appurtenant to the maintenance and operation of a CATV System for the interception, sale, transmission and distribution of Cable Service; and the right to transmit the same to the inhabitants of the unincorporated portions of Warren County on the terms and conditions hereinafter set forth. Any nonexclusive franchise granted by the Warren County Fiscal Court pursuant to this Ordinance shall also grant to the Grantee the right and privilege to erect, operate, and maintain poles, wires, cables, underground conduits, manholes and other conductors or fixtures necessary for the operation of a Telecommunications System in, upon, along, above, over and under the streets, alleys, public ways, and public places, now laid out or dedicated and all extensions thereof, and additions thereto, in Warren County.
- (b) Franchisee shall abide by the terms of the laws, ordinances, and regulations of the United States of America, the Commonwealth of Kentucky, and the County, as now existing or hereafter adopted or amended.
- (c) In the event of any conflict between any of the applicable County ordinances and regulations or the Franchisee's bid proposal and the provisions of this Ordinance, the provisions of this Ordinance shall control.

**2. Definitions.**

For purposes of this Ordinance, the following terms, phrases, words, and their derivatives shall have the meanings set forth in this section, unless the context clearly indicates that another meaning is intended. Words used in the present tense include the future tense, words in the singular number include the plural number, and words in the plural number include the singular. The words "shall" and "will" are mandatory, and "may" is permissive. Words not defined shall be given their common and ordinary meaning.

To the extent any definitions differ from or are in conflict with definitions in the federal Cable Act, it is the express intent that the definition in applicable federal law shall take precedence.

- (a) "Applicant" shall mean a person or party which is applying for a new franchise.
- (b) "Basic Cable Service" shall be defined as that term is defined in the Cable Communications Policy Act of 1984 as amended, and shall, subject to applicable law, specifically include the retransmission of local television broadcast signals and PEG access channels to the extent required hereunder.
- (c) "Cable Act" means the Cable Communications Policy Act of 1984 (Public Law No. 98-549), and the Cable Television Consumer Protection and Competition Act of 1992 (Public Law No. 102-385) as amended by the Telecommunications Act of 1996 (Public Law No. 104-104), together with current federal legislation governing Cable Television Systems

and Telecommunications Systems and their operation in the United States and any subsequent amendments thereto.

- (d) "Cable Channel" or "Channel" shall have the same meaning as is ascribed to the term "cable channel" or "channel" at 47 U.S.C. § 522(4).
- (e) "Cable Service" shall have the same meaning as is ascribed to the term "Cable Service" at 47 U.S.C. § 522(6).
- (f) "Cable System" or "CATV System" shall have the meaning as ascribed to the term "Cable System" at 47 U.S.C. § 522(7).
- (g) "County" shall mean the County of Warren, Kentucky, a Kentucky county government.
- (h) "FCC" shall mean the Federal Communications Commission and any legally appointed, designated or elected agent or successor.
- (i) "Franchise" means any franchise granted to the Grantee pursuant to this Ordinance.
- (j) "Franchise Fee" shall mean any fee that may be imposed by the Warren County Fiscal Court, as compensation for the Grantee's use of the County rights-of-way pursuant to federal or state law.
- (k) "Grantee" is a party to which a Franchise under this Ordinance is granted by the Warren County Fiscal Court, or its successor, transferee or assignee.
- (l) "Gross Revenue" shall mean any and all revenue collected from the Grantee's Subscribers within the unincorporated portions of the County, through Grantee's Cable System and Telecommunications System. Gross revenues include, but are not limited to, revenues from Subscriber rates for Telecommunications Service, Pay Service television, premium channels, and video programming service tiers. Unless prohibited by either federal or state law, Gross Revenue does not include any taxes or fees imposed and/or assessed by law or regulation on Subscribers, including state sales taxes, which a franchised cable operator is obligated to collect and pay in full to the applicable governmental authorities. Gross Revenue shall also not include uncollected bad debt.
- (m) "Pay Service" shall mean the delivery over the CATV System of programming to Subscribers for a fee or charge on a per-program or per channel basis.
- (n) "Public Access Content" means the video/audio stream of scheduled public access programming distributed by a third-party that operates a public access studio.
- (o) "Service" or "Services" means Cable Service and/or Telecommunication Service.

- (p) "Street" shall mean the surface of and the space above and below any public road, street, highway, freeway, lane, path, public way or place, sidewalk, alley, court, boulevard, parkway, drive or easement in the unincorporated portions of the County, now or hereafter held by the County for the purpose of public travel and shall include other public rights-of-way as shall be now held or hereafter held by the County.
- (q) "Subscriber" means a lawful recipient of Grantee's Cable Service or Telecommunications Service.
- (r) "Telecommunications Service" means the transmission via facilities, in whole or in part, of any writings, signs, signals, pictures, video, texts, messages, sound, data, communications or other forms of intelligence, information, or media through wire, wireless or other means. This term shall not include Cable Service.
- (s) "Telecommunications System" means any and all equipment, structures, materials or tangible components located in the rights-of-way and used to provide Telecommunications Services, including without limitation all plant (whether inside or outside), cabinets, surface location markers, fiber strands, electronic equipment, amplification equipment, optic equipment, transmission and distribution structures, antennae, lines, pipes, mains, conduit, ducts, regenerators, repeaters, vaults, pedestals, manholes, handholds, pull boxes, splice closures, wires, cables, towers, wave guides, and anything else designed and constructed for the purpose of producing, receiving, amplifying or distributing Telecommunications Services.

**3. Term of Franchise / Franchise Fee.**

- (a) The term of any Franchise granted pursuant to this Ordinance shall be twenty (20) years. Any franchise granted pursuant to this Ordinance shall take effect when legally adopted by the Warren County Fiscal Court according to Kentucky law, and accepted and agreed to by Grantee. Such acceptance shall be in writing, duly executed and sworn to, by, or on behalf of the Grantee before a notary public or other officer authorized by law to administer oaths.
- (b) Payments shall be made at the times and in conformance with the requirements of Kentucky Revised Statutes, Chapter 136, as revised by House Bill 272 (Tax Modernization) in the 2005 Regular Session of the Kentucky General Assembly (the "Kentucky Franchise Law"). Additionally, the County may at any time impose any fees or taxes consistent with state or federal law, including, but not limited to property taxes and occupational license fees.
- (c) The excise tax distribution from the state is not a payment in lieu of any tax, fee or other assessment except as specifically provided in this Ordinance, or as required by applicable law. By way of example, and not limitation, permit fees and business license taxes are not waived and remain applicable. Such payments shall be made at the times and in conformance with the requirements of this Ordinance.
- (d) The County may not collect Franchise Fees from Grantee except to the extent allowed by this subsection (d). If at any time Kentucky law is changed to allow the County to collect Franchise

Fees other than as prescribed by the Kentucky Franchise Law, (i) the County may collect said Franchise Fees for the reason that the Streets to be used by the Grantee in the operation of its system within the boundaries of Warren County are valuable public properties, acquired and maintained by the County at great expense to its taxpayers, and that the grant to the Grantee to use said right-of-way is a valuable property right without which the Grantee would be required to invest substantial capital in right-of-way costs and acquisitions, and (ii) the Franchise Fee shall be in an amount equal to the lesser of (X) three percent (3%) of Grantee's Gross Revenue and (Y) the positive amount (if any) determined in accordance with (X) as remains after deducting Franchise Fees paid by Grantee under the Kentucky Franchise Law, *provided, however*, that any Franchise Fee collected by the County pursuant to this Ordinance shall not be greater than, and the terms associated therewith and the collection of such Franchise Fee shall not be any less favorable or advantageous than, those fees and terms offered in conjunction with or contained in any similar Ordinance or arrangement between the County and any other Grantee and, *provided, further*, that in no event will Grantee be required to pay any Franchise Fee that is in excess of that paid by the incumbent local exchange carrier or incumbent Cable System operator servicing the County.

- (e) The payment of the Franchise Fee, if any, shall be in addition to any other tax or payment owed to the County by Grantee.
- (f) If any Franchise Fee is owed to the County under subsection (d) above, it shall be payable quarterly to the County and the Grantee shall file a complete and accurate report, signed by and certified as accurate by an officer of the Grantee, of all Gross Revenues received within the territorial limits of unincorporated Warren County during the previous three month period, and said payment shall be made to the County no later than thirty (30) days after the expiration of the quarter when due. The Gross Revenue report from operations of the Grantee within the franchise area shall include: a schedule of Gross Revenue by category by month; a schedule of the number of Subscribers by category of Service by month; and a schedule of Gross Revenue upon which the Franchise Fee is based.
- (g) If any franchise fee is owed to the County under subsection (d) above, upon reasonable notice, the County shall have the right to inspect the Grantee's income records, the right to audit and to re-compute any amounts determined to be payable under this Ordinance; provided, however, that such audit shall take place within twelve (12) months following the close of each of the Grantee's fiscal years. If, as a result of such audit or review, the County determines that Grantee has underpaid its fees to the County in any twelve (12) month period by ten percent (10%) or more, then, in addition to making full payment of the relevant obligation, Grantee shall reimburse the County for all reasonable expenses incurred as a result of an audit or review and such payments shall be paid within the thirty (30) days following written notice to the Grantee by the County, which notice shall include a copy of the audit report and copies of all invoices for which the County seeks reimbursement.
- (h) In the event that any franchise payment or recomputed amount is not made to the County on or before the applicable dates heretofore specified, interest shall be charged from such date at the annual rate of 2% over prime interest rate, or the maximum interest rate allowed by law, whichever is less.

- (i) The County reserves the right to require the Grantee to collect any consumer or other tax or other fee that may be imposed by the County, the Commonwealth of Kentucky, or the federal government on Cable Services or Telecommunication Services.
- (j) No acceptance of any payment by the County shall be construed as an accord and satisfaction that the amount paid is in fact the release of any claim that the County may have for further or additional sums payable under this Ordinance.

**4. Territorial Extent of the Franchise.**

The Grantee is authorized to operate throughout all the unincorporated portions of territory of the County. Any deviations from the territory must be approved in writing by the County, which approval shall not be unreasonably withheld. The County retains the right to award other Grantees the right to operate a Cable System or Telecommunications System or similar operation in the County should they so elect.

**5. Conditions on Occupants of Public Ways.**

- (a) The Grantee shall have the right to disturb, break and excavate in the Streets as may be reasonable and necessary to provide the Services authorized by this Ordinance, subject to the provisions of this Ordinance and the provisions of applicable County ordinances. The Grantee shall give prior notification to the County's Public Works Department of any construction work done by the Grantee on or in any Streets (including streets, sidewalks, curbs, gutters, drainage facilities or other street installations) that will necessarily involve the cutting of any blacktop or concrete or any excavation in the right-of-way. The Grantee shall obtain all necessary permits prior to any cutting or excavation. Grantee shall notify the County to schedule and coordinate installation, construction, maintenance, replacement or repairs of its System with proposed improvements to the Streets that have been designated for improvements, resurfacing or repair. Any replacement or repair shall, to the extent reasonably practical, be developed to coincide with the County pavement program.
- (b) In the event Grantee enters upon any Street for the purposes of constructing, erecting, installing, operating, maintaining, repairing and/or removing any part of its Cable System or Telecommunications System, it shall promptly and diligently prosecute the work to completion at its sole expense and shall repave, cover and restore all trenches and exposed areas as quickly as circumstances permit and shall leave all public rights-of-way in as good a condition as existed when Grantee entered upon them. Grantee shall perform such restoration work in compliance with all applicable County standards. Any repairs to Streets necessitated by reason of Grantee's failure to comply with County standards shall be performed by Grantee, at its expense, for a twelve (12) month period following the date Grantee failed to comply with the applicable County standards. However, notwithstanding the foregoing requirements, Grantee shall upon the request of the County and at its sole expense, repave all street pavement located within an entire street block if Grantee, its employees, contractors or agents undertook an authorized excavation of street right-of-way that has been repaved within six (6) months of the excavation where Grantee knew or should have known that it would need to excavate the new

pavement within six (6) months of the County notifying Grantee of the Streets that will be repaved. The above provisions shall not apply to the extent the excavation was necessitated by an act of the County or by an act of God or by an act of a third party with whom Grantee is not in privity of contract or over whom Grantee has no control or, in order to fix or repair a potentially or actual dangerous condition or to accommodate a request for Services by a new customer. In the event Grantee is required to repave an entire street block of pavement or right-of-way and the work by the Grantee is determined to be in compliance with the applicable County requirements, the County shall assume responsibility for the maintenance of the improved right-of-way. All restorations or repairs of Streets shall be performed in compliance with applicable County requirements and may be subject to inspection by the County at any time. In the event Grantee fails, refuses or neglects to comply with these provisions, the County shall have the right, after providing Grantee notice and a reasonable opportunity to comply with the applicable County provisions, to repair or restore the affected Streets and the costs and expenses incurred by the County shall be paid to the County by the Grantee within thirty (30) days from the date on which an itemized bill is submitted to the Grantee.

- (c) In the construction, installation, maintenance, repair or removal of any of its Cable System or Telecommunications System, or any part thereof, Grantee shall exercise due regard for the rights of the County, pedestrians and motorists, and shall not unreasonably or unnecessarily interfere with or injure County property or the private property of others. Grantee shall comply with all applicable laws with respect to signalization, placement of lights, danger signals or warning signs. All work performed by Grantee shall be done in a workmanlike manner and shall not unnecessarily interfere with the public use of the County's right-of-way or property.
- (d) Grantee shall, upon request by the County, remove, move, modify, relocate, reconstruct or adjust any of its Cable System or Telecommunications System located within Streets, at its own expense, if the County, in its sole discretion, constructs, reconstructs, widens, alters, excavates, repairs, changes or improves any Streets as part of any public improvement project and such work requested by the County shall be accomplished by Grantee within thirty (30) calendar days after notice by the County, provided, however, that if the work requested of Grantee cannot be reasonably completed within that time period, Grantee shall have such additional time to complete its work as is reasonably necessary to complete that work.
- (e) If the County requires the Grantee to adapt or conform its Cable System or Telecommunications System or to, in any way, construct, reconstruct, remove, alter, relocate, adjust or change its system to enable any other person, firm, corporation or entity, whether public or private, other than the County, to utilize Streets, Grantee shall be reimbursed for all costs incurred by the Grantee from the person, firm, corporation or entity requesting or required by the County to perform such change, construction, removal, repair, maintenance, alteration or relocation.
- (f) Grantee shall not erect or authorize or permit others on its behalf to erect any poles except when necessary. Poles may not be erected by the Grantee solely because it is more convenient, economical and/or profitable for Grantee to so operate. No poles or other wire holding structures shall be erected by the Grantee without prior approval of the County with regard to need, location, height, type, and any other pertinent aspect. Such approval shall not



unreasonably be withheld. However, no location of any pole or wire holding structure of the Grantee shall be a vested interest and such poles or structures shall be removed or modified by the Grantee at its own expense whenever the County determines that the public health, welfare and/or safety would be enhanced thereby, provided that if a proposed removal or modification for aesthetic purposes would affect more than five (5) poles erected by Grantee, the County and Grantee shall negotiate in good faith for commercially reasonable terms upon which such removal or modification shall be performed

- (g) If Grantee locates its above ground Facilities where poles or other wire holding structures already existing for use in serving Warren County are available for use by the Grantee, but it does not make arrangements for such use, the County may require the Grantee to use such poles and structures if it determines that the public health, welfare and/or safety would be enhanced thereby.
- (h) Where the County or a public utility serving the County desires to make use of the poles or other wire holding structures of the Grantee, but agreement thereof with the Grantee cannot be reached, the Warren County Fiscal Court may require the Grantee to permit such use for reasonable and proper consideration consistent with applicable law, including applicable provisions of the National Electric Safety Code and telecommunications industry construction standards, if the Warren County Fiscal Court determines that the use would enhance the public health, welfare and/or safety.
- (i) Grantee shall use commercially reasonable efforts to bury the fiber optic cable to a depth of 42" below grade. If Grantee does not do so, or is unable to do so, under no circumstances shall the County or its contractors be required to reimburse the Grantee for any damages resulting from the County's damage to that cable, *provided, however*, that the County shall not be required to reimburse Grantee for such damages only if County first contacts Kentucky 811, commonly referred to as "BUD" or the "Call Before You Dig" hotline, before performing any work on the applicable property.
- (j) The Grantee shall construct, install, operate and maintain the Cable System in a manner consistent with all laws, ordinances, construction standards, governmental requirements, and FCC technical standards, which standards are incorporated by reference herein. In addition, the Grantee shall provide the County upon request, with a written report of the results of the Grantee's annual proof of performance tests conducted pursuant to FCC standards and requirements.
- (k) Construction, installation and maintenance of the Cable System shall be performed in an orderly and workmanlike manner. All new cables and wires shall be installed, where possible, parallel with electric and telephone lines. Grantee shall at all times comply with:
  - (i) National Electrical Safety Code (National Bureau of Standards);
  - (ii) National Electrical Code (National Bureau of Fire Underwriters);

- (iii) Applicable FCC or other federal, state and local regulations including Technical Standards; and
- (iv) Applicable local ordinances, regulations and permitting requirements.
- (l) Any antenna structure used in the Cable System shall comply with the applicable standards and requirements of the U.S. Department of Transportation for the construction, marking, and lighting of antenna structures. If applicable, RF leakage shall be checked and maintained in conformance with FCC Rules and Regulations.
- (m) The Grantee shall maintain equipment capable of providing standby power for the headend for a minimum of two hours.
- (n) In all areas of the County where the cables, wires, and other like facilities (including but not limited to telephone and power), of all public utilities are placed underground, the Grantee shall place its cables, wires, or other like facilities underground to the maximum extent that existing technology reasonably permits.
- (o) The methods of construction, upgrade, installation, maintenance and repair of the Cable System shall comply and be consistent with good engineering practices for CATV Systems of similar size and design, and consistent with and satisfy FCC performance and technical standards. All work shall be performed by the Grantee in a good and workmanlike manner.
- (p) The Grantee shall remedy or justly compensate property owners for any damages caused by its installation, construction, operation or removal of its cable facilities, as required by the Cable Communications Policy Act of 1984, 47 U.S.C. 541(a)(2)(C).
- (q) The Grantee shall, on the request of any person holding a building-moving permit issued by the County temporarily raise or lower its wires to permit the moving of buildings. The person requesting such raising or lowering shall bear the expense of such temporary removal, raising or lowering of wires, and the Grantee shall have the authority to require such payment in advance. The Grantee shall be given not less than thirty (30) business days' notice to arrange for such temporary wire changes.
- (r) The Grantee shall be entitled to remove any tree or trim any portion, either above, at or below ground level, of any tree within any right-of-way to prevent the branches of such trees from coming into contact with the wires and cables of the Grantee. Any trimming, removal or other disturbance of trees shall conform to all applicable laws or ordinances. No matter who performs the work requested by the Grantee, the Grantee shall be responsible, and shall defend and hold the County harmless, for any and all damages to any tree as a result of trimming, or to the land surrounding any tree, whether such tree is trimmed or removed.

**6. Rights Reserved by County.**

- (a) Any Franchise granted pursuant to this Ordinance shall be subject to all applicable provisions of the County ordinances and any amendments thereof, whether made prior to or after the Effective Date. Additionally, the right is hereby reserved to the County to adopt, in addition

to the provisions contained herein and in existing applicable ordinances, such additional regulations as it shall find necessary in the exercise of the police power.

- (b) Any Franchise granted pursuant to this Ordinance is expressly subject to the right of the County:
- 1) To repeal the same for misuse or nonuse;
  - 2) To impose such other regulations as may be determined by the County to be conducive to the health, safety, and welfare of the public; and
  - 3) To control and regulate the use of their streets, roads, alleys, bridges, public places, and space above and beneath them. The Grantee shall pay such part of the cost of improvements or maintenance of the streets, roads, alleys, bridges, and public places as shall arise from its use thereof.
- (c) Any Franchise granted pursuant to this Ordinance is not exclusive.
- (d) The County shall have the right to make such inspections it shall find necessary to ensure compliance with the terms of this Ordinance and any Franchise granted pursuant to this Ordinance and other pertinent provisions of law.

7. **Insurance.**

The Grantee shall maintain all other insurance requirements in accordance with what follows:

- (1) The Insurance required shall be written for not less than the following:

Comprehensive General Liability and Workers' Compensation

During the term of any Franchise granted pursuant to this Ordinance, Grantee shall, at its own cost and expense, maintain Comprehensive General Liability Insurance. A certificate of insurance evidencing said coverage shall be provided to the County prior to commencement of the performance of said Franchise. Such policies shall be in the minimum amount of Five Million Dollars (\$5,000,000.00) for bodily injury or death to one person, and Five Million Dollars (\$5,000,000.00) for bodily injury or death of any two or more persons resulting from one occurrence, Five Million Dollars (\$5,000,000.00) for property damage resulting from one accident, Five Million Dollars (\$5,000,000.00) for excess commercial liability, and insurance in the amount required by applicable law for workers' compensation employer liability. Grantee may satisfy its coverage obligations through its umbrella coverage.

- (2) The following policies are to contain, or be endorsed to contain, the following provisions:

Commercial General Liability Contractual Liability, and Automobile Liability Coverages

- (a) The County, its officers, employees, and volunteers are to be covered as insureds with respect to liability arising out of activities performed by or on behalf of the Grantee, including Grantee's general supervision of the premises owned, occupied or used by the Grantee, or automobiles owned, leased, hired or borrowed by the Grantee. The coverage shall contain no special limitations on the scope of protection afforded to the County, its officers, employees and volunteers.
- (b) The Grantee entering into this contract for service insurance coverage shall be primary insurance as respects the County, its officers, employees, and volunteers. Any insurance or self-insurance maintained by the County, its officers, employees, and volunteers shall be excess of the entity entering into this contract for service's insurance and shall not contribute to it.
- (c) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the County, its officers, employees, and volunteers.
- (d) Coverages are to be written on an occurrence basis through an insurance company or companies lawfully authorized to do business in the Commonwealth of Kentucky with a Best's rating of no less than A-.

All Coverages

- (a) Each insurance policy required shall be endorsed to state that coverage shall not be suspended, voided, canceled, or reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the County.
- (b) Any deductibles or self-insured retentions must be declared to and approved by the County.
- (c) The Grantee shall furnish the County with certificates of insurance and with original endorsements effecting coverage required by these insurance requirements. The certificates and endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All endorsements are to be received and approved by the County before work commences. The County reserves the right to require complete, certified copies of all required insurance policies at any time.
- (d) During the term of a contract, the Grantee shall comply with all appropriate Occupational Safety and Health Administration standards as detailed in 29 CFR Part 1910 as adopted by KAR 2:300 through 2:320 with Amendments and 29 CFR Par 1926 as adopted by 803 KAR 2:400 through 2:245.
- (e) The Grantee shall have a safety policy based upon the above standards, a copy of which may be obtained by the County upon request.

**8. Liability and Indemnification.**

The Grantee shall, at its sole cost and expense, indemnify and hold the County and all officers, officials, and employees of the County harmless at all times during the term of any Franchise granted pursuant to this Ordinance from any and all penalties, damages, claims or charges to persons and property, both real and personal, whether compensatory or punitive, and expenses, including reasonable attorneys' fees and court costs, arising therefrom, either at law or in equity, which might be claimed now or in the future, which arise out of, or are caused by, the construction, installation, erection, location, product performance, operation, maintenance, repair, replacement, removal, or restoration of the System or any equipment, wire, or cable authorized to be installed pursuant to any franchise granted pursuant to this Ordinance by the Grantee, including any action arising out of the award of a Franchise to the Grantee by the County. Upon receipt of notice of any such action, claim, or suit, the County shall provide Grantee prompt written notice of the action, claim, or suit, and the Grantee shall, at its own expense, defend the County against any such actions and shall conduct such defense and/or settle such action, claim, or suit in Grantee's sole and absolute discretion.

**9. Performance Bond.**

The Grantee, throughout the term of any Franchise granted pursuant to this Ordinance, shall maintain adequate financial resources to perform, or provide a plan acceptable to the County demonstrating that it can perform, on a timely basis, all obligations pursuant to this Ordinance. Within thirty (30) days after the award of any Franchise granted pursuant to this Ordinance, the Grantee shall file with the County a Performance Bond in the amount of Two Hundred Fifty Thousand and 00/100 (\$250,000.00) in favor of the Warren County Fiscal Court.

In the event the Grantee fails to comply with any law, ordinance or regulation governing its Franchise, or fails to observe, fulfill and perform well and truly each term and condition of the Franchise, there shall be recoverable, jointly and severally, from the principal and surety of the bond, any damages or loss suffered by the County as a result, including the full amount of any compensation, indemnification, or cost of removal or abandonment of any property of the Grantee, plus a reasonable allowance for attorney's fees, including the Warren County Fiscal Court's designated agent's legal staff and costs. The bond shall contain the following endorsement: It is hereby understood and agreed that this bond may not be canceled by the surety and that the intention not to renew may not be stated by the surety until thirty (30) days after receipt by the Warren County Fiscal Court, by registered mail, a written notice of such intent to cancel or not to renew.

Prior to drawing upon the performance bond for the purposes described in this Section, the Warren County Fiscal Court shall notify the Grantee in writing, and by certified mail, that payment is due and that the Grantee shall have thirty (30) days from the receipt of such written notice to make a full and complete payment. If the Grantee does not make the payment within thirty (30) days, the Warren County Fiscal Court may withdraw the amount thereof, with interest and penalties, from the performance bond. The Grantee's recourse, in the event Grantee believes any taking or withdrawing from the performance bond is improper, shall be through legal action. No later than thirty (30) days after mailing to the Grantee, by certified mail, notification of a withdrawal above, the Grantee shall replenish the performance bond in an amount equal to the

amount so withdrawn. Failure to make timely replenishment of such amount to the performance bond shall constitute a material violation of this Ordinance.

The Grantee may substitute a letter of credit for the performance bond at the discretion of and on terms favorable to the Warren County Fiscal Court. The rights reserved to County with respect to the performance bond or letter of credit are in addition to all other rights of the County, whether reserved by this Ordinance or authorized by law and no action, proceeding or exercise of a right to respect to such performance bond or letter of credit shall affect any other right the County may have under this Ordinance.

**10. Transfer Of Ownership Or Control.**

- (a) Neither any Franchise granted pursuant to this Ordinance nor any rights, interest or obligations of the Grantee in the Cable System or Telecommunications System or pursuant to this Ordinance shall in any event be sold, assigned, transferred, leased, or subleased, in whole, or in part, nor shall title thereto, either legal or equitable, or any right or interest therein, pass to or vest in any person or entity either by act of the Grantee, by act of any person or entity holding control of or any interest in the Grantee or the Cable System or the Telecommunications System or this Ordinance by operation of law or otherwise, without the prior express written approval by the County, which shall not be unreasonably withheld and shall be subject to all applicable law. If the County does not respond to Grantee's request for prior express written approval within one-hundred and twenty (120) days of receipt, the County shall be deemed to have approved the transfer, unless the Grantee and County agree to an extension of time.
- (b) Every transfer without the prior approval of the County shall constitute a default of this Ordinance. In the event of such a default, the County shall proceed according to the procedure set forth in this Ordinance, and any applicable state or federal law.
- (c) Notwithstanding the foregoing, no consent shall be required for the Grantee to hypothecate, pledge, mortgage or assign all or any part of the Cable System or Telecommunications System, or any right or interest therein for financing purposes; provided, that each such hypothecation, pledge, mortgage or assignment for security purposes shall be subject to the rights of the County pursuant to this Ordinance and applicable law.
- (d) Notwithstanding any other provision of this Section, no consent shall be required for any transfer of the Franchise or any interest in the Cable System or Telecommunications System or the Grantee to any entity controlling, controlled by or under the same common control as the Grantee.
- (e) Any approval by the County of a transfer shall be contingent upon the prospective transferee or assignee of the Grantee agreeing in writing to the following:
  - 1. To abide by and accept the terms of the Franchise or otherwise becoming a signatory to the Franchise Agreement;

2. To assume and be responsible for the obligations and liabilities of the Grantee to the County under this Ordinance, known and unknown; and
3. That the approval by the County does not constitute a waiver or release of any noncompliance claims the County may have against the Grantee or of rights of the County under the Franchise or applicable law upon discovery, whether arising before or after the effective date of the transfer.

(f) Upon the foreclosure or other judicial sale of all or a substantial part of the CATV System or Telecommunications System, or upon the termination of any lease or mortgage covering all or a substantial part of the CATV System or Telecommunications System, the Grantee shall notify the County of such fact, and such notification shall be treated as a notification that a change in control of the Grantee has taken place, and the provisions of this Ordinance governing the consent of the County to such change in control of the Grantee shall apply.

**11. [Reserved for future use.]**

**12. Operational Standards**

- (a) The Grantee shall put, keep and maintain all parts of the Cable System and the Telecommunications System in good condition throughout the term of this Ordinance.
- (b) Grantee shall provide Cable Service and/or Telecommunications Service within seven (7) calendar days upon the reasonable request for such service(s) by any residence or building that is located up to 125 feet from the point of connection to Grantee's existing distribution system. Grantee's existing distribution system shall not include individual service drops.
- (c) The Grantee shall render efficient Cable Service and/or Telecommunications Service, make repairs promptly, and interrupt Cable Service and/or Telecommunications Service only for good cause and for the shortest time reasonable. Such interruptions, insofar as possible, shall be preceded, where reasonable, by notice to persons affected thereby and shall occur during periods of minimum Cable System or Telecommunications System use.
- (d) The Grantee shall not allow its operations to interfere with television reception of persons not served by the Grantee, nor shall the Cable System and/or Telecommunications System interfere with, obstruct or hinder in any manner, the operation of the various utilities serving the residents within the confines of the County.
- (e) The Grantee shall continue, through the term of the Franchise, to maintain the technical standards and quality of Services set forth in this Ordinance. Should the County find that the Grantee has failed to maintain these technical standards and quality of Services, and such failure continues for three (3) months following such resolution, the failure will constitute a breach of a condition for which the remedies set forth in this Ordinance are applicable.
- (f) Upon initial installation, and at least once annually, and at such times as there is a change in the information, each Subscriber shall receive written notice of all Cable Service and/or

Telecommunications Service equipment and services available and the rates/charges for each, including but not limited to the Basic Cable Service rate, and billing and complaint procedures, including addresses and telephone numbers where Cable Service Subscribers may make billing inquiries and/or complaints. The Cable Service and/or Telecommunications Service Subscribers are to be notified of rate changes, channel changes or any other substantive service changes at least thirty (30) days in advance, or as required by applicable law. Upon request, the Grantee shall provide the County a complete listing of fees, charges, and related conditions of service associated with providing Cable Service and/or Telecommunications Service. The Grantee shall not charge Cable Service and/or Telecommunications Subscribers for any services they have not affirmatively requested. Upon request from a Cable Service and/or Telecommunications Service Subscriber, Grantee shall confirm in writing regarding any agreements or bill modifications made over the phone.

- (g) The County, shall have primary responsibility for the continuing administration of the Franchise terms and implementation of complaint procedures related to the administration of the Franchise terms.
- (h) In order to promote and develop Public, Education and Governmental (“PEG”) access programming in the County for the Cable System, the County may provide Grantee with programming for rebroadcasting on up to three (3) PEG Access Channels, which shall include:
  - a. One (1) public / community programming access channel dedicated to community programming (“Public Access Channel”);
  - b. One (1) full-time channel for government use by the County (“Governmental Access Channel”); and
  - c. One (1) channel available for use by the County public school systems (“Educational Access Channel”).

Collectively, these channels shall be known as the “PEG Access Channels.”

Grantee shall provide all equipment necessary for the PEG Access Channels to be rebroadcast on the Grantee’s Cable System and agrees to work in good faith with the County to rebroadcast PEG Access Channel programming provided to Grantee by the County.

**13. Cable System Complaint Procedure / Customer Service.**

During the term of this Ordinance, and any renewal thereof, the Grantee shall maintain a local business office that is located within twenty-five (25) miles of the County.

Grantee shall, for the purpose of receiving and resolving all complaints regarding the Cable Service, including but not limited to quality of service, equipment malfunctions, return of equipment, acceptance of payment, adjusting statements and similar matters, meet the customer service standards specified by the FCC at 47 C.F.R. 76.309(c). In the event of an inconsistency between FCC customer service standards and the terms of this Ordinance, the Ordinance shall control. Specifically:



- (a) The Grantee shall be reachable by a local, toll-free telephone call to receive complaints regarding quality of service, equipment malfunctions and similar matters with all calls being answered by knowledgeable, qualified company representatives. The local office shall be open to receive inquiries or complaints from Subscribers during normal business hours, and in no event less than 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The Grantee shall provide the means to accept complaints via telephone twenty-four (24) hours a day, seven days a week. The Grantee shall respond to any service complaints within twenty-four (24) hours and shall reasonably attempt to resolve them within three (3) business days of receipt of said complaint, subject to the customer's scheduling convenience. Grantee shall also permit customers to return cable equipment by U.S. mail, UPS or similar delivery method at the Grantee's expense and shall advise customers of this option when customers inquire about returning equipment.
- (b) As Subscribers are connected or reconnected to the system, the Grantee shall, by appropriate means, such as a card, brochure or other means, furnish information concerning the procedures for making inquiries or complaints, including the address and local telephone number to which such inquiries or complaints should be addressed.
- (c) Any bill, notice or other communication provided or issued by Grantee to any Subscriber may be provided or issued, if such Subscriber so consents, solely by electronic means.
- (d) When there exists evidence that the Grantee does not satisfy FCC performance and technical standards, the County shall have the right and authority to require the Grantee to test, analyze, and report on the performance of the CATV System. The Grantee shall fully cooperate with the County in performing such testing, and shall prepare a report reflecting the results of such tests, if requested, within thirty (30) days after notice. Such report shall include the following information:
  - (1) The nature of the complaints or the problem that precipitated the special tests;
  - (2) What system component was tested;
  - (3) The equipment used and procedures employed in testing;
  - (4) The method, if any, in which such complaint or problem was resolved;
  - (5) Any other information pertinent to said tests and analysis that maybe required.

The County may require that such tests be supervised by a professional engineer not on the permanent staff of the Grantee. The engineer should sign all records of special tests and forward to the County such records with a report interpreting the results of the tests and recommending actions to be taken. The expense of the professional engineer shall be borne by the County unless a significant violation of FCC performance and technical standards is found in which case the expense shall be borne by the Grantee. The County's authority under this section shall be limited to requiring tests, analyses, and reports covering specific subjects with characteristics based on complaints or other evidence when and under such

circumstances as the County has reasonable grounds to believe that the complaints or other evidence require that the tests be performed to protect the public against substandard Cable Service.

- (e) Under normal operating conditions, telephone answer time by a customer representative, including wait time, and the time required to transfer the call, shall not exceed thirty (30) seconds. 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 under normal operating conditions, measured on an annual basis.
- (f) Under normal operating conditions, the customer shall receive a busy signal less than three percent (3%) of the total time that the Grantee's office is open for business.
- (g) Installations, Outages and Service Calls. Under normal operating conditions, each of the following four standards will be met no less than 95% of the time measured on an annual basis.
  - (1) Installations required by Section 12(b), above, shall be performed within the timeframe described therein. Subscriber service representatives shall appropriately identify themselves with Grantee-issued picture identification and, upon request, means of verification, before entering the property.
  - (2) Excluding those situations beyond the control of the Grantee, the Grantee shall respond to Cable Service interruptions promptly and in no event later than 24 hours. Other service problems will be responded to within 36 hours during the normal work week.
  - (3) Subscribers experiencing Cable Service outages for which Grantee or its equipment is responsible shall be credited with one day's service for each day during which the subscriber experiences an outage of four or more hours upon request.
  - (4) The appointment window alternatives for installations, service calls, and other installation activities will be either a specific time or a maximum four-hour time block. Additionally, based on community needs, the Grantee shall schedule supplemental hours during which appointments can be set.
  - (5) If at any time an installer or technician is running late, an attempt to contact the customer shall be made. The appointment may be rescheduled as necessary at a time which is reasonably convenient for the customer.
  - (6) All service technicians and installers shall be appropriately trained.
  - (7) Grantee shall designate an employee who shall serve as ombudsman whom the County may contact in order to resolve any outstanding customer service issues. Grantee shall provide to the County the email address and individual business telephone number for such employee.

- (8) The Grantee shall establish procedures for receiving, acting upon and resolving Subscriber technical, customer service, Cable Service, and billing complaints. The Grantee shall furnish a notice of such procedures to each Subscriber at the time of initial subscription to the system as required by Federal regulations. The Grantee shall maintain a written record or "log", listing date and time of written customer technical, customer service, Cable Service, and billing complaints, describing the nature of the technical, customer service, Cable Service, and billing complaints and when and what action was taken by the Grantee in response thereto; such record shall be kept at Grantee's local office, for as long as business needs require (but for not less than two (2) years), and shall be available for inspection by the County during Normal Business Hours. Nothing herein shall require Grantee to make available any personally identifiable information or other information which Grantee may not disclose under applicable law. Upon request from Subscriber, Grantee shall respond in writing regarding any resolution of Subscriber's complaint.
- (9) Each subscriber bill shall itemize the package of services, additional outlets, pay-per-view services, additional services, and clearly state the charge for each. Each bill shall clearly state the due date for payment, the amount of late payment fees and a telephone number for billing inquiries.
- (h) Upon initial installation, and at least once annually, and at such times as there is a change in the information, each subscriber shall receive written notice of all equipment and services available and the rates/charges for each, including but not limited to the Basic Cable Service rate; billing and complaint procedures, including addresses and telephone numbers where Subscribers may make billing inquiries and/or complaints; notice that complaints not satisfactorily handled by the Grantee may be referred to the County (telephone number must be provided); availability of parental lock-out devices; and written instructions on how to use the cable service. The County and the subscribers are to be notified of rate changes, channel changes or any other substantive service changes at least thirty (30) days in advance as required by applicable law. In addition, the Grantee shall provide the County annually and upon request a complete listing of fees, charges and related conditions of service association with the providing of cable service. The Grantee shall not charge Subscribers for any services they have not affirmatively requested. Upon request from Subscriber, Grantee shall confirm in writing regarding any agreements or bill modifications made over the phone.
- (i) If the Grantee fails to provide service to a Subscriber, the Grantee shall, after being afforded a reasonable opportunity to provide the service, refund all deposits or advance charges paid for the service in question by said Subscriber promptly. This provision does not alter the Grantee's responsibility to Subscribers under any separate contractual agreements the Grantee might have with Subscribers or relieve the Grantee of liability for damage that might result to the County or any Subscriber because of the Grantee's failure to provide a service as promised. If any Subscriber terminates monthly service prior to the end of a prepaid period, Grantee shall refund a pro-rata portion of such prepaid amount
- (j) The Grantee shall provide a copy of its current rate schedule to the County. The County reserves the right to regulate rates for cable services to the fullest extent permitted by law and in accordance with such law. The Grantee shall provide information regarding its Basic Cable Service rate on its website.

- (k) No disconnection shall occur for at least thirty (30) days after the due date of said monthly fee or charge. The thirty (30) day period shall include ten (10) days written notice to the delinquent Subscriber of the intent to disconnect. After disconnection, upon payment in full of the delinquent fee or charge and the payment of a reconnection charge, the Grantee shall promptly reinstate the Subscriber's Cable Service.
- (l) Failure to provide the Cable Service as outlined in this Ordinance shall be deemed a material breach of this ordinance for which the provisions of this Ordinance shall apply.

**14. Availability Of Books, Records And Reports.**

- (a) The Grantee shall fully cooperate in making available at reasonable times, and the County shall have the right to inspect, the books, records, maps, plans and other like materials of the Grantee necessary for enforcement of this Ordinance, at any time during normal business hours, including, but not limited to, the Grantee's schedule of charges for Subscriber service, records of all written complaints and a full and complete set of plans, records and strand maps showing the location of the Cable System.
- (b) The County shall maintain as confidential any information disclosed to it by Grantee under the terms of this Ordinance which Grantee has designated as confidential or which the County has a reasonable basis to believe is confidential or proprietary in nature. In the event that the County believes at any time that it is required by law to disclose such information to a third party, it will so notify Grantee at a time prior to any such disclosure that affords Grantee a reasonable opportunity to take such action as it deems necessary to prevent such disclosure, including seeking relief in court.
- (c) Upon request, if applicable, Grantee shall provide the County no later than one hundred and twenty (120) days after the end of the Grantee's fiscal year, a copy of Grantee's or Grantee's parent company's Form 10-K for the preceding twelve (12) month period. Copies of all non-confidential petitions, applications, communications and reports submitted by the Grantee to the FCC, Securities and Exchange Commission or any other federal or state regulatory commission or agency having jurisdiction in respect to any matters affecting cable television operations authorized pursuant to the Franchise, shall be provided to the County upon reasonable request.
- (d) Copies of renewal or replacement insurance certificates shall be delivered each year to the County upon reasonable request.

**15. Default of Franchise; Revocation, Termination And Cancellation of Franchise.**

- (a) When any event, act or omission on the part of the Grantee occurs which represents a violation of a material provision of this Ordinance and the interests of the County or Subscribers are

negatively affected, then such event, act or omission may be considered a breach of this Ordinance. A material violation includes, but is not limited to, the following:

1. With the knowledge of an officer of Grantee, the Grantee made a material, false statement; or
  2. Failure to make the required payments or failure to file the required reports as provided under this Ordinance following notice of the failure and a reasonable opportunity to cure; unless the Grantee is lawfully contesting the legality or applicability of such payments or reports; or
  3. A transfer of the Franchise without the prior consent of the County, as may be required by the terms above; or
  4. The Grantee knowingly and consistently violates any FCC order, ruling or regulation concerning technical or performance standards, unless the Grantee is lawfully contesting the legality or applicability of such order; or
  5. The Grantee knowingly and repeatedly violates a material provision of the franchise.
- (b) The County, will enforce the terms of this Ordinance and other franchise ordinances on a competitively neutral basis. For purposes of establishing the date of breach, the date of violation will be the date that the event can clearly be established or, if it cannot be so established, the date the Grantee receives notice of the violation from the County. For purposes of giving rise to the opportunity to cure, the date of violation will be the date the Grantee receives notice of the violation from the County and not the date of the event.
- (c) The parties shall attempt to informally resolve any issues first through verbal or written communication. If such discussions are not successful, the County, shall notify the Grantee, in writing, of the specific breach, and direct the Grantee to comply with all such provisions of this Ordinance.
- (d) In the event the Grantee fails to correct the enumerated condition within a reasonable time, the County shall notify the Grantee of the time and place of a due process administrative hearing to be conducted by the County which shall be held not less than thirty (30) days thereafter.
- (e) At the time of the public due process hearing, the Grantee may present evidence and information regarding the alleged breach of the Franchise. If the situation has been resolved, or steps are being taken to resolve the situation, the Grantee may present such information at the hearing. Upon the conclusion of the hearing, the County may determine that no violation existed or that the Grantee has cured any violation and thereby dismiss the matter, or may determine from the evidence presented therein, that there was a continuing violation subsequent to the correction period which could have been prevented by the Grantee. The County shall notify the Grantee of any finding that the Grantee failed to cure a noticed violation within the time provided above, while having the ability to do so, the reasons therefor and the evidence in support thereof.

(f) Penalties shall be recoverable from Grantee as follows:

- (1) For failure to extend the system as required by Section 12: Two Hundred Fifty dollars (\$250.00) per day or part thereof that the violation continues.
- (2) For failure to provide data and reports as required by Section 14 : Two Hundred Fifty dollars (\$250.00) per day or part thereof that the violation continues;
- (3) For failure to provide insurance as required by Section 7 : Two Hundred Fifty dollars (\$250.00) per day or part thereof that the violation continues;
- (4) For failure to provide a performance bond or letter of credit as required by Section 9: Two Hundred Fifty dollars (\$250.00) per day or part thereof that the violation continues;
- (5) For failure to provide PEG access channel(s) as required by Section 12: Two Hundred Fifty dollars (\$250.00) per day or part thereof that the violation continues;
- (6) For failure to comply with the operational standards following the Grantors' resolution directing Grantee to make improvements pursuant to Section 12: Two Hundred Fifty dollars (\$250.00) per day or part thereof that the violation continues;
- (7) For failure to test, analyze, and report on the performance of the system following the reasonable request of the Grantor pursuant to Section 5(j): Two Hundred Fifty dollars (\$250.00) per day or part thereof that the violation continues;
- (8) For failure to meet the customer service standards of Section 13 : Two Hundred Fifty dollars (\$250.00) per day or part thereof that the violation continues;
- (9) For failure to comply within thirty (30) days of any County resolution directing compliance with any other provision of this ordinance: Two Hundred Fifty dollars (\$250.00) per day or part thereof that the violation continues.

(g) In lieu of all other rights and remedies available to the County, for material violations of the Franchise and after first granting Grantee a due process hearing to contest any alleged violations of the Franchise, the County may revoke, terminate or cancel any Franchise granted pursuant to the Ordinance by repealing the agreement by which it was granted, with an effective date of not less than twelve (12) months thereafter. The exercise of one remedy shall not foreclose use of another.

(h) Notwithstanding any other provision of this Ordinance, the County shall not subject the Grantee to revocation of the Franchise in any of the following instances:

- (1) The violation was not intentional by the Grantee and the effect thereof on the County or Subscribers was de minimis; or

- (2) There is no pattern of violation or the occurrence of repeated violations of the same matter over time is discontinued after notification of the Grantee thereof by the County; or
- (3) The violation was beyond the reasonable control of the Grantee.

**16. Bids Process For Renewals And New Applicants.**

- (a) All bids received by the County shall become the sole property of the County. Subject to applicable law, the County reserves the right to reject any and all bids and waive all informalities and/or technicalities where the best interest of the County may be served.
- (b) Bids must be sealed, and submitted at the time and place indicated in the request for proposals. Bids may be modified at any time prior to the opening of the bids, provided that any modifications must be duly executed in the manner that the bid must be executed. No bid shall be opened or inspected before the public opening.
- (c) Before submitting a bid, each Applicant must (a) examine the Ordinance thoroughly, (b) familiarize itself with local conditions that may in any manner affect performance under the franchise, (c) familiarize itself with federal, state and local laws, ordinances, rules and regulations affecting performance under the franchise and (d) carefully correlate its observations with the requirements of the ordinance.
- (d) The County may make such investigations as it deems necessary to determine the legal, financial and technical ability of each Applicant to perform under the Franchise, and the Applicant shall furnish to the County all such relevant information and data for this purpose as the County may request. The County reserves the right to request reasonable information regarding the existing Cable System and Telecommunications System and plans for future expansion and changes. The County reserves the right, consistent with the standards and procedures established in applicable law, to reject any bid if the evidence submitted by, or investigation of, such Applicant fails to satisfy the County's reasonable interest that such Applicant is properly qualified to carry out the obligations of the Franchise and to complete the work contemplated therein. Conditional bids will not be accepted.

**17. Miscellaneous Provisions.**

- (a) Captions and headings of this Ordinance are for reference purposes only and shall not affect in any way the meaning and interpretation of any provisions of this Ordinance.
- (b) This Ordinance shall be governed in all respects under the laws of the Commonwealth of Kentucky.
- (c) In the event any section or part of this Ordinance shall be held invalid, illegal, or unenforceable, such invalid, illegal, or unenforceable provision shall not affect the remaining provisions or sections of this Ordinance.

- (d) All rights and privileges granted herein are subject to the police powers of the County and their rights under applicable laws and regulations to regulate the Grantee and the construction, operation, and maintenance of the Grantee's system, including, but not limited to, the right to adopt and enforce additional ordinances and regulations as the County shall find necessary in the exercise of its police powers, the right to adopt and enforce applicable zoning, building, and safety ordinances and regulations and the right to adopt and enforce ordinances and regulations relating to Streets, telecommunications, and utility standards.
- (f) Upon the expiration or termination of any Franchise granted by the County pursuant to this Ordinance, the Grantee shall remove its Cable System and Telecommunications System from the Streets of the County at its own cost and expense and shall restore the right-of-way to as good a condition as before removal. Should Grantee fail or refuse to remove the Cable System or Telecommunications System, the County may require that the Cable System or Telecommunications System be removed upon sixty (60) calendar day's written notice, and if Grantee has failed to take steps to remove the Cable System or Telecommunications System within the sixty (60) day period, the system may be removed by the County at the sole expense of the Grantee. Grantee shall not remove any underground cable or conduit which requires trenching or other opening of the street unless the Grantee is ordered to remove such cable by the County. Any underground cable or conduit which is not removed shall be deemed abandoned and title shall vest in the County.
- (h) Grantee shall conduct the work to be performed pursuant to this Ordinance as an independent contractor and not as an agent of the County.
- (j) The Grantee shall not deny service, deny access, or otherwise discriminate against Subscribers, channel users or general citizens on the basis of race, color, religion, age or sex.
- (k) The Grantee shall not be excused from complying with any of the terms and conditions of this Ordinance by any failure of the County upon any one or more occurrences to insist upon or to seek compliance with any such terms or conditions.
- (l) Whenever this Ordinance shall set forth any time for an act to be performed by or on behalf of the Grantee, such time shall be deemed of the essence and any failure of the Grantee to perform within the reasonable time allotted shall always be sufficient grounds for the County to invoke an appropriate penalty, including possible revocation of the Grantee's Franchise.
- (m) Upon request and as required by federal law, the Grantee shall provide all Subscribers receiving channels showing first-run movies and special entertainment events with parental control functionality that prevents the unauthorized viewing of such channels.
- (n) Grantee shall comply with 47 U.S.C. 544(g) and all regulations issued pursuant thereto with respect to an Emergency Alert System ("EAS"). If the Grantee provides an EAS, then the County shall permit only appropriately trained and authorized Persons to operate the EAS equipment and shall take reasonable precautions to prevent any use of the Grantee's Cable System in any manner that results in inappropriate use thereof, or any loss or damage to the



Cable System. The County shall hold the Grantee, its employees, officers and assigns harmless from any claims or costs arising out of use of the EAS, including, but not limited to, reasonable attorneys' fees and costs.

- (q) The Grantee shall abide by all provisions of this Ordinance and shall not at any future time set up as against the County a claim that the provisions of the Ordinance were unreasonable, arbitrary or void on the effective date of the Franchise except for subsequent changes in state or federal law which may render provisions unenforceable. In any court proceeding involving any claim by Grantee against the County, or any of its officials, officers or employees arising from the regulation of Cable Service or from a decision of approval or disapproval with respect to a grant, renewal, transfer or amendment of a Franchise, any relief, to the extent such relief is required by any other provision of federal, state or local law shall be limited to injunctive relief and declaratory judgment.

***[INTENTIONAL PAGE BREAK]***

This Ordinance shall be in full force and effect from and after its adoption and publication as provided by law.

Adopted this 2<sup>nd</sup> day of February, 2018

First Reading – the 19<sup>th</sup> day of January, 2018

Second Reading – the 2<sup>nd</sup> day of February, 2018 Yes \_\_\_ No \_\_\_

  
\_\_\_\_\_  
Judge/Executive  
Warren County Fiscal Court

Attest:  
Brenda Hale  
Fiscal Court Clerk