



**BOARD OF SUPERVISORS AGENDA ITEM REPORT
CONTRACTS / AWARDS / GRANTS**

Requested Board Meeting Date: October 20, 2015

or Procurement Director Award

Contractor/Vendor Name (DBA): Mediacom Arizona, LLC, a Delaware Limited Liability Company ("Mediacom").

Project Title/Description:

Restated and Amended Cable Television Nonexclusive License Renewal Agreement with Mediacom (the "Agreement").

Purpose:

Mediacom has an existing License with the County to construct, install, maintain and operate a Cable System within the public right of way in specified portions of Pima County. Its service area is all unincorporated lands lying generally within the area known as Ajo, Arizona. Mediacom would like to renew its existing License for an additional ten (10) year period, effective as of July 1, 2015, with a new termination date of June 30, 2025. County is amenable to such extension, pursuant to the terms of the Agreement. The License fee payable to County will be the greater of 5% of Mediacom's gross revenues, or such maximum license fee as County would be permitted under applicable law to charge a cable system licensee.

Procurement Method:

N/A

Program Goals/Predicted Outcomes:

The Ajo area of Pima County will continue to have cable television coverage provided by Mediacom. County will receive License Fees payable quarterly which fees shall be due and payable within forty-five (45) days of the end of the prior quarter.

Public Benefit:

The renewal will benefit the citizens of Pima County, particularly in the area of Ajo, Arizona, with continued operation of cable television in the area. Mediacom will also provide County, at Mediacom's expense, with channel capacity for 2 video channels to be used for public, educational or governmental access.

Metrics Available to Measure Performance:

Licensee will be required to pay quarterly license fees with each such payment to be accompanied by a full and complete financial report. License fees are subject to audit by County. Licensee must also provide County with proof of insurance for commercial general liability, automobile liability, blanket contractual liability and completed operations liability coverage in minimum amounts as set forth in the Agreement.

Retroactive:

This renewal will be retroactive to July 1, 2015. Mediacom experienced some delays in having the Agreement signed and County was statutorily required to hold a public hearing in Ajo, Arizona before this matter could be heard by the Board of Supervisors. Such public hearing occurred, following the required public notice, on September 30, 2015.

*To: COB 10-15-15 (2)
Ver. - 2
Pgs. - 36 Addendum*

Procurement Dept 10/01/15 PM 08:51

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Original Information

Document Type: _____ Department Code: _____ Contract Number (i.e., 15-123): _____

Effective Date: _____ Termination Date: _____ Prior Contract Number (Synergen/CMS): _____

Expense Amount: \$ _____ Revenue Amount: \$ _____

Funding Source(s): _____

Cost to Pima County General Fund: _____

Contract is fully or partially funded with Federal Funds? Yes No Not Applicable to Grant Awards

Were insurance or indemnity clauses modified? Yes No Not Applicable to Grant Awards

Vendor is using a Social Security Number? Yes No Not Applicable to Grant Awards

If Yes, attach the required form per Administrative Procedure 22-73.

Amendment Information

Document Type: CTN Department Code: IT Contract Number (i.e., 15-123): CMS141284

Amendment No.: 1 AMS Version No.: 2

Effective Date: July 1, 2015 New Termination Date: June 30, 2025

Expense Revenue Increase Decrease Amount This Amendment: \$ *See below

Funding Source(s): *5% of Gross Revenues. Estimated to be approximately \$52,167.00 over the 10 year extension period based on the most recent one year payment.

Cost to Pima County General Fund: _____

Contact: Michael D. Stofko

Department: Real Property Services Telephone: 520-724-6667

Department Director Signature/Date: [Signature] 10-2-15

Deputy County Administrator Signature/Date: [Signature] 10/6/15

County Administrator Signature/Date: [Signature] 10/8/15
(Required for Board Agenda/Addendum Items)



CONTRACT
NO. <u>CTN-IT-CMS 141 284</u>
AMENDMENT NO. <u>01</u>
This number must appear on all invoices, correspondence and documents pertaining to this contract.

**RESTATED AND AMENDED
CABLE TELEVISION
NONEXCLUSIVE LICENSE RENEWAL AGREEMENT
Mediacom Arizona, L.L.C.
Document #CTN-IT-CMS141284 (formerly 12-14-M-141284-0600)**

This Restated and Amended Nonexclusive Cable Television License Renewal Agreement (“the Agreement”) is entered into between Pima County (“County”), a political subdivision of the State of Arizona, and Mediacom Arizona, L.L.C., a Delaware corporation doing business as Mediacom (“Licensee”) and will be effective July 1, 2015.

RECITALS

- A. Licensee has applied for the renewal of Licensee’s existing non-exclusive license to construct, install, maintain, and operate a Cable System (as defined below) within the public right of way in specified portions of unincorporated Pima County.
- B. County has determined that, subject to the terms and conditions set forth herein, renewal of Licensee’s existing license is in the best interests of the public.
- C. County has conducted a public hearing, affording the public notice and the opportunity to comment on the Agreement as provided in A.R.S. section 9-507(B).

DEFINITIONS

For purposes of this Agreement, any words or phrases used herein have the same meaning given in the Cable Act or the Cable Ordinance (both defined below), except that the following words, phrases, terms, and their derivatives have the following meanings:

Cable Act. Title VI of the Federal Communications Act of 1934, enacted as the Cable Communications Policy Act of 1984, and as amended by the Cable Television Consumer Protection and Competition Act of 1992 and the Telecommunications Act of 1996, and as may be amended further from time to time.

Cable Ordinance. Pima County Ordinance number 1997-17, as codified in Pima County Code Title 5, Chapter 5.04, and as may be amended from time to time.

Cable Service. The transmission of video and/or other programming service, together with such interaction by the recipients or users thereof, if any, as is required for the selection or use of such service.

Cable System. Facilities consisting of a set of closed transmission paths and associated signal-generation, -reception and -control equipment that are designed to provide Cable Service to multiple Customers (as defined below). A Cable System does not include a facility that serves fewer than fifty Customers, a facility that serves Customers without using any public street, road, or alley, a facility that serves only to retransmit the television signals of one or more television broadcast stations, a facility of a common carrier that is subject, in whole or in part, to 47 U.S.C. sections 201 through 276 (except that the facility is considered a Cable System, other than for purposes of 47 U.S.C. section 541(c), to the extent the facility is used in the transmission of video programming directly to Customers, unless the extent of that use is solely to provide interactive on-demand services), an open video system that complies with 47 U.S.C. section 573, or a facility of an electric utility that is used solely for operating its electric utility system.

Contract Year. July 1 through June 30.

Customer. A person or entity who lawfully and with the owner's permission receives Cable Service through the use of a Cable System.

Effective Date. July 1, 2015

Fiber Node. A basic structural point of electronic and physical transition on the Cable System from fiber optic cable to coaxial cable.

FCC. The Federal Communications Commission or the successor governmental entity thereto.

Gross Revenues. All cash, credits, property of any kind or nature, or other consideration, less related bad debt not to exceed one and one-half (1½) percent annually, that is received directly or indirectly by Licensee, its affiliates, subsidiaries, or parent, or by any person, firm, or corporation in which Licensee has a financial interest or that has a financial interest in Licensee and that is derived from Licensee's operation of a Cable System to provide Cable Service in the Service Area (as defined below). Gross Revenues also include all revenue received by Licensee from charges for Cable Service provided in the Service Area, irrespective of whether any part of the facility or facilities from which such Cable Service originates or is generated lies within the Service Area, and all charges for the installation, removal, connection, or reinstatement of any equipment necessary for a Customer to receive Cable Service in the Service Area, and any other receipts from Customers derived by Licensee from operating its Cable System in the Service Area, including receipts from forfeited deposits, the sale or rental of equipment, late charges, interest, and the sale of program guides. Gross Revenues further include all income Licensee receives from the lease of its Cable System located in the public streets, roads, and alleys in the Service Area, unless services that the lessee in such transaction provides over Licensee's Cable

System are subject to a transaction privilege tax levied by County. Gross Revenues do not include revenues from commercial advertising on Licensee's Cable System, the use or lease of any studio facilities that may be part of Licensee's Cable System, the use or lease of leased access channels or bandwidth, the production of video programming by Licensee, the sale, exchange, use, or cablecast of any programming by Licensee in the Service Area, sales to Customers by programmers of home-shopping services, reimbursements paid by programmers for launch fees or marketing expenses, license fees, taxes or other fees or charges that Licensee collects and pays to any governmental entity, any increases in the value of any stock, security, or asset, or any dividends or other distributions made in respect of any stock or securities.

Person. Any natural person or any association, firm, partnership, joint venture, corporation, or other legally recognized entity, whether for-profit or not-for profit, but not including County or any other governmental entity or subdivision.

Service Area. All of the unincorporated lands lying within the area generally known as Ajo, Arizona.

Technically Feasible Point of Connection. A point on a Cable System, including "trunk" or "feeder" cable, owned or operated by Licensee where, consistent with Licensee's overall system design, Licensee may insert a device that splits off a portion of the signal in order to extend the Cable System so as to provide Cable Service as required under this Agreement.

TERMS

1. Grant of Authority. County hereby grants to Licensee, subject to the terms and conditions of this Agreement and applicable law, the non-exclusive right, privilege, and authority to construct, operate, maintain, and repair a Cable System (and only a Cable System as defined above) within the public right of way lying within the Service Area, -- including County-owned alleys, roads, easements, and other County-owned property primarily dedicated to, designed for, or actually and customarily used for vehicular or pedestrian travel, or any easement Licensee is authorized to use by federal law, but not including parking areas or other County-owned real estate used primarily for purposes other than vehicular or pedestrian travel (except as may be permitted by County, as determined by County on a case-by-case basis) -- in order to provide Cable Service. Nothing in this Agreement shall be construed to prohibit Licensee from offering any service over its Cable System that is not prohibited by federal or state law, subject to any lawful licensing or other restrictions or conditions that the County might impose upon such service.

2. Relationship with Applicable Law.

- A. Incorporation of Terms of Cable Ordinance. Except as modified herein, the terms and provisions, whether express or implied, of the Cable Ordinance hereby are incorporated into this Agreement, and Licensee hereby expressly and specifically accepts and agrees to be bound by any and all terms of the Cable Ordinance as it exists on the Effective Date.

- B. Other Ordinances. This Agreement and the provisions thereof, including but not limited to the provisions of Paragraphs 24 through 32, shall be subject and subordinate to all lawful County ordinances of general applicability now in force or hereafter adopted, including all ordinances relating to the use of the public right of way by utilities. Licensee agrees that it will not assert any claim against County that the provisions of this Agreement, the provisions of P.C.C. § 5.04 et seq. (“Pima County Cable Communications Ordinance”), or the provisions of P.C.C. § 10.50 et seq. (“Pima County Right-of-Way Ordinance”) are unreasonable, arbitrary, or void.
- C. State and Federal Law to Control. Notwithstanding Subparagraphs (A) or (B), or any other provision of this Agreement, the provisions of this Agreement shall be subject to applicable federal law, including but not limited to the Cable Act and the rules, regulations, and orders of the FCC, and also shall be subject to state law not in conflict with such federal law. In the event of any conflict between the provisions of this Agreement and such state or federal law, the provisions of such state or federal law shall prevail.

3. Term; Prior License.

- A. Renewed License. The renewal license as granted by this Agreement shall remain in effect from the Effective Date through June 30, 2025, unless otherwise terminated pursuant to the terms of the Agreement.
- B. Prior License. The terms of Licensee’s existing non-exclusive license to construct, install, maintain, and operate a Cable System in the County shall be deemed to expire immediately before the Effective Date.

4. License for Cable Service Only. This Agreement authorizes Licensee to provide Cable Service only; it shall not be interpreted as preventing the County’s imposition of separate and/or additional conditions upon Licensee’s use of the public right of way to provide services other than, or in addition to, Cable Service. For example (and not by way of limitation), and notwithstanding any other provision of this Agreement, County may impose separate and/or additional conditions upon Licensee’s use of the public right of way to provide telecommunications services as defined in A.R.S. section 9-581, or to provide commercial mobile radio, cellular-telephone, or cellular-broadband services, to the extent County is permitted by law to impose such conditions.

5. Limited Scope of Agreement.

- A. Limited Rights Granted to Licensee. This License is intended to convey limited rights and interests only as to those portions of the public right of way in which County has an actual interest. It is not a warranty of title or interest in the public right of way, it does not provide Licensee any interest, vested or otherwise, in any particular location within the public right of way, and it does not confer rights other than as expressly provided in this Agreement.

- B. Terms Not Applicable to Certain After-Acquired Cable Systems. Except upon the mutual agreement of County and Licensee, or as otherwise provided by applicable law, the terms of this Agreement shall not apply to any Cable System that Licensee acquires from a third party after the Effective Date, if that other Cable System already is subject to a license or franchise from County, in which case that existing license or franchise agreement will continue in effect until the expiration of its term. If such after-acquired system is not subject already to a license or franchise from County, then it shall be subject to the terms of this Agreement unless the parties otherwise agree.

6. License Not Exclusive. Licensee's right to use and occupy the public right of way pursuant to this Agreement is not exclusive and does not explicitly or implicitly preclude the issuance of other licenses to construct, operate, maintain, or repair Cable Systems, or affect County's right to authorize the use of the public right of way or other property by other Persons as County determines appropriate, or affect County's right to provide, or to permit any other governmental entity to provide, Cable Service.

7. Superior Rights. The rights of County in and to the use of the public right of way located within Pima County are and forever shall be paramount and superior to the rights of Licensee.

8. Licensing of Other Persons.

- A. Equivalent Licensing Provisions. Notwithstanding the provisions of Paragraph 6, and subject to Subparagraphs (B) through (D) of this Paragraph 8, in the event that County authorizes or permits any Person other than Licensee to construct, operate, maintain, and repair a Cable System within the public right of way, it shall do so pursuant to a license (or license renewal agreement) with such other Person, the material provisions of which shall be comparable to those contained in this Agreement.
- B. Exceptions. Subparagraph (A) shall not apply with respect to --
1. an agreement with a Person who constructs, operates, maintains, and repairs a Cable System in order to provide Cable Service to a limited, specific location where --
 - a. Licensee is not providing Cable Service from or through the use of its Cable System as of the date such Person's application for a license is submitted to the County,
 - b. the Person can show that a written request was made by the Person, by County, or by any other Person residing or doing business in Pima County, to Licensee, requesting that Licensee commence providing such services to that location,

- c. the aforementioned written request described the location with particularity, either by service address or addresses, or by geographical boundaries (including but not limited to the legal description of a platted subdivision), and
 - d. the aforementioned written request was made more than one hundred eighty (180) days prior to the date such Person's application for a license is submitted to County; or
- 2. any valid license in effect on the Effective Date, during the current term thereof, whereby a Person other than Licensee is authorized to provide Cable Service.
- C. Remedy. Licensee's sole remedy for a violation of Subparagraph (A) will be to seek injunctive or declaratory relief to enforce the provisions of this Section; County is not required to commence or prosecute any litigation to secure Licensee's rights under Subparagraph (A).
- D. Indemnification. In addition to the provisions of Paragraph 33, Licensee shall indemnify County and its officers, employees, and agents from and against any claims made against County, including but not limited to claims for breach of contract or tortious interference with contractual relations, by any Person as a result of, or by reason of, County's compliance with or enforcement of Subparagraph (A) or Licensee's seeking relief under Subparagraph (C).

9. Licensee to Bear Its Own Costs. Unless otherwise expressly provided in this Agreement, all acts that Licensee is required to perform must be performed at Licensee's own expense.

10. License Fees.

- A. Fee on Gross Revenues. Licensee shall pay County an amount equal to the greater of --
 - 1. five percent (5%) of its Gross Revenues (less any legally permitted offsets or credits), or
 - 2. such maximum license fee (less any legally permitted offsets or credits) as County would be permitted under applicable law to charge a Cable System licensee pursuant to any license to provide Cable Service or to construct, operate, maintain, and repair a Cable System in the public right of way granted, extended, or renewed after the Effective Date.
- B. Calculation and Payment Schedule. Licensee will pay the license fee payable under Subparagraph (A) in quarterly installments; Licensee's Gross Revenues, and the fee payable thereupon under Subparagraph (A), for each calendar quarter shall be calculated at the end of such calendar quarter, and the fee shall be paid,

without demand, no later than forty-five (45) days after the end of that calendar quarter.

- C. Late-Payment Interest. In the event that a license fee payment under Subparagraphs (A) and (B) is not received by County on or before the due date, or is underpaid, Licensee shall pay, in addition to the payment due, interest on the unpaid amount from the due date at the annual rate specified in A.R.S. section 44-1201(A).
- D. No Accord or Satisfaction. No acceptance by County of any payment shall be construed as a release or as an accord and satisfaction of any claim County may have for further or additional sums payable under this Agreement, or for the performance of any other obligation by Licensee under this Agreement or applicable law.
- E. Right-of-Way Permit Fees. Licensee shall be liable, without offset against any license fee due pursuant to Subparagraph (A), for any permit fee or other fee charged by County for use of or work in, or for damage caused to, the public right of way, to the extent such fees are permitted by A.R.S. section 9-506.
- F. Financial Reports Required. Each license-fee payment shall be accompanied by a full and complete financial report, in the format shown on Exhibit A hereto, showing in detail the Gross Revenues and other revenues of Licensee for the period corresponding to that payment. Submission of the Excluded Revenues listed in Exhibit A as part of quarterly and annual reports required under this paragraph shall be voluntary and at the discretion of Licensee. Together with the last such report for each Contract Year, Licensee shall provide a separate full and complete financial report, also in the format shown on Exhibit A, showing in detail the Gross Revenues of Licensee for that Contract Year. This yearly financial report shall be certified as correct by an officer or other authorized employee of Licensee.
- G. License Fees Subject to Audit.
 - 1. Upon reasonable prior written notice, during normal business hours at Licensee's principal local business office, and subject to a reasonable confidentiality agreement, County may inspect Licensee's financial records used to calculate the license fee for any calendar quarter ending within twenty-four months prior to the giving of such written notice. Licensee shall not withhold access to categories of excluded revenue maintained in the ordinary course of business and set forth in the definition of Gross Revenues herein, should the auditor determine that such access is necessary to complete the audit.
 - 2. In the event of an alleged underpayment discovered through any such audit by County or otherwise, County shall provide Licensee with a report

setting forth County's findings in detail, including any and all substantiating documentation. Licensee then shall have thirty (30) calendar days from the receipt of the report to provide County with a written response agreeing to or refuting County's findings, together with any substantiating documentation. Based on these reports and responses, the parties shall agree upon the amount of underpayment, if any. Such underpayment, together with all applicable late-payment interest as provided for in Subparagraph (C), shall be paid to County within thirty (30) calendar days of the parties' agreement as to the amount. If the parties cannot agree on such an amount, either party may bring an action to have the disputed amount determined by a court of law.

3. County shall bear the costs of any audit conducted pursuant to Subparagraphs (G)(1) and (G)(2), unless the results of such audit show an underpayment in excess of one (1) percent of the total amount owed for that quarter, in which case Licensee shall be liable to County for the actual and reasonable costs of the audit conducted by internal County personnel, in addition to the underpayment, all applicable late-payment interest as provided for in Subparagraph (C), and any other costs incurred by County in establishing and collecting the amount of the underpayment.
 4. Licensee shall have the right, unless prohibited by law, to pass through to customers any franchise fees not previously collected from customers that are paid to County as a result of audit findings.
- H. License Fees Not in Lieu of Other Assessments, Taxes, or Fees. The license fee payable under Subparagraph (A) is in addition to all other fees, assessments, taxes, or payments that Licensee may be required to pay under applicable law.
- I. Payment on Termination. If this Agreement is terminated for any reason, Licensee shall pay County a *pro-rata* share of the license fee due under Subparagraph (A) based on the number of full months Licensee provided Cable Service in the Service Area during the calendar quarter in which the license terminates, accompanied by a statement as described in Subparagraph (F).
- J. Disputes over Revenue Records. If a dispute arises as to whether a particular item of revenue is within the scope of the term "Gross Revenues," and Licensee withholds revenue records on the ground that such revenues are not Gross Revenues, Licensee agrees that it will provide a certified statement describing the nature of the revenues contained in the withheld records, and further agrees to pay all costs, including attorneys' fees, that County incurs in obtaining access to the original records should it ultimately be established that the revenues in question do constitute part of Licensee's Gross Revenues.

11. Non-Discrimination.

- A. Economic Discrimination in the Provision of Service. Licensee shall not discriminate or permit discrimination between or among Persons with respect to the provision of Cable Service or other goods or services in the Service Area, or the fees charged therefor, on the basis of any Person's level of income, or the average or mean income of the Persons residing in any particular area or neighborhood. It shall be the right of any Person to receive or purchase any good or service offered by Licensee in the Service Area, so long as such Person's financial and other contractual obligations to Licensee are satisfied. However, nothing herein shall prohibit Licensee from offering bulk discounts, temporary, *bona-fide* promotional discounts, or package discounts, or from employing other such pricing strategies as part of its business practice. In any case, Licensee shall remain liable for the payment of license fees under Paragraph 10(A).
- B. Other Discrimination. Licensee agrees to comply with all provisions and requirements of Arizona Executive Order 2009-09 which is hereby incorporated into this contract as if set forth in full herein **including flow down of all provisions and requirements to any subcontractors.** During the performance of this contract, Licensee shall not discriminate against any employee, client or any other individual in any way because of that person's age, race, creed, color, religion, sex, disability or national origin.
- C. Americans with Disabilities Act. This Agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. sections 12101-12213) and all applicable federal regulations under that Act, including 28 Code of Federal Regulations parts 35 and 36.

12. Regulation of Rates and Charges. County may regulate Licensee's rates and charges for services covered by this Agreement to the maximum extent permitted by law applicable at the time such regulation is imposed by County, irrespective of whether such regulation is or was permissible on the Effective Date.

13. Notices to County and Customers.

- A. Notices to Customers.
 - 1. Licensee shall provide written information on each of the following areas at the time of installation of service, at least annually to each of its Customers, and at any time upon a Customer's request: products and services offered by Licensee, prices and options for Licensee's programming services, conditions of subscription to Licensee's programming and other services, Licensee's installation and service-maintenance policies, how to use Licensee's services, channel positions of programming carried on Licensee's Cable System, and billing and

complaint procedures, including the address and telephone number of County's cable office.

2. Licensee shall advise its Customers of the procedures for resolving complaints about the quality of the television signal delivered by Licensee, including the address of the responsible County officer.
3. Licensee shall notify its Customers in writing of any changes in the rates charged for services or equipment, in the programming services provided, or in channel positioning as soon as possible, and in no event less than thirty (30) days in advance of such changes.
4. Licensee shall notify its Customers at least thirty (30) days in advance of any significant changes in the information required by Subparagraphs (A)(1) or (A)(2) of this Paragraph 13.
5. In addition to the telephone number of County's cable office and any other information required by law, Licensee shall include the following text on any billing statement sent to a Customer in the Service Area: "You can view the license at www.Pima.gov/CATV." County shall be responsible for establishing and maintaining the website referenced by, and for timely informing Licensee of any change in, the foregoing URL address. When County notifies the Licensee that this Agreement is posted at and can be viewed at the foregoing URL address, Licensee shall add the text to its monthly statements to Customers within forty-five (45) days. The foregoing text shall appear in the area of the Customer's monthly bill in which Licensee inserts text in compliance with other laws.

- B. Notices to County. Licensee shall give County no less than thirty (30) days' prior written notice of any changes in the rates charged for services or equipment, in the programming services provided, or in channel positioning. Such notice shall state the precise amount of any rate change and briefly explain in readily understandable fashion the cause of the rate change (*e.g.*, inflation, changes in external costs, the addition or deletion of channels, *etc.*). When the change involves the addition or deletion of channels, each channel added or deleted must be identified separately.

14. Broad Categories of Programming. Licensee shall make available a broad range of commercial and noncommercial television programming from the following categories: local broadcast programming, non-broadcast arts and cultural programming, non-broadcast educational and informational programming, non-broadcast children's programming, and non-broadcast sports programming.

15. Extension of Service.

- A. Extension of Service Required. Subject to Paragraph 23(A), upon written request, and unless County extends the deadline for good cause (as determined by County in its sole discretion) upon Licensee's request, Licensee shall extend its Cable System so as to provide Cable Service at the standard rates charged by Licensee to its Customers within the Service Area --
1. within sixty (60) calendar days to any residence, service address, public school, or County-owned or -occupied building in the Service Area that is within a three hundred (300) foot radius of the nearest Technically Feasible Point of Connection, irrespective of whether that Technically Feasible Point of Connection is on a Cable System that lies or originates within the Service Area,
 2. within one hundred eighty (180) calendar days to any residence, service address, public school, or County-owned or -occupied building in the Service Area that does meet the requirements of Subparagraph (A)(1), above, but which lies within a platted subdivision or development, the density of which subdivision or development is at least twenty-five (25) existing homes per street mile, as measured from the nearest Technically Feasible Point of Connection, irrespective of whether that Technically Feasible Point of Connection is on a Cable System that lies or originates within the Service Area.
- B. Cost of Compliance. Subject to Paragraph 23(A), nothing in Subparagraph (A) shall be construed to limit Licensee's right to impose a one-time charge as set forth in section 5.04.110(E) of the Cable Ordinance. However, --
1. Licensee is required to use good faith in determining the necessary length of the drop line to any residence, service address, public school, or County-owned or -occupied building and to act in good faith to minimize that length, and
 2. Licensee shall bear the costs, without right to offset or other credit, of constructing or extending its trunk or distribution cable and/or other infrastructure to and through the subdivision or development in question in order to comply with the requirements of Subparagraph (A)(2); section 5.04.110(E) of the Cable Ordinance shall not apply to such costs of constructing or extending the trunk or distribution cable and/or other infrastructure, and Licensee may not charge County or any other Person therefor.
- C. Exceptions. The requirements of Subparagraph (A) shall not apply with respect to any residence, service address, public school, or government building where --
1. another Person, within the applicable time period set forth in Subparagraphs (A)(1) or (A)(2), begins to provide Cable Service,

2. Licensee would be required to obtain a private easement in order to comply,
3. another Person is required by applicable zoning regulation or ordinance, or by other applicable federal, state, or local law or ordinance to ensure that Cable Service is provided, or
4. Licensee can show by clear and convincing evidence, the sufficiency of which shall be determined by County in its sole discretion, that compliance with Subparagraph (A) would cause Licensee an undue economic hardship.

16. Customer and Consumer Rights.

- A. Highest Standards to Apply. Licensee shall abide by the highest standards of customer service and consumer protection set by such federal and/or state laws as may be applicable at any time during the term of this Agreement.
- B. Customer Equipment. Subject to FCC rules on inside wiring and equipment, and to such reasonable provisions as Licensee may impose for the purposes of preventing signal and/or service theft, and of maintaining the quality and integrity of its Cable System and the services provided through the operation thereof, each Customer of the Licensee (including County and any other governmental entity entitled to service pursuant to Paragraph 23 or otherwise) shall have the right --
 1. to attach devices to Licensee's Cable System for the purpose of retransmitting any services within the Customer's premises,
 2. to use the Customer's own remote-control devices, converters, signal splitters, and other similar equipment,
 3. to be provided at no cost, where possible, with information by Licensee as necessary to assist the Customer in installing and adjusting such devices as are described in Subparagraphs (B)(1) and (B)(2) in such manner as will enable the Customer to utilize those devices with Licensee's Cable System, and
 4. to install, retain, and maintain in place, any legal antenna or antenna switch, and Licensee shall not, as a condition of providing Cable Service, require a Customer to remove or refrain from installing any such antenna or antenna switch.
- C. Customer Privacy. Licensee shall observe and protect strictly the privacy and property rights of its Customers, including those rights established by federal law and regulation. This shall include, but not be limited to --

1. not revealing any individual's preferences of any kind, including viewing habits, political, social, or economic philosophies, beliefs, creeds, religions, names, addresses, or telephone numbers, to any Person, governmental entity, police department, or investigating agency, except as required by law or court order, or as authorized voluntarily by that individual, and Licensee may not require the granting of such authorization as a condition of providing services to that or any other Person,
 2. not permitting the transmission of any signal that the Customer does not initiate or request, including "polling" or monitoring of channel selection, from any Person's premises in the absence of prior written permission from that Person, with the exception of such signals as are useful only for the control or measurement in the aggregate of the performance of Licensee's Cable System,
 3. not installing any equipment in or on private property in the absence of a request for service by the owner of that property, and
 4. not permitting any subliminal transmission at any time for any purpose.
- D. Quality of Workmanship. The installation by Licensee of any equipment on any Customer's property shall be done according to the highest standards of workmanship, as well as according to any applicable regulation or ordinance (including, with respect to County property, Design Standard 16719 (Voice & Data Communication Cabling) promulgated by the Pima County Facilities Management Department, as may be amended from time to time).
- E. Refunds.
1. If Licensee collects a deposit or advance charge on any service or equipment requested by a Customer, Licensee either shall provide such service or equipment within thirty (30) calendar days of the collection of the deposit or charge or shall refund such deposit or charge within five (5) days upon the Customer's request. Licensee shall advise each of its Customers of this right of refund at any time an order for equipment or service is placed.
 2. If a Customer of Licensee terminates any monthly service during the first ninety (90) days of said service because of the failure of Licensee, as documented by a repeated pattern of material complaints or service-call requests made by the Customer, to render satisfactory service in terms of signal quality in accordance with the standards set forth in this Agreement, Licensee shall refund the installation or reconnection charges that were paid by the Customer for such service.

3. In the event that a Customer makes a payment in advance for services covered by this Agreement, the appropriate *pro-rata* portion of said payment shall be refunded by Licensee upon termination of the Customer's service.
4. In addition to the foregoing, Customers shall be entitled to refunds as provided in Paragraph 18(A).

F. Disconnection.

1. Licensee shall levy no charge for the disconnection or removal of any service or equipment unless such charge was disclosed to the Customer at the time such service or equipment was initiated or installed. Where Licensee improperly has discontinued service to a Customer, Licensee shall provide free reconnection of service to that Customer.
2. Any equipment other than inside wiring shall be removed from private property promptly upon request by the owner or person with legal control of such property, and in no event more than thirty (30) calendar days after such request. This provision does not apply to equipment located in the public right of way or easements.
3. If any Customer of Licensee fails to pay an appropriate fee or other charge, Licensee may disconnect the Customer's service. However, such disconnection shall not be effected less than thirty (30) calendar days after the due date of such fee or charge, and not less than ten (10) calendar days after prior written notice to the Customer of Licensee's intent to disconnect the service. After such disconnection, Licensee shall reinstate service promptly upon the Customer's payment in full of all proper fees and charges, including any reconnection charge.

17. Consistency of Services. Except in the limited circumstances set forth in Paragraph 11, or in situations where Licensee has connected to a Technically Feasible Point of Connection on a Cable System lying outside the Service Area in order to comply with either Paragraph 15(A) or Paragraph 23(A), Licensee shall make available the same channels, the same channel alignment, the same pricing and charges, and the same "packages" or groupings of services to each Customer throughout the Service Area.

18. Minimum Service Requirements.

- A. Reliable, Uninterrupted Service. Licensee must provide reliable service, and may interrupt service on its Cable System only for good cause and for the shortest time possible. Licensee must give prior notice to affected Customers and County of any anticipated service interruption except in emergency situations or when the service interruption is required for system maintenance with a maximum duration

of one (1) hour during the hours of 6:00 a.m. until 12:00 midnight, or four (4) hours during the hours of 12:00 midnight until 6:00 a.m.

1. Except for authorized and scheduled interruptions as set forth above, in the event of an aggregate of more than two (2) hours of service interruptions or outages within any twenty-four (24) hour period, any Customer that calls and reports the interruption or outage or that requests a refund shall be entitled to a refund or credit -- according to the Customer's preference -- of an amount equal to one (1) full day's worth of any monthly fees paid to Licensee.
 2. Except for authorized and scheduled interruptions as set forth above, in the event of an aggregate of more than six (6) hours of service interruptions or outages within any seventy-two (72) hour period, any Customer that calls and reports the interruption or outage or that requests a refund shall be entitled to a refund or credit -- according to the Customer's preference -- of an amount equal to twenty-five (25) percent of any monthly fees paid to Licensee.
 3. Except for authorized and scheduled interruptions as set forth above, in the event of an aggregate of more than eight (8) hours of service interruptions or outages within any thirty (30) day period, any Customer that calls and reports the interruption or outage or that requests a refund shall be entitled to a refund or credit -- according to the Customer's preference -- of an amount equal to one (1) full month's worth of any monthly fees paid to Licensee.
- B. Minimum Number of Video Channels. Licensee must provide at least eighty-five (85) channels of video programming.
- C. Leased Access Channels. Licensee must provide leased access channels as provided by federal law.
- D. Fiber Nodes. The average number of homes passed per Fiber Node shall be less than eight hundred (800), or consistent with contemporary industry standards.
- E. Standby Power. Licensee must provide "backup" or "standby" power at its headend facility such as is necessary for Licensee to continue operating its Cable System without interruption or reduction of services for six (6) continuous hours in the event of a power outage. Upon request, Licensee also shall provide County with a copy of the results of any proof-of-performance testing of its backup power systems that are reported to the FCC, and shall do so promptly after such results are reported to the FCC.
- F. Efficient Servicing. Licensee must exercise good faith in providing efficient servicing of and prompt repairs to its Cable System.

- G. Adequate Signal Strength. Licensee must provide a signal of adequate strength and quality, as defined by the standards set by the FCC, to each Customer, as demonstrable by instruments or otherwise.
- H. Internet Service Capability. Licensee must include the capacity to support high-speed Internet access to each of its customers over its Cable System, which capacity Licensee may or may not elect to use to provide high-speed Internet access or other services to its Customers.

19. Service Centers. For purposes of customer service and customer complaint procedure, licensee shall maintain a local business office open during normal business hours with a listed local or toll-free telephone number and employ a sufficient number of telephone lines to allow reasonable access by subscribers and members of the public. When the business office is closed, an answering machine or service capable of receiving service complaints and inquiries shall be employed.

20. Emergency Alert System. Licensee's Cable System shall be installed and operated with an emergency alert system in compliance with the rules of the FCC and the State of Arizona Emergency Alert System Operation Plan ("the State Plan"), as amended from time to time. Licensee's Cable System further shall be configured such that, in the event of a local emergency as reasonably determined by County, County shall be able to interrupt, to the extent not prohibited by FCC regulations or the State Plan, all audio and video signals distributed over Licensee's Cable System in order to deliver necessary information. This emergency override system will be operated in accordance with rules and regulations established by the State Plan as permitted by applicable law and amended from time to time. County shall coordinate any testing of the emergency alert system with the Office of Emergency Management for Pima County in order that any such testing is conducted at the same time as any testing done by the Office of the Emergency Management for Pima County.

21. Interconnection.

- A. Interconnection Required. Upon County's written request, Licensee shall interconnect its Cable System with any other willing cable system for the purpose of exchanging public, educational, and governmental programming with the interconnected system, irrespective of whether the interconnected system originates or lies within the Service Area. For purposes of this Paragraph 21, a "willing cable system" means a Cable System owned or operated in Pima County by a Person or governmental entity that is willing to interconnect its system with Licensee's Cable System on fair, reasonable, and economically and technically feasible terms.
- B. Division of Costs. The owner or operator of each interconnected Cable System shall be responsible for bearing the cost of installation and operation of any facilities or equipment located within its own territory of operation, including whatever equipment or facilities are used to accomplish the interconnection.

- C. Prompt Agreement Required. Upon County’s request as described in Subparagraph (A), Licensee shall enter promptly into good-faith negotiations with the owner or operator of the other system in order to provide for completion of the interconnection, including determination of where the point of interconnection shall be located, what technical method will be used to accomplish the interconnection, what costs for the interconnection will be assessed to each party, and what the schedule for completion of the interconnection will be.
- D. Licensee not Responsible for Signals Received. Licensee will not be responsible for ensuring that the signals provided by any interconnecting Cable System are of adequate quality, and may terminate an interconnection for any period of time during which an interconnecting system delivers signals in a manner that endangers the technical operation of Licensee’s Cable System.
- E. Licensee’s “PEG” Obligations Not Affected. Nothing in this Paragraph 21 alters Licensee’s obligations under Paragraph 22(A).

22. Public, Educational, and Governmental Programming.

- A. Public, Educational, and Governmental Channels.
 - 1. Licensee shall provide County with channel capacity for two (2) video channels to be used for public, educational, or governmental access (“PEG”) programming.
 - 2. The parties acknowledge that it is County’s policy to require, to the extent permitted by statute (including A.R.S. section 9-506) that the PEG channels be transmitted in the least expensive “package” or tier of services available from Licensee within the Service Area. Therefore, the parties agree as follows:
 - a. One of the PEG channels must be transmitted in the most inexpensive package or tier of services available from Licensee within the Service Area (commonly referred to as “the basic service tier”).
 - b. PEG channels that are not transmitted in the basic service tier must be included in the least expensive package or tier of services available from Licensee that is in “the digital programming tier” as that term is used in A.R.S. section 9-506(D)(1).
 - 3. One (1) of the two (2) PEG channels that are transmitted in the basic service tier must be assigned to Channel 96, and that channel may not be reassigned without County’s prior written consent, unless Licensee is otherwise obliged to reassign the channel by applicable law. Licensee

may change the channel assignment of any of the other PEG channels upon ninety (90) calendar days' prior notice to County.

5. County may designate one or more persons or governmental entities to manage County's PEG channels and provide programming therefor to Licensee, and the responsibilities to be assigned to such managers shall be determined by County in its sole discretion. Before a manager changes the basic nature of the PEG access programming on a PEG channel delivered to Licensee for transmission on the Cable System, County shall provide Licensee with forty-five (45) days' advance written notice.
- B. Signal Quality. The signal by which PEG programming is provided to Licensee's Customers pursuant to Subparagraph (A) must be of adequate strength and quality as defined by the standards set by the FCC, and must have the same functionality (including latency) and identification as commercial programming provided by Licensee to its Customers.
- C. Cost of Compliance. To the fullest extent provided in A.R.S. section 9-506(D), Licensee shall bear all capital and operating costs associated with the services to be provided pursuant to Subparagraph (A), with the exception of the actual costs of producing the PEG programming and delivering such programming to Licensee, which costs shall be borne by the Person or entity actually producing that programming.
- D. Licensee Not to Exercise Editorial Control. County and/or its agents shall retain full editorial control over the content of any PEG programming; Licensee may not exercise any editorial control over the content of programming provided pursuant to Subparagraph (A), except as expressly permitted by federal law. Licensee shall have no obligation to carry PEG programming that is commercial in nature or is obscene.
- E. Licensee Not Responsible for Content. County will not hold Licensee responsible for the content of any PEG programming, with the exception of any PEG programming produced by Licensee.
- F. Access to Facilities. Licensee shall provide reasonable access to any equipment or facility used in the production or transmission of PEG programming in the event that County or an agent thereof requires such access in order to effect repairs or upgrades to such equipment.
- G. Promotion. Licensee, without entitlement to offset or other credit, will identify the PEG channels, and the PEG programming available pursuant to Subparagraph (A), in any printed or electronic programming guides in the same manner in which it identifies channels and programming available on commercial channels offered on its Cable System, to the extent that County makes such information

available to Licensee's guide service in a timely fashion and in a manner consistent with Licensee's guide-service policies.

23. Other Public Services.

A. Video Service to Public Buildings.

1. Upon request, Licensee shall provide the most inexpensive (commonly referred to as "basic") "package" or tier of services available from Licensee within the Service Area and a single outlet to each school whether or not affiliated with County, (excluding dormitories and home schools) and to each building owned or occupied by County, including but not limited to administration buildings, and libraries within a three hundred (300) foot radius of the nearest Technically Feasible Point of Connection, irrespective of whether that Technically Feasible Point of Connection is on a Cable System that lies or originates within the Service Area.
2. The basic services provided pursuant to Subparagraph (A)(1) shall be provided at no cost to County, and Licensee shall claim no right to offset or other credit therefor.
3. Installation of the facilities and equipment necessary to provide services pursuant to Subparagraph (A)(1) will be at no charge to County, and Licensee shall claim no right to offset or other credit therefor. However, in the event that Subparagraph (A)(1) does not apply to a particular building because of that building's location outside the three hundred (300) foot radius, Licensee nevertheless shall supply the same basic services to the building upon County's agreement to pay the additional costs of installing the necessary facilities and equipment beyond the three hundred (300) foot radius.

B. Existing Facilities and Equipment. To the extent that Licensee currently owns or operates equipment or facilities used to carry out the services and obligations set forth in Paragraphs 20, 21, 22, and 23(A), it will continue to provide, maintain, service, and/or replace such equipment or facilities, except as otherwise agreed by the parties.

C. Technical Assistance. Licensee agrees to provide to County or its agents, at no cost to County and without claim to offset or other monetary credit except as authorized under applicable state, federal, or local law, technical assistance, consultation, and diagnostic services necessary to carry out Licensee's contractual obligations set forth in Paragraphs 20, 21, 22, and 23(A).

24. Regulation of the Public Right of Way.

- A. Regulation and Permitting. All rights hereunder are granted under the express condition that County shall have the power at any time to impose restrictions and limitations upon, and to make regulations as to, Licensee's use of the public right of way as may be deemed best for the public safety or welfare. Prior to beginning any activity in the public right of way, Licensee shall obtain all required permits from County and any other applicable jurisdiction for such activity.
- B. County Activities. This Agreement does not deprive County of any powers, rights, or privileges it now has or may later acquire to use, perform work on, or to regulate the use of, and to control, the public right of way, including, without limitation, the right to perform work on its roadways, the public right of way, or appurtenant drainage facilities, including, but not limited to, construction, alteration, removal, paving, widening, grading, excavation, landscaping, or beautification.

25. Design and Location of Facilities.

- A. Work to Conform to Plans and Permit. Any work performed by Licensee or any contractor or agent thereof within the public right of way shall be performed in accordance with plans submitted by Licensee, and be subject to all terms and conditions of any permit required by Paragraph 24(A) or otherwise.
- B. County Standards to Control. The location or relocation of any of Licensee's facilities in the public right of way shall conform to applicable County standards and regulations then in effect.
- C. Scenic Routes. The placement or installation by Licensee of facilities or equipment within any part of the public right of way designated by the Pima County Board of Supervisors as a scenic route must be constructed in accordance with any County ordinance governing scenic routes.
- D. Undergrounding.
 - 1. With respect to any part of Licensee's Cable System that is located above ground within the public right of way, County may, upon written request, require Licensee to conduct a study of the cost of undergrounding that portion of the Cable System. That study shall include a breakdown of the costs allocated to labor, material, design, and construction in converting Licensee's above-ground facilities to underground facilities. Licensee shall submit the requested cost study within ninety (90) calendar days after receiving County's written request, and the cost of preparing and providing the study shall be borne by Licensee.

2. Notwithstanding any other provision of this Agreement, County may require Licensee to underground its Cable System to the extent consistent with the provisions of P.C.C. § 5.04.100 (F.) (“Pima County Cable Undergrounding Ordinance”).

E. Location Information. Licensee shall keep and maintain the following information at all times, and shall make such information available to County within three (3) working days of any request for such information:

1. facilities information at all levels identified by the American Society of Civil Engineers Standard CI/ASCE 38-02 - *Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data*,
2. current and precise maps of all parts of Licensee’s Cable System located in the public right of way, in a format compatible with County’s Geographical Information System, and
3. horizontal and vertical location information for all of Licensee’s undergrounded facilities located in the public right of way, accurate to within one-half (0.5) foot horizontally and one-half (0.5) foot vertically, and tied to an approved County datum.

F. Location Marking Required. Licensee shall provide location marking for all of its underground facilities within forty-eight (48) hours of any request by County. In the event Licensee is unable to provide the location marking within the allotted time frame, Licensee shall be liable for any costs incurred by County to locate the underground facilities, including the costs of excavation in the careful and prudent manner required by state law. In the event County incurs such costs, County shall submit a bill to Licensee for the incurred costs, and Licensee shall pay County the invoiced amount within sixty (60) calendar days of receipt of the invoice. If the invoice is not paid by Licensee in a timely manner, all rights granted to Licensee under this Agreement shall be suspended, no permits will be issued to Licensee for any work within the public right of way, and Licensee will continue to be liable for such costs until they are paid in full.

26. Construction Safety. Any opening or obstruction in the public right of way caused by Licensee during the course of Licensee’s activities in the public right of way shall be guarded and protected at all times by safety barriers erected by Licensee that shall be designated clearly by warning lights during periods of dusk and darkness. Any work performed by Licensee in or adjacent to a public roadway open for travel shall be signed and marked properly by Licensee with warning and directional devices in accordance with all applicable state and local traffic regulations and in accordance with the Arizona Department of Transportation’s Traffic Control Manual for Highway Construction and Maintenance.

27. Construction-Related Damage and Inconvenience.

- A. Damage to Persons or Property. Licensee shall use reasonable care at all times to avoid damage or injury to persons or property (including the public right of way and other County property) during the construction, adjustment, removal, relocation, repair, operation, or maintenance of Licensee's Cable System.
- B. Interference with Others. Licensee's Cable System shall be located, erected, adjusted, installed, replaced, removed, relocated, and maintained in a manner designed to cause the least amount of interference with the use of roads, streets, alleys, and other property by County, by the public, or by any other franchisee or licensee of County, and in such a way as will minimize interference with the rights and convenience of owners and users of adjacent property.
- C. Statutory Requirements. Licensee shall be responsible for the cost to excavate in a "careful and prudent manner" any of the Licensee's underground facilities on all County construction projects occurring within the public right of way pursuant to A.R.S. sections 40-360.21 and 40-360.22(A).
- D. Damage to Other Facilities. In the construction, adjustment, removal, relocation, repair, operation, and maintenance of its Cable System, Licensee shall avoid causing or permitting any damage, disturbance, or unnecessary modification or alteration to County facilities, including pavement, or to the facilities or equipment of others located in the public right of way. If Licensee causes or permits any such damage, disturbance, or unnecessary alteration or modification, Licensee, at its sole expense and in a manner approved by the County Engineer, shall restore the damaged, disturbed, altered, or modified facilities or equipment to the condition in which they existed before being so damaged, disturbed, altered, or modified, and also shall be liable to the owner of such facilities or equipment for any other losses or expenses that may accrue as a result of the damage, disturbance, alteration, or modification. The restoration of such facilities and/or equipment shall be initiated promptly and completed expeditiously by Licensee, who shall give priority to such restoration over all of Licensee's non-emergency activities.
- E. Damage to Vegetation. In the construction, adjustment, removal, relocation, repair, operation, and maintenance of its Cable System, Licensee shall use all necessary care to avoid damaging or disturbing existing vegetation in the public right of way. If Licensee causes or permits any such damage or disturbance, Licensee shall revegetate the public right of way at its sole expense and in accordance with all County regulations then in effect.
- F. Notice to Adjacent Properties. Licensee shall be responsible for notifying the owners or other persons having lawful control of adjoining property in writing about permanent or temporary above- or below-ground facilities to be constructed in the public right of way. Licensee shall make every reasonable effort to resolve

the reasonable concerns of owners or other persons having lawful control of adjoining property regarding the construction, operation, and maintenance of Licensee's Cable System. Should County determine that Licensee has failed reasonably to evaluate all economically feasible options available to alleviate such concerns, County may require Licensee to change or relocate its facilities at Licensee's sole expense. In the event Licensee disputes County's determination in this regard, it may seek relief from a court of competent jurisdiction as defined in Paragraph 48.

- G. Access to Adjacent Properties. Licensee shall provide prior written notice to the owners or other persons having lawful control of adjoining property of any activity by Licensee that might interfere with access to or the use of said adjoining property. Licensee shall maintain access to any adjoining property during all construction activities or other operations, except to the extent that this requirement of maintaining access is waived in writing by the owner or other person having lawful control of such adjoining property. If an emergency requires activity without such written notice, Licensee shall use its best efforts to provide timely actual notice to the owners or other persons having lawful control of adjoining property.

28. Drainage. During construction or excavation in the public right of way, Licensee shall provide proper drainage so that the public right of way will be free from standing surface water and adequately drained so as not to cause flood or erosion damage to any County facilities or to surrounding property. Licensee may be required at the request of County to submit drainage engineering data and design plans to County for review and approval prior to the issuance of any right-of-way use permit by County.

29. Relocation, Abandonment, and Removal.

- A. Relocation. Nothing in this Agreement shall be construed to prevent County from abandoning, adjusting, altering, improving, repairing, maintaining, or beautifying its facilities and/or the public right of way for public purposes, and therefor to require Licensee, at Licensee's expense (except where Licensee has established prior rights, in which case the expense will be borne by County), to remove, relocate, or abandon in place Licensee's Cable System in order to accommodate the activities of County. Licensee shall be responsible for designing, planning, and executing such removal, relocation, or abandonment. County shall not be liable for costs or lost revenues sustained by Licensee because of damage to, or modification, alteration, or destruction of, any part of its Cable System located in the public right of way when such damage, modification, alteration, or destruction results from activities related to the construction, operation, and/or maintenance of County facilities and/or the public right of way, provided that those activities are conducted in accordance with applicable laws and regulations.
- B. Scheduling. County may require that Licensee's Cable System be adjusted, removed, replaced, relocated, or abandoned by Licensee in accordance with an

activity schedule determined by County. Such activity schedule shall be provided to Licensee within a reasonable period of time prior to the scheduled start date of any such activity. If the schedule is unacceptable to Licensee, Licensee may appeal to the Pima County Board of Supervisors. If Licensee's Cable System is not adjusted, removed, replaced, relocated, or abandoned within the time period allotted by County's activity schedule, County may, at its discretion, adjust, remove, or relocate Licensee's Cable System, and Licensee hereby agrees to be liable for all costs incurred by the County in so doing, including overhead, maintenance costs, and an administrative surcharge in the amount of fifteen (15) percent of the total cost attributed to such adjustment, removal, or relocation. In the event County incurs such costs, County shall submit a bill to Licensee for the incurred costs, and Licensee shall pay County the invoiced amount within sixty (60) calendar days of receipt of the invoice. If the invoice is not paid by Licensee in a timely manner, all rights granted to Licensee under this Agreement shall be suspended, no permits will be issued to Licensee for any work within the public right of way, and Licensee will continue to be liable for such costs until they are paid in full.

- C. Delay Costs. Licensee shall reimburse any costs incurred by County or its agents, contractors, or licensees or franchisees as a result of any delays to County projects caused by Licensee's failure to fulfill, in accordance with any applicable County activity schedule, any obligation imposed upon Licensee by law or by this Agreement, including but not limited to those imposed pursuant to Subparagraphs (A) or (B). In the event County incurs such costs, directly or indirectly, County shall submit a bill to Licensee for the incurred costs, and Licensee shall pay County the invoiced amount within sixty (60) calendar days of receipt of the invoice. If the invoice is not paid by Licensee in a timely manner, all rights granted to Licensee under this Agreement shall be suspended, no permits will be issued to Licensee for any work within the public right of way, and Licensee will continue to be liable for such costs until they are paid in full.
- D. Removal. Unless County requires or agrees otherwise at the time, upon the termination of this Agreement for any reason, and after the exhaustion of any administrative or judicial appeals, Licensee shall remove its Cable System at its own cost within one hundred eighty (180) calendar days, unless, within such one hundred eighty (180) day period, Licensee obtains approval from County or other governing authority such licenses, permits, and other approvals as are necessary to allow Licensee to continue to use its Cable System for lawful purposes. In the event that Licensee must remove its Cable System pursuant to this Subparagraph, Licensee shall not be entitled to offset or other financial credit or compensation for costs associated with the removal or relocation of its Cable System. Moreover, in the event that Licensee's Cable System is not removed promptly by Licensee, County shall have the right to remove the Cable System, and Licensee agrees to be liable for all costs incurred by County in so doing. In the event County incurs such costs, County shall submit a bill to Licensee for the incurred costs, and Licensee shall pay County the invoiced amount within sixty (60)

calendar days of receipt of the invoice. Licensee will continue to be liable for such costs until they are paid in full.

30. Issuance of Permit not County Approval of Violation. County's review, approval, or acceptance of plans or specifications, or issuance of a permit for the installation, construction, or location of a facility or equipment by Licensee shall not be construed to be an authorization for or approval of a violation of any federal, state, or local law or regulation, or of any industry standard, pertaining to the location or construction of a utility facility or Cable System in the public right of way. No permit or approval presuming to give such authority shall be valid or otherwise relieve Licensee of its obligations under this Agreement regarding the location and construction of facilities.

31. County Inspection.

- A. County, if it deems necessary, has the right to inspect any work done by Licensee in the public right of way to ensure proper performance of the terms of this Agreement and conformance with any applicable federal, state, or local laws, ordinances, and regulations. County may require Licensee to pay a reasonable, nondiscriminatory, and uniform fee to cover the actual costs of inspections performed by County or its contractor under this provision, to the extent such fee is permitted by A.R.S. section 9-506.
- B. County may, at its discretion, excavate Licensee's facilities to verify conformance with Paragraph 25, above, and Licensee shall be liable for the cost of such excavation, along with an administrative surcharge in the amount of fifteen (15) percent of the total cost of the excavation, should Licensee's facilities be found to be out of conformance. Licensee shall be responsible for taking corrective action to bring its location information into conformance with the actual location of all facilities.

32. Abandonment of Facilities. Abandonment in place by Licensee of any part of its Cable System located within the public right of way may occur only after acquiring written approval from County, and Licensee must ensure that any such abandonment does not result in a safety hazard or in any environmental or aesthetic damage, and that any such damage is abated and remediated promptly by Licensee at Licensee's sole expense, without right to offset or other monetary credit. This obligation shall survive the termination or expiration of this Agreement.

33. Liability and Indemnity.

- A. No Recourse Against Individuals. To the extent permitted by law, Licensee agrees that it shall have no recourse whatsoever against County's officers, officials, boards, commissions, committees, appointees, agents, or employees for any loss, costs, expenses, or damages arising out of any provision or requirement (or the enforcement thereof) of this Agreement, the Cable Act, the Cable Ordinance, or any other applicable law, regulation, or ordinance. This provision is in addition to, and shall not be read as limiting, any immunities granted to

County or its officers, officials, boards, commissions, agents, or employees under state or federal law.

- B. Indemnification Required. Licensee acknowledges its sole liability for any of its transmissions, facilities, and/or equipment, and for any activities Licensee performs within the public right of way. Licensee agrees to indemnify, hold harmless, and defend County and its officials, agents, servants, and employees against any and all claims for injuries to persons, damage to physical property, or loss or infringement of intellectual property, whether intentional, negligent, or otherwise, arising out of Licensee's transmissions, work in the public right of way, or operation of its Cable System, or in any way related to Licensee's exercise of its rights under this Agreement. Neither this Agreement, nor the issuance of any County permit, nor County approval of any activity or installation of facilities or equipment, nor the failure of County to direct Licensee to take any precautions or to make any changes or to refrain from doing anything shall excuse Licensee of its responsibilities hereunder to County or others in the case of any injury to persons or damage to or infringement of property or property rights.
- C. Defense Required. If County is sued in any court by any Person, firm, association, corporation, or other entity to recover damages for injuries to person or property on account of the installation, repair, operation, and/or maintenance of Licensee's Cable System, Licensee shall defend all such suits and pay any resulting judgments, and shall, at the option of County, be made a party to any such court proceeding.
- D. Obligations Not Limited by Insurance. The amounts and types of insurance coverage required in Paragraph 34 shall not be construed as limiting the scope of Licensee's obligations pursuant to this Paragraph 33.
- E. Survival of Termination. The obligations imposed pursuant to this Paragraph 33 shall survive the termination, cancellation, expiration, or revocation, whether in whole or in part, of this Agreement.

34. Insurance.

- A. Minimum Insurance Requirements. On or before the Effective Date, Licensee shall provide County with, and maintain in full force throughout the term of this Agreement, a policy of insurance issued by a company duly authorized to do business in the state of Arizona with an "A.M. Best" rating of B+ VI, providing, with respect to the installation, construction, operation, and maintenance of its Cable System, --
 - 1. liability insurance to include commercial general liability and automobile liability coverages, occurrence form, including, but not limited to, blanket contractual liability coverage, completed operations liability coverage, broad form property damage liability coverage (including, but not limited

to, coverage for explosion, collapse, and underground hazard), and automobile nonownership liability coverage, written in the following minimum amounts:

- a. for commercial liability insurance coverages as listed above and bodily injury, including death, 1,000,000 dollars per each occurrence,
 - b. for property damage, 500,000 dollars combined single limit,
 - c. for comprehensive automobile liability, bodily injury, 1,000,000 dollars combined single limit per each occurrence, and
 - d. for excess umbrella liability, 5,000,000 dollars each occurrence,
2. workers' compensation insurance coverage as required by the law and regulations of the State of Arizona, with employer's liability coverage of at least 100,000 dollars for each accident or disease, a 500,000-dollar disease policy limit, and a waiver of subrogation against the County, and
 3. notation of any self -insurance layers or large deductibles on the certificate of insurance.
- B. Pima County To Be Named Additional Insured. All liability insurance policies required in this Paragraph 34 shall include Pima County as an additional insured party.
- C. Licensee To Be Responsible for Premiums. Licensee shall be responsible for all premiums due and payable for insurance required in this Paragraph 34.
- D. County Approval Required. All insurance policies required in this Paragraph 34 shall be in a form approved by the Pima County risk manager, and shall include a sixty (60) day notice of cancellation endorsement.
- E. Subcontractors. Licensee shall include all subcontractors as additional insureds under its policies or shall furnish County with separate certificates and endorsements for each subcontractor.
- F. Primary Insurance. Licensee's insurance shall be primary insurance and County's insurance shall be considered non-contributory.
- G. Modifications. Any modification or variation from the insurance requirements in this License shall be made by the licensing department in consultation with County's Division of Risk Management. Such modification will not require a formal License amendment, but may be made by administrative action, and without the consent of Licensee, upon notice by County. Licensee shall supply a

certificate of insurance including the modification within ten (10) days from the date notice of the modification is received by Licensee. Such notice will be given pursuant to the terms of the License; if the License does not specify a notice procedure, County may give notice by Certified U.S. Mail, E-Mail or Facsimile; Certified Receipt, E-Mail Receipt Confirmation or Facsimile Confirmation shall constitute proof of receipt of notice. Failure by Licensee to supply a modified certificate of insurance as required by this paragraph shall constitute material breach by Licensee and grounds for immediate termination of the License by County. Licensee further hereby consents to the addition of the modified insurance requirements to the License.

35. Performance Bond. Within thirty (30) calendar days after the execution of this Agreement, Licensee shall file with County a performance bond, issued by a surety company authorized to do business in the State of Arizona and in a form approved by the Pima County Attorney, for the benefit of County in the amount of One Hundred Thousand dollars (\$100,000.00). Such bond shall be maintained in full as a continuing obligation during the entire term of this Agreement, and for six (6) months following the termination of the Agreement. In the event Licensee fails to comply with any provision of this Agreement or the Cable Ordinance, County may recover jointly and severally from Licensee and the surety on the bond any and all damages or costs suffered by County.

36. County Participation in Legal Actions. County shall have the right at all times to take part in any suit or action instituted by or against Licensee in which any judgment or decree could be rendered, any lien on any of Licensee's property situated within the public right of way could be foreclosed, or the rights, powers, or duties of Licensee to do or not to do anything which by this Agreement it may be required to do or not to do could be affected, and also to take such steps as County may deem essential to protect the interests of County or the public. Therefore, County shall have the right, among others, to intervene in any suit, action, or proceeding by any Person or governmental entity seeking to enjoin, restrain, or in any manner interfere with Licensee in the performance or observance by it of any of the terms or conditions of this Agreement, or of any regulation, notice, or direction of the County in such connection, or which involves or might involve the constitutionality, validity, or enforcement of this Agreement, and County may move for dissolution of any such injunction or restraining order, or take any other appropriate step in any such suit, action, or proceeding that it may deem necessary or advisable in order to protect its interests.

37. Assignment. Licensee will not sell, assign, or transfer this License or any of Licensee's facilities or equipment in the public right of way, nor lease the total capacity of its Cable System to another entity without the prior written approval of the Pima County Board of Supervisors, which approval may be sought, and either granted or denied, only in a manner consistent with state and federal law. However, this prohibition shall not apply in the case of a sale, assignment, transfer, or lease by Licensee to an affiliated interest, nor shall it apply to assignments made or security interests granted in order to secure financing, though Licensee must provide at least thirty (30) days' advance notice of any such affiliate transfer, assignment, lease, or sale. County shall have discretion to review the financial, technical, and operational qualifications of any

entity acquiring Licensee's rights under this Agreement or any of Licensee's facilities or equipment in the public right of way.

38. Books and Records.

- A. Inspection Permitted. County may inspect and, with the exception of confidential information, copy such of Licensee's books and records as reasonably is necessary to ensure compliance with the terms of this Agreement or applicable law. Licensee shall allow County to inspect and copy the books and records within thirty (30) calendar days (or such shorter time as may be necessary to comply with state or federal law) of County's request therefor at Licensee's local business office during normal business hours, or provide them to County for inspection at such location as County and Licensee mutually agree. However, County will not refuse any reasonable request that such inspection take place at Licensee's facilities within County. In the event the books and records are not available readily at Licensee's local offices, Licensee may choose to pay the reasonable travel costs of County's representatives to inspect and copy the books and records at the appropriate location.

- B. Maintenance. Licensee shall maintain a complete set of books and records, and grant County the right to inspect and copy those books and records as provided in Subparagraph (A), for the term of this Agreement and continuing for three (3) years after the termination thereof.

39. Annual and Other Reports; Annual Review Meeting.

- A. Annual Report. No later than September 1 of each year, and in addition to any reports required elsewhere in this Agreement (including but not limited to the financial reports required pursuant to Paragraph 10(F)), Licensee shall submit to County an annual report containing the following information about the operations of the Cable System in the Service Area during the preceding Contract Year:
 - 1. A summary of activities in the development of the Cable System in the Service Area, including a summary of cable television services begun or discontinued and statements of the total number of Customers, the total number of homes passed, and the number of Customers added or discontinued,
 - 2. A list of all complaints received and service interruptions or outages experienced, including data on the disposition of complaints and response times,
 - 3. A summary by category of written complaints received concerning the Cable System in the Service Area, identifying the number and nature of complaints and their dispositions,

4. A list of officers and members of the board of directors of Licensee and its parent entities,
 5. A full schedule of all Customer and user rates, fees, and charges for all Cable Service provided, except that Licensee need not include proprietary multiple-dwelling-unit rates unless specifically requested by County, and
 6. A copy of Customer and user agreements used by Licensee, except that Licensee need not include proprietary multiple-dwelling-unit agreements unless specifically requested by County.
- B. Annual Review Meeting. Within thirty (30) days after Licensee submits the annual report pursuant to subparagraph 39(A), County and Licensee shall arrange a meeting of senior representatives of County and Licensee. The purpose of the meeting is for Licensee and County to review in detail Licensee's past performance and future plans.
- C. Other Reports.
1. At any time upon written request, Licensee shall provide a customer-opinion survey report identifying customer satisfaction/dissatisfaction with the Cable Service offered by Licensee in the Service Area. Licensee may submit to County the most recent customer-opinion survey report it has prepared to satisfy this obligation if such report has been prepared no more than twelve (12) months before County's request under this subparagraph.
 2. At any time upon written request, Licensee shall provide any or all of the following reports about the Service Area:
 - a. a report showing compliance with the requirements regarding telephone calls and installations specified in the federal customer service standards identified in Paragraph 16(A),
 - b. a statement of the total number of complaints received for the most recent calendar quarter, including the number of complaints by type of complaint and complaints received as a percentage of basic Customers,
 - c. a list of all services offered by Licensee, including any non-Cable Service, provided that, if County requests more than one (1) such report in any twelve (12) month period, later reports need only identify new services and changes in services offered since the date of the last such report submitted to County,

- d. a statement of the percentage of service interruptions or outages that were cured within eight (8) hours, the average time from notice that a problem existed to final cure, and the percentage of other service calls that were resolved within ninety-six (96) hours,
 - e. a statement of the percentage of standard and non-standard installations that were completed within the time required in Paragraph 15(A), and
 - f. a statement of the total number of outages, divided into planned interruptions and unplanned outages, showing the number of outages and the total duration of outages.
3. Licensee also shall provide such other reports as may be required under the Pima County Code to determine compliance with this Agreement or applicable law.

40. Liquidated Damages. Any failure by Licensee to comply with the provisions of this Agreement or the Cable Ordinance will result in injury to County, and it is and will be difficult to estimate the extent and cost of such injury. Therefore, and notwithstanding any provision of the Cable Ordinance to the contrary, County and Licensee have exercised their best judgment, and agree that liquidated damages will be awarded for violation of this Agreement or the Cable Ordinance as set forth in this Paragraph 40.

A. Classifications of Violations.

1. Upon any failure by Licensee to complete construction of its Cable System or to extend service as provided in Paragraph 15, Licensee shall pay County an amount equal to five hundred dollars (\$500.00) per day, or part thereof, that each such violation occurs or continues.
2. Upon any failure by Licensee to provide data, documents, reports, or information as and when required by this Agreement, Licensee shall pay County an amount equal to one hundred dollars (\$100.00) per day, or part thereof, that each such violation occurs or continues.
3. Upon any failure by Licensee to comply with reasonable orders of County, Licensee shall pay fifty dollars (\$50.00) per day for each day, or part thereof, that such noncompliance occurs or continues.
4. Upon a total service outage lasting more than twenty-four (24) hours, Licensee shall pay ten thousand dollars (\$10,000.00) per day for each day, or part thereof, that such outage continues. This Section will not apply where the outage is the result of a condition of Force Majeure, as set forth in Paragraph 45.

5. Upon any failure by Licensee to remedy any other violation of this Agreement or the Cable Ordinance within fifteen (15) calendar days of receipt of notice of such violation, Licensee shall pay an amount equal to three hundred dollars (\$300.00) per day, or part thereof, that each such violation occurs or continues.
- B. Exceptions. Liquidated damages will be reduced or eliminated if County finds that Licensee's failure resulted from excusable neglect or conditions beyond Licensee's control. Licensee, however, shall bear the burden of proof in this regard.
- C. Procedure.
1. Prior to assessing any of the liquidated damages set forth in Subparagraph (A), County shall give Licensee thirty (30) calendar days' prior written notice of its intention to assess such damages. Such notice shall set forth, at a minimum, --
 - a. the amount to be assessed,
 - b. the factual basis for such assessment, and
 - c. the specific provision of this Agreement or the Cable Ordinance that County alleges was violated.
 2. Following receipt of the notice as provided in Subparagraph (C)(1), Licensee shall have a thirty (30) day period within which to resolve any alleged violations.
 3. Liquidated damages shall accrue for a maximum of one hundred twenty (120) days, after which County may pursue any other remedy available at equity or at law. If any violation remains unresolved for more than one hundred twenty (120) days following Licensee's receipt of the notice as provided in Subparagraph (C)(1), County shall schedule a public hearing to investigate the matter. Licensee shall be given at least ten (10) calendar days' notice of such hearing, and shall be afforded a full and fair opportunity to be heard.
- D. Other Remedies not Excluded. The imposition and collection of liquidated damages pursuant to this Paragraph 40 shall not prevent County from pursuing other remedies for violations of this Agreement or the Cable Ordinance.

41. Construction of Agreement.

- A. Entire Agreement. This instrument constitutes the entire agreement between the parties pertaining to the subject matter hereof, and all prior or contemporaneous

agreements and understandings, oral or written, hereby are superseded and merged herein.

- B. Amendment. This Agreement shall not be modified, amended, altered, or changed except by written agreement signed by the parties.
- C. Captions and Headings. The headings used in this Agreement are for convenience only and are not intended to affect the meaning of any provision of this Agreement.
- D. Severability. In the event that any provision of this Agreement or the application thereof is declared invalid or void by statute or judicial decision, such action shall have no effect on any other provision or its application to the extent possible in the absence of the invalid or void provision or application, and to this extent the provisions of this Agreement are severable. In the event that any provision of this Agreement is declared invalid or void, the parties agree to meet promptly upon request of the other party in an attempt to reach an agreement on a substitute provision.

42. No Joint Venture. It is not intended by this Agreement to, and nothing contained in this Agreement shall be construed to, create any partnership, joint venture, or employment relationship between the parties, or create any employer-employee relationship between County and any employee of Licensee, or between Licensee and any County employees. No party shall be liable for any debts, accounts, obligations, or other liabilities whatsoever of the other, including (without limitation) the other party's obligation to withhold Social Security and income taxes for itself or any of its employees.

43. No Third-Party Beneficiaries. Nothing in this Agreement is intended to create duties or obligations to, or rights in, third parties not parties to this Agreement, or to affect the legal liability of any party to this Agreement, by imposing any standard of care with respect to the maintenance of public facilities different from the standard of care imposed by law.

44. Waiver. Waiver by any party of any breach of any term, covenant, or condition set forth herein shall not be deemed a waiver of any other term, covenant, or condition, or of any subsequent breach of the same or any other term, covenant, or condition.

45. Force Majeure. No party shall be in default under this Agreement by reason of its failure to fulfill any obligation under this Agreement if such failure is the result of uncontrollable forces. The term "uncontrollable forces" shall mean, for purposes of this Agreement, any cause beyond the control of the party affected, including but not limited to failure of facilities, breakage of or accidental damage to machinery or transmission facilities, weather conditions, flood, earthquake, lightning, fire, epidemic, war, riot, civil disturbance, sabotage, strike, lockout, labor dispute, boycott, material or energy shortage, casualty loss, acts of God, or action or non-action by governmental bodies in approving or failing to act upon applications for approvals or permits which are not due to the negligence or willful action of the parties, order of any government officer or court (excluding orders promulgated by the County itself), and declared local, state or

national emergency, which, by exercise of due diligence and foresight, such party could not reasonably have been expected to avoid. Either party rendered unable to fulfill any obligations by reason of uncontrollable forces shall exercise due diligence to remove such inability with all reasonable dispatch.

46. Notification. Unless and until changed by written notice delivered as provided in this Paragraph 46, all notices or demands upon any party to this Agreement shall be in writing, unless other forms are designated elsewhere, and shall be delivered in person or sent by mail addressed as follows:

If to the County, to:

Pima County Administrator
130 W. Congress St.
Tucson, AZ 85701

If to the Licensee, to:

Mediacom Arizona, L.L.C.
Mr. Bruce Gluckman, Vice President,
Legal & Regulatory Affairs
100 Crystal Run Road
Middletown, New York 10941

with a copy to:

Regional Manager
Mediacom
PO Box 110
Waseca, MN 56093-0110

47. Remedies. Any party may pursue any remedies provided by law for the breach of this Agreement. Except as otherwise provided in this Agreement, no right or remedy is intended to be exclusive of any other right or remedy, and each shall be cumulative and in addition to any other right or remedy existing at law or in equity or by virtue of this Agreement.

48. Governing Law, Venue. This Agreement is governed by applicable provisions of federal law and by the laws of the State of Arizona. Any legal action relating to this Agreement shall be brought and maintained in a court of competent jurisdiction located in Pima County, Arizona.

49. Conflict of Interest. This Agreement is subject to A.R.S. section 38-511, which provides for the cancellation of contracts for certain conflicts of interest.

50. New Technology. County and Licensee agree to meet at periods not exceeding three (3) years, beginning after the Effective Date, or upon the written request of either party, to discuss changes in cable-television technology, the laws and regulations governing the services provided

pursuant to this Agreement, and/or services competing therewith in order to discuss and/or agree upon necessary and/or appropriate, economically feasible changes to this Agreement in light thereof.

(REMAINDER OF PAGE INTENTIONALLY LEFT BLANK)

IN WITNESS WHEREOF, the parties have affixed their signatures to this nonexclusive license renewal agreement on the dates written below.

PIMA COUNTY:

Sharon Bronson, Chair, Board of Supervisors

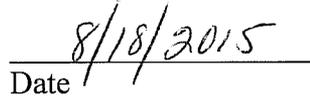
Date

Mediacom Arizona, L.L.C.:



Signature
GROUP VP Regulatory & Legal Affairs
Deputy General Counsel

Name and Title (Please Print)



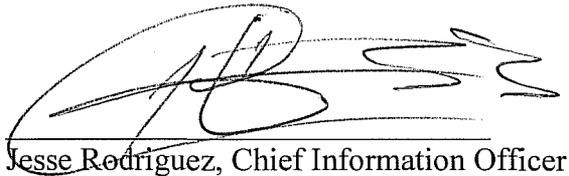
Date

ATTEST:

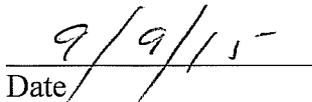
Robin Brigode, Clerk of the Board of Supervisors

Date

APPROVED AS TO CONTENT:



Jesse Rodriguez, Chief Information Officer

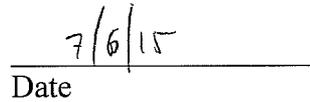


Date

APPROVED AS TO FORM:



Tobin Rosen, Deputy County Attorney



Date

Exhibit A

Quarterly Revenue Report License Fee Calculation

Dates/Quarter

GROSS REVENUES CASH AND CREDIT

Property	\$
Cable Service	
Basic Revenue	\$
Expanded Revenue	\$
Digital Product Tier	\$
Equipment	
Install	\$
Removal	\$
Connection	\$
Reinstatement	\$
Other Receipts	
Forfeited Deposits	\$
Equipment Sales/Rentals	\$
Late Charges	\$
Interest	\$
Sale of Program Guides	\$
Lease of Facilities	\$
Total Revenue	\$
Less Bad Debt	\$
Net Total Revenue	\$
Franchise License Fee Rate	5%
Franchise License Fee Due	\$
User Fees Collected (fee on fee)	\$
Total Payment Due	\$

EXCLUDED REVENUE

Commercial Advertising	\$
Lease or Use	
Studio Facilities	\$
Leased Access Channels/Bandwidth	\$
Production of Video Programming	\$
Programming in Area	
Sales	\$
Exchanges	\$
Use	\$
Cablecast	\$
Telecommunications	
Voice Services	\$
Data Services	\$
Home Shopping Sales	\$
Reimbursements	
Launch Fees	\$
Marketing Expenses	\$
License Fees	\$
Taxes and Other Fees	\$
Government Payments	\$
Increased Value	
Stock	\$
Securities	\$
Dividends and Distributions	
Stock	\$
Securities	\$
Total Excluded Revenue	\$

Number of Basic Subscribers