

ORDINANCE NO. 98-17

An Ordinance and Agreement Setting Forth Regulations, Terms and Conditions Under Which Cable Television Systems Shall Operate in Somerset, KY and Granting to Falcon Community Cable L.P., a Franchise to Construct, Operate and Maintain a Cable Television System Within the City.

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An Agreement Setting Forth the Regulations, Terms and Conditions Under Which Cable Television Systems Shall Operate in Somerset, KY and Granting A Franchise to Falcon Community Cable, L.P., their Successors and Assigns to Construct, Operate and Maintain a Cable Television System in the City.

BE IT ORDAINED by the City Council of Somerset, KY as follows:

1. **TITLE AND PURPOSES OF AGREEMENT**

This Agreement shall be known as the Somerset Cable Television Franchise Agreement. The purposes of this Agreement are: a) to establish the terms and conditions under which a cable television system must operate within Somerset, KY (which may hereafter be referred to as "City", "Franchising Authority", Franchiser, or "Grantor"); b) to provide for the payment of a franchise fee to the City for costs associated with administering and regulating the system; and c) to grant a cable television franchise to Falcon Community Cable L.P. (hereafter referred to as "Falcon" or "Franchisee").

2. **DEFINITIONS**

For the purposes of this Agreement the following terms, phrases, words and their derivations shall have the meaning defined herein, unless the context clearly indicates that another meaning is intended. Words used in the present tense include the future, words in the plural number include singular number, and words in the singular number include the plural number.

(1) **"Cable Act"** means The Cable Communications Policy Act of 1984 as modified by the Cable Television Consumer Protection and Competition Act of 1992, and the Telecommunications Act of 1996.

(2) **"Cable Television System"** means any non-broadcast facility consisting of a set of transmission paths and associated signal reception, transmission and control equipment, that is designed to distribute to Customers or other users audio, video and other forms of communications services via electronic or electrical signals.

(3) **"Channel"** is a band of frequencies in the electromagnetic spectrum, capable of carrying one audio-visual television signal.

G. Franchisee may offer service which requires advance payment of periodic service charges.

H. The Franchisee shall provide refunds to Customers in the following cases:

(1) If the Franchisee fails within a reasonable time to commence service requested by a Customer, it will refund all deposits or advance charges that the Customer has paid in connection with the request for such service at the request of the Customer.

(2) If a Customer terminates any service at any time and has a credit balance for deposits or unused services, upon return of all Franchisee's equipment, the Franchisee will refund the appropriate credit balance to the Customer. The Customer will be responsible for furnishing the Franchisee a proper address to which to mail the refund.

(3) If any Customer's cable service is out of order for more than 24 consecutive hours during the month due to a technical failure, damage, or circumstances within the control of the Franchisee, the Franchisee will credit the account of that Customer on a pro rata basis upon the Customer's request. The credit will be calculated using the number of twenty-four (24) hour periods that service is impaired and the number of channels on which service is impaired as a fraction of the total number of days in the month that the service impairment occurs and the total number of channels provided by the system in the absence of an impairment.

11. CUSTOMER SERVICE AND CONSUMER PROTECTION

A. Cable System Office Hours and Telephone Availability

(1) The Franchisee will maintain a local, toll-free or collect call telephone access line which will be available to its Customers 24 hours per day, seven days per week. Trained company representatives will be available to respond to customer telephone inquiries during normal business hours, the access line may be answered by a service or an automated response system, including an answering machine. Service inquiries received after normal business hours must be responded to by a trained company representative on the next business day. Customer service center and bill payment locations will be open at least during normal business hours.

(2) The Franchisee will maintain a local customer service office, open during normal business hours, either within the City or within 5 miles thereof.

(4) "**City**" means Somerset, KY in its present form or in any later reorganized, consolidated, enlarged or reincorporated form, which is legally authorized to grant a cable television franchise under state and federal law. The City may also be referred to as "Franchising Authority," Grantor, or Franchisor.

(5) "**Customer**" means any person who receives monthly cable television service provided by the Franchisee's Cable Television System.

(6) "**Falcon**" means Falcon Community Cable, L.P., which may also be referred to as "Franchisee."

(7) "**FCC**" means the Federal Communications Commission.

(8) "**Franchise**" means the rights granted pursuant to this Agreement to construct, own and operate a cable television system along the public ways in the City, or within specified areas of the City.

(9) "**Franchise Area**" means the City for which a franchise is granted under the authority of this Agreement. If not otherwise stated in an exhibit to this Agreement, the Franchise Area shall be the legal and geographic limits of the City, including all territory which may be hereafter annexed into the City.

(10) "**Franchising Authority**" means Somerset, KY, its City Council acting as the City's duly elected governing body, its lawful successor or such other person or body duly authorized by the City to grant a cable television franchise.

(11) "**Franchisee**" means a person or business entity, or its lawful successor or Assignee, which has been granted a franchise by the City pursuant to this Agreement.

(12) "**Gross Receipts**" as the term is used in calculating franchisee fees means all revenue actually received by the Franchisee from its cable operations in the City of Somerset or directly related thereto.

(13) "**Normal Business Hours**" means those hours during which most similar businesses in the community are open to serve customers.

(14) "**Normal Operating Conditions**" means those service conditions which are within the control of the Franchisee. Those conditions which are not within the control of the Franchisee include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Those conditions which are ordinarily within the control of the Franchisee include, but are

not limited to, special promotions, pay-per-view events rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of the cable system.

(15) "**Ordinance**" means the City's Cable Television regulatory Ordinance 93-21.

(16) "**Public Way or Right-of-Way**" means the surface, the air space above the surface and the area below the surface of any public street, highway, lane, path, alley, sidewalk, boulevard, drive, bridge, tunnel, park, parkways, waterways, or other public right-of-way including public utility easements or rights-of-way and any temporary or permanent fixtures or improvements located thereon now or hereafter held by the City which shall entitle the City and the Franchisee to the use thereof for the purpose of installing and maintaining the Franchisee's cable television system.

(17) "**School**" means any elementary or secondary school recognized by the Commonwealth of Kentucky with the exception of home schools.

(18) "**Service Interruption**" means the loss of picture or sound on one or more cable channels within the control of the Franchisee.

(19) "**Standard Installation**" means those installations located up to 150 feet from the existing distribution system.

3. **FRANCHISE TO OPERATE REQUIRED**

It shall be unlawful to operate a cable television system within the City unless a valid franchise has first been obtained from the City. This franchise, granted on a non-exclusive basis shall authorize the Franchisee to provide cable television services within the City and to charge customers for such services. It shall also authorize and permit the Franchisee to traverse any portion of the City in order to provide service outside the City. Unless otherwise specified, the Franchise Area shall be the legal boundaries of the City.

4. **GRANT OF FRANCHISE**

A franchise is hereby granted to Falcon Community Cable, L.P. (which may be referred to herein as "Falcon" or "Franchisee") to operate and maintain a cable television system in the City for a period of ten (10) years commencing on the effective date of this Agreement.

Franchisee shall have the option to renew this franchise for an additional term of five (5) years, provided that it is in substantial compliance with the material terms of this Agreement at the time of its expiration.

5. FRANCHISEE FEES

A. The Franchisee shall pay a franchise fee which is intended to compensate the City for costs which may be associated with administering or regulating Franchisee's cable system. The amount of the franchise fee shall be five (5%) percent of the Franchisee's annual Gross Receipts, as defined herein. Such fee shall be paid on a quarterly basis. Franchisee shall be entitled to list the franchise fee as a separate line item on monthly bills; provided, however, such listing shall not exceed the actual fee imposed by the City on subscriber revenue. Payment of the franchise fee shall be accompanied by an accounting report, in a form similar to that currently utilized by the Franchisee, as well as information relative to service call ratios. Upon request from the City, the Company shall provide specific information relative to customer complaints and resolutions of the same.

B. Due to federal and local regulations requiring that Franchisee notify cable Customers at least thirty (30) days prior to the effective date of any increases in monthly charges on Customer bills, any increased franchisee fee amounts which may be due to the City shall begin accruing sixty (60) days following the effective date of this Agreement. If the City requires more than thirty (30) days notice to Customers of increased rates, then any increased franchisee fee amounts which may be due to the City shall begin accruing sixty (60) days after the City's required notice period.

C. The Franchisee shall file a report showing Franchisee's Gross Receipts for the quarter year and the amount of franchisee fees due to the City. The Franchisee shall have an obligation to maintain financial records of its Gross Receipts and Franchisee fee payments for audit purposes for a period of three years, and the City shall have the right to audit the Franchisee's books at the offices where such books are maintained. Where reasonable, records shall be made available at the Franchisee's local office for any such audit.

6. SYSTEM REBUILD

A. Franchisee will rebuild the Somerset cable TV system utilizing fiber optic technology. The new system will have 550 MHz bandwidth and have 83 channel capacity with at least 70 channels activated upon completion of the rebuild. The cable TV system shall be capable of digital compression. Same shall be offered by

Falcon, provided it is economically feasible, said feasibility to be reasonably determined by the Franchisor.

B. Franchisee will install fiber optic cables to transport signal from its headends located in Somerset and McCreary County.

C. Franchisee will replace the existing coaxial cable with fiber optic cable to all nodes. Cable extending from the nodes to Customers shall be coaxial cable. Nodes shall serve no greater than 500 Customers or 750 homes passed per node as system design dictates.

D. Franchisee shall reduce amplifier cascades to maximum of 5, not including customer owned or installed equipment.

E. During the term of this Franchise, if a new cable television service shall become technically feasible and can be operated by Franchisee at a reasonable profit, Franchisee shall be obligated to make such new service available to the Customers.

Finally, it is agreed that when determining "reasonable profit", projections of profits shall be based upon the remaining term of the Franchise or any extension thereof then granted by the City.

F. Franchisee shall install standby power throughout the system to maintain 4 hours of standby power associated with the distribution of Cable Service to minimize customer outages. Franchisee shall provide backup power capacity for the head end for a minimum of 24 hours service.

G. Franchisee shall install, operate and maintain an Emergency Alert System ("EAS") in compliance with all Federal Emergency Alert System requirements, including all requirements set forth in 47 CFR Part 11: Emergency Alert System ("EAS" Regulations). Franchisee shall add audio-override service upon completion of the rebuild provided the same is not inconsistent with the EAS Regulations.

H. Franchisee hereby affirms, promises and warrants to the Franchisor that the design and architecture of the system as rebuilt will be "state of the art" so as to be fully capable of performing the promises and agreements contained herein with the understanding of the Parties that such "state of the art" services shall actually be provided only in accordance with this Article. Franchisee further affirms, promises and warrants that said rebuild will not be asserted or relied on as a basis for any increase in rates.

I. Franchisee warrants hereby that the rebuild will create a substantial improvement in the overall television signal quality, as well as an overall improvement in system reliability and resistance to outages. This is to be measured on a system-wide basis.

7. CONSTRUCTION SCHEDULE AND GUARANTEES

A. Construction and activation of the system rebuild will be completed within eighteen (18) months of the date this Agreement is executed between the parties. Franchisee shall provide the City with a specific time line for completion of the rebuild within one hundred and twenty days of the execution date of this Agreement. An additional period of sixty (60) days will be permitted, if necessary, for Franchisee to perform final technical fine tuning, testing, and connection of Customers to the rebuilt system. Franchisee will keep the City informed of its progress on construction of the system rebuild on a bimonthly basis whenever requested by the City.

B. Within sixty (60) days of the effective date of this Franchise Agreement, Franchisee will obtain a corporate surety bond from a recognized and financially secure and stable insurance company in the amount of Five Hundred Thousand (\$500,000) dollars to guarantee the construction and full activation of the Cable Television System as agreed and full and timely performance of all the terms and conditions of this Agreement throughout its life, except that after the completion of the construction and full activation of the Cable Television System the amount of the bond may be reduced to Fifty Thousand (\$50,000) dollars. Franchisee will file the bond with the City Clerk. If Franchisee fails to construct the system as promised, the bond shall be forfeited in full to the City. The bond shall contain the following endorsement:

It is hereby understood and agreed that this bond may not be canceled by the surety, nor the intention not to renew be stated by the surety, except sixty (60) days after receipt by the City Clerk of Somerset, Kentucky, by registered mail, of written notice of such intent to cancel or not to renew.

8. PUBLIC, EDUCATIONAL AND GOVERNMENT CHANNELS

A. Upon completion of the rebuild, Franchisee will provide the City with two video channels for use by the City government and by educational or public users of the cable system.

These two channels shall be held in reserve until requested by the City. Franchisee will also provide up to two additional P.E.G. channels upon request by the City for P.E.G. purposes based on a reasonable showing by the City of need for the additional channels and the broadcasting of original first run programming on the existing channels of at least ten (10) hours per day, five (5) days per week, for a consecutive ninety (90) day period. Upon notice from the City, Franchisee shall terminate all public access programming and channel capacity on the cable system.

B. Franchisee will provide a one time cash grant of \$25,000.00 to be used by the City of Somerset for government or educational access purposes. Said payment will be due within sixty (60) days of the execution hereof.

C. Franchisee agrees to participate in a working group which will include representatives of the City Government, the Rural Economic Development Center, and Franchisee for the purpose of establishing an ongoing working relationship to facilitate City utilization of the television production facilities of the Rural Economic Development Center and the distribution of the Center's programming by Franchisee. Franchisee shall instruct personnel of the Rural Economic Development Center and of the City on how to play a tape on the Cable Television System and how to hook into the Cable Television System for a live feed, and any other duties, responsibilities or services reasonably needed for operation of the system.

D. Franchisee will continue its cooperative support of local educators and the school system in Somerset through the provision of numerous educational cable TV programs and written materials to local schools.

E. Upon completion of the rebuild, Franchisee shall have connected the Rural Economic Development Center to the City's cable system.

F. Franchisee will provide an annual cash grant of \$5,000.00 to be used by the City of Somerset for government or educational access purposes. Said payment will be due on the anniversary date of the execution of this agreement. This cost shall be an external cost pursuant to the rate regulations of the FCC.

9. NEW CHANNELS & PROGRAMMING TO BE ADDED AFTER THE REBUILD IS COMPLETED

Subject to Customer preferences, input from the City, availability, and the entering into of acceptable contractual agreements, new services shall consist of additional satellite broadcasts, pay-per-view, premium services multiplexing, and on

screen program guide. Provided, however, any increase in services incident hereto shall be reasonable, justified by community needs and desires, and pursuant to reasonable community demand.

10. **CUSTOMER RATES**

A. All charges to Customers shall be consistent with a schedule of fees for services offered and established by the Franchisee in conformance with applicable rules promulgated by the FCC. Rates shall be nondiscriminatory in nature and uniform to persons of like classes under similar circumstances and conditions. The Franchisee acknowledges the City's rights to regulate rates as permitted by federal statute, e.g. - 47 U.S.C. Section 543.

B. The Franchisee will provide the City with sixty (60) days and Customers with thirty (30) days advance written notice of any change in rates and charges whenever possible.

C. Franchisee may offer different or discounted rates at its discretion for promotional purposes and may establish different rates for different classes of Customers where appropriate, such as offering discounted rates to low income individuals or groups or bulk rates to multiple unit dwellings.

Franchisee, with the cooperation of the City, at Franchisee's cost, with mutual consent, shall seek approval from the FCC to offer a "Lifeline" basic service tier consisting of eight to twelve channels which would include local broadcast television stations, access channels, and possibly some satellite delivered channels. Upon the approval of the "Lifeline" basic service tier by the FCC, the Franchisee shall be obligated to make the same available to all elderly low income Customers who qualify, such qualifications to be agreed to by the City and the Franchisee, at rates established in conformance with FCC rules which the Franchisee anticipates will initially be ten to twelve dollars per month per Customer. As an alternative proposal, Franchisee will provide a senior-citizen discount of twenty percent (20%) of the otherwise prevailing basic cable rate, subsidized by the general customer, upon the request of the Franchising Authority.

D. Franchisee shall inform each new Customer of all applicable fees and charges for providing cable television service.

E. Franchisee may, at its own discretion and in a non-discriminatory manner, waive, reduce or suspend connection fees, monthly service fees or other charges on a one time or monthly basis for promotional purposes.

F. Franchisee may refuse to provide service to any person because a prior account with that person remains due and owing.

B. Installation, Outages and Service Calls

(1) Standard overhead installations will be performed within three (3) business days where feasible and practical, but not more than seven (7) business days after an order has been placed. Standard underground installations shall be performed within fourteen (14) business days where feasible and practical. "Standard" installations are those that are located up to 150 feet from the existing distribution system.

(2) Excluding conditions beyond the control of the Franchisee, the Franchisee will begin working on "service interruptions" promptly and in no event later than 24 hours after the interruption becomes known, Monday through Friday and will begin working on "area outages" which affect all channels in three (3) or more Customer homes immediately upon receipt of notice of the same. Repairs will be made as soon as reasonably practicable considering weather conditions, cause of outage, etc.

(3) The "appointment window" alternatives for installations, service calls, and other installation activities will be either a specific time or a four-hour time block during normal business hours. The Franchisee may schedule service calls and other installation activities outside of normal business hours for the express convenience of the customer.

(4) If Franchisee's representative is running late for an appointment with a customer and will not be able to keep the appointment as scheduled, a representative of the Franchisee will attempt to contact the customer. The appointment will be rescheduled, as necessary, at a time which is convenient for the customer.

(5) If the Franchisee's service representative appears for an appointment scheduled by a customer within the time period promised and no one is present at the customer's dwelling to permit necessary physical access to the dwelling unit, the Franchisee may charge the customer for the service call, up to a maximum of \$25.

C. FCC Customer Service Standards

Franchisee shall comply with the FCC customer-service standards at 47 C.F. R. Section 76.309(c).

D. Franchisee agrees to maintain its offices and properties in a professional manner and with a professional and reasonable outward appearance.

12. **INFORMATION PROVIDED BY FRANCHISEE TO CUSTOMERS**

A. The Franchisee shall provide written information on each of the following areas at the time of installation of service, at least annually to all Customers, and at any time upon request: products and services offered; prices and options for programming services and conditions of subscription to programming and other services; installation and services maintenance policies; instructions on how to use the cable service; channel positions of programming carried on the system; and billing and complaint procedures, including the address and telephone number of the local franchise authority's cable office.

B. Customers will be notified of any changes in rates, programming services or channel positions thirty (30) days in advance of such changes if the change is within the control of the Franchisee. In addition, the Franchisee shall notify Customers thirty (30) days in advance of any significant changes in the other information required by paragraph A of this section. Franchisee shall not be required to provide prior notice of any rate change that is the result of a regulatory fee, franchise fee, or any other fee, tax, assessment, or change of any kind imposed by any Federal Agency, State, or Franchising Authority on the transaction between the Franchisee and the Customer.

C. Bills will be clear, concise and understandable. Bills will be itemized, with itemizations including basic and premium service charges and equipment charges. Bills will also clearly delineate all activity during the billing period, including optional charges, rebates, and credits. In case of a billing dispute, the Franchisee must respond to a written complaint from a Customer within thirty (30) days.

D. Refund checks will be issued promptly, but no later than either: the customer's next billing cycle following resolution of the request or sixty (60) days, provided that the Customer has previously returned all the equipment supplied by the Franchisee if service is terminated.

E. Credits for services will be issued no later than the Customer's next billing cycle following the determination that a credit is warranted.

13. **TECHNICAL STANDARDS**

A. Franchisee shall be responsible for insuring that the Cable Television System is designed, installed, and operated in a manner that fully complies with FCC rules regarding cable television technical standards, the National Electric Safety Code (NESC), all state and local regulations, and good and accepted industry practices. The Cable Television System must be capable of

delivering all National Television Systems Committee (NTSC) color and monochrome standards signals and designed to provide superior picture quality and reliability. Antennas, supporting structures, and outside plant used in the system must be designed to comply with the recommendations of the Electronics Industries Association on tower structures and outside plant. Franchisee shall be prepared to show, on request by an authorized representative of the City, that the system does, in fact, comply with the above rules.

B. Franchisee must not design, install or operate its facilities in a manner that will interfere with the signals of any broadcast station, the cable system of another franchisee, or individual or master antenna used for receiving television or other broadcast signals.

C. Franchisee shall conduct complete performance tests of the Cable Television System at least once each calendar year, at intervals not to exceed seven months, and whenever system performance is unsatisfactory. Franchisee shall maintain the resulting test data on file at the Franchisee's local business office for at least five (5) years and make the same available to the City upon request. The test data shall be made available for inspection by the City, upon request. The performance test shall be directed at determining the extent to which the system complies with all the technical standards set forth in § 76.605(a) of the FCC's rules.

14. **EXTENSION OF CABLE SERVICE**

A. Both Parties acknowledge that all residents of the City who have reasonably requested service has been provided the same. Franchisee shall provide service to all portions of the Franchise area, present and future, reaching a minimum density of twenty (20) dwelling units per linear strand mile, as measured from the nearest coaxial cable line, within six (6) months after the achievement of such density requirement.

B. Franchisee agrees to negotiate with the developer(s) of new subdivisions relative to the cost of installation of aerial or buried drop lines to new subdivisions within the franchise areas at the request of the developer. Upon successful completion of such negotiations, Franchisee shall install aerial or buried drop lines to such subdivisions.

C. Franchisee shall extend and make cable television service available to any resident within the City who requests connection at the standard connection charge if the connection to the resident would require no more than the standard one hundred and fifty (150) foot aerial drop or a seventy-five (75) foot buried drop line or extension from the nearest coaxial feeder cable. With respect to requests for connection requiring an aerial or buried

drop line in excess of the maximum standard distance, Franchisee shall extend and make available cable television service to such residents at a connection charge not to exceed its actual costs for the distance exceeding the standard one hundred and fifty (150) feet of aerial or seventy-five (75) feet of underground cable respectively.

D. Interconnection with other local cable television companies and local phone companies shall be accomplished in conformity with applicable law, by means of fiber optic cable, phone line, coaxial cable or microwave system.

15. **FREE BASIC CABLE SERVICE TO PUBLIC BUILDINGS**

Franchisee shall provide, without charge, one service outlet activated for basic Customer service to each School and to all local public buildings, including each police station, fire station, public library, and City Hall. If it is necessary to extend Franchisee's lines more than two hundred (200) feet solely to provide service to any such school or public building, the City or the building owner or occupants shall have the option of either paying Franchisee's direct costs for line extensions in excess of two hundred (200) feet or releasing the Franchisee from the obligation to provide service to such building. Furthermore, Franchisee shall be permitted to recover the direct cost of installing cable service, when requested to do so, in order to provide: a) more than one outlet, b) inside wiring, or c) a service outlet requiring more than two hundred (200) feet of drop cable to any public building.

16. **INSURANCE**

A. Within ninety (90) days following the grant of a franchise the Franchisee shall obtain the following insurance policies: A general comprehensive liability policy indemnifying, defending and saving harmless the City, its officers, boards, commissions, agents or employees from any and all claims by any person whatsoever on account of injury to or death of a person or persons occasioned by the operations of the Franchisee under the franchise herein granted including any communication over the cable system, excepting programming on government channels, or alleged to have been so caused or occurred, with a minimum liability of One Million (\$1,000,000) Dollars for personal injury, death of any one person or damage to property and Two Million (\$2,000,000) Dollars for personal injury, death of any two or more persons in any one occurrence.

B. All insurance policies called for herein shall be with sureties qualified to do business in Kentucky, in a form satisfactory to the City, and shall require thirty (30) days written notice of any cancellation to both the City and the Franchisee. The Franchisee shall, in the event of any such cancellation notice, obtain, pay all premiums for, and file with the City, written evidence of the issuance of replacement policies within thirty (30) days following receipt by the City or the Franchisee of any notice of cancellation.

17. **INDEMNIFICATION**

The Franchisee, by its acceptance of a franchise granted pursuant to this Agreement, shall indemnify and hold harmless the City, its officials, boards, commissions and employees against any and all claims, suits, causes of action, proceedings, and judgments for damage arising out of the award of franchise to the Franchisee and its construction and operation of the Cable Television System under the franchise. These damages shall include, but not be limited to, penalties arising out of patent trademark and copyright infringements and damages arising out of any failure by Franchisee to secure consents from the owners authorized distributors or licensees of programs to be delivered by the Franchisee's Cable Television System whether or not any act or omission complained of is authorized, allowed, or prohibited by the Franchisee.

18. **FRANCHISE VIOLATIONS: PROCEDURES, NOTICE AND CURE**

A. Before exercising any right of redress available to it under the terms of this Agreement, including determination of any penalty assessable under applicable law, the City shall follow the procedures set forth in this Section.

B. The City shall notify Franchisee in writing, by Certified mail, of any alleged violation, ("Violation Notice") which notice shall include a detailed description of any alleged violation and a request for cure of such violation.

C. Franchisee shall have thirty (30) days from the date of receipt of such notice to respond in writing, indicating: (1) that Franchisee has cured the alleged violation, providing reasonable documentation demonstrating that the alleged violation has been cured; (2) that Franchisee has commenced or will commence actions to cure the alleged violation, but that the alleged violation cannot reasonably be cured immediately, describing the steps taken or to be taken to cure the alleged violation; (3) that Franchisee disagrees with the allegation or that the violation has occurred, and contests the Violation Notice, stating the reasons therefor. If a violation is cured by Franchisee within sixty (60) days of receipt of notice, then no penalty shall be imposed. After

said Notice, if correction or cure is not made within a reasonable time, then Franchisor may proceed with collection of any fine, penalty, etc.

D. Upon receipt of Franchisee's response to the Violation Notice, the City may either accept Franchisee's proposed cure and/or explanation, or if it believes that the violation will not be cured within a reasonable period of time, the City may schedule an administrative hearing, providing Franchisee no less than fifteen (15) days written notice of the hearing which shall afford Franchisee due process including an opportunity to present evidence.

E. Within fifteen (15) days following an administrative hearing on an alleged violation, the City shall issue a written report stating its findings and the reasons therefor. The City may determine (a) that the alleged violation has been corrected, or is in the process of being corrected by Franchisee, and that no further action is required; (b) that an extension of the time or other appropriate relief should be granted until the cure for the problem can be completed by Franchisee; or (c) that other appropriate action should be taken including the imposition of monetary penalties and/or the revocation of this franchise.

F. In cases involving construction codes or technical standards, if the alleged violation does not pose a substantial and immediate safety hazard, Franchisee shall be allowed a reasonable and sufficient time to complete any required corrections or repairs to the system to remedy any alleged noncompliance. So long as Franchisee is making a good faith effort to correct the alleged noncompliance, no penalties shall be assessed. A "substantial and immediate safety hazard" shall be defined as one posing an imminent likelihood of injury to persons if not repaired immediately. Franchisee shall not be penalized for other minor violations of the Franchise or applicable codes, so long as it demonstrates it is making good faith efforts to correct any problem or violation within a reasonable period of time of the discovery of alleged violation.

G. The Franchise granted to the Franchisee may be revoked by the City Council for failure to construct, operate or maintain the Cable Television System as required by this Agreement or for other material breach of the Agreement.

H. For the violation of the following provisions of this Agreement, damages may be chargeable, in addition to the forfeiture of the performance bond provided for in Section 7 hereof, in lieu of revocation pursuant to Section 18G, as follows:

- 1) For failure to complete construction of the Cable Television System in accordance with the construction schedule of Section 7, or to meet the requirements of

Section 8 or 9, unless the Franchising Authority specifically approves the delay or failure, Franchisee shall pay two hundred (\$200.00) dollars per day for each violation.

2) For failure to respond to downed cable lines or inactive wiring within the public right of way, Franchisee shall pay one hundred (\$100.00) dollars per day per occurrence.

3) Any other violation reasonably set forth by Franchiser in an amendment to its Cable Ordinance.

19. **FRANCHISE TERMINATION AND CONTINUITY OF SERVICE**

A. In the event of a formal denial of renewal or revocation of a franchise, which denial or revocation is upheld by final judicial adjudication of any appeal(s) which may be filed, if any, the Franchisee shall have a period of one (1) year from such final adjudication within which to transfer or convey the assets of the cable system to another owner, subject to Section 22 hereinbelow. Approval of such proposed transfer or assignment shall not be unreasonably withheld by the City.

B. In the event the franchise term expires prior to formal action being taken by the City either to renew the franchise or deny renewal, the term of this franchise shall automatically be extended until such time as formal action to renew or deny renewal is taken by the City. The renewal procedures and criteria contained in Section 626(c) of the Cable Communications Policy Act of 1984, as amended, shall be followed by the City and the Franchisee.

C. In the event of a termination or transfer of the Franchise for whatever reason, the Franchisee must do everything in its power to ensure that all customers receive continuous, uninterrupted service through the existing facilities unless the Customers can reasonably be served by a competing cable operator. Where necessary, the Franchisee must cooperate with the City to operate the system for a temporary period following termination or transfer as required to maintain continuity of service to all Customers.

D. In accordance with the Cable Act, in the event (a) the City terminates the franchise, pursuant to provisions of this franchise; or (b) the franchise is not renewed at the normal expiration of the franchise term, and the Company has exhausted all rights to renewal under the Cable Act, the City shall have the right to purchase the Cable System. In the instance of non-renewal, any such acquisition or transfer shall be at fair market value, determined on the basis of the Cable System valued as a

going concern, but with no value allocated to the franchise itself. If the franchise is revoked for cause, the acquisition or transfer shall be at a fair and reasonable price, taking into consideration the fair market value of the system as well as other relevant considerations. If the system is purchased at the time of transfer, the acquisition shall be at a fair market value. The City shall notify the Company in writing within thirty (30) days of its intent to acquire the Cable System. The purchase price shall be based upon the value of the Cable System determined pursuant to this Section. The date of valuation shall be no earlier than the day following the date of expiration or termination, and no later than the date the City makes an offer for the Cable System.

The value of the Cable System shall be determined by three qualified appraisers. One shall be chosen by the City; one shall be chosen by the Franchise; and the third shall be chosen by the first two. The City shall hire the qualified appraisers at its cost. The appraisers shall determine the current worth of the system pursuant to the above. In the case of termination or non-renewal, no value shall be assigned to the franchise.

Upon exercise of this option, the payment of the agreed-upon sum by the City, and its service of official notice of such action upon the Company, the Company shall immediately transfer to the City possession and title to all facilities and property, real and personal, of the Cable System, free from any and all liens and encumbrances not agreed to be assumed by the City in lieu of some portion of the purchase price set forth above, and the Company shall execute such deeds or other instruments of conveyance to the City as shall be necessary for this purpose.

20. **FORCE MAJEURE**

In the event the Franchisee is prevented or delayed in the performance of any of its obligations under this Agreement by reason of flood, fires, hurricanes, tornadoes, earthquakes, or other acts of God, unavoidable casualty, insurrections, war, riot, sabotage, unavailability of materials or supplies, vandalism, strikes, boycotts, lockouts, labor disputes, shortage of labor, unusually severe weather conditions, acts or omissions or delays by utility companies upon whom Franchisee is dependent for pole attachments or easement use, or any other event which is beyond the reasonable control of the Franchisee, the Franchisee shall have a reasonable time under the circumstances to perform its obligations under this Agreement or to procure a reasonable and comparable substitute for such obligations. Under such circumstances the Franchisee shall not be held in default or noncompliance with the provisions of the Agreement nor shall it suffer any penalty relating thereto.

21. **COMPETING SERVICE PROVIDERS**

If at any time during the existence of this Franchise, a competing multi-channel service operates with more favorable term(s) than those established for the Franchisee under this Agreement, (including but not limited to lesser channel capacity, lesser requirements to provide public, educational, or government access, less onerous reporting requirements, less onerous customer notification requirements, less restrictive billing practices, less onerous customer service requirements, less responsibility to provide institutional networks or interconnection, or less responsibility to pay a franchise fee), upon the written request of the Franchisee, such term(s) shall also be simultaneously extended to the Franchisee, so that no provider of multi-channel service shall receive an unfair competitive advance.

22. **PERMITS FOR NON-FRANCHISED ENTITIES**

The City may issue a license, easement or other permit to a person other than the Franchisee to permit that person to traverse any portion of the Franchisee's franchise area within the City in order to provide service outside, but not within the City. Such license or easement, absent a grant of a franchise, shall not authorize nor permit said person to provide cable television service of any type to any home or place of business within the City nor render any other service within the City.

23. **TRANSFER OR ASSIGNMENT OF FRANCHISE**

A. Any transfer or assignment of the Franchise shall be governed by 47 USC 507. In making a determination of an application for transfer of the franchise, the City will consider the legal, financial, technical and character qualifications of the transferee to operate the system and whether operation by the transferee would adversely affect the cable services to subscribers or otherwise be contrary to the public interest. Approval by the City of a transfer of the franchise shall not constitute a waiver or release of any rights of the City under the Franchise.

B. The Franchisee may secure financing or an indebtedness by trust, mortgage, or other instrument of hypothecation of the franchise, in whole or in part, without requiring the consent of the City. In addition, so long as the managing and/or general partner of the Franchisee remains the same, consent shall not be required to transfer the interests of any limited partner of the Franchisee, who has no day-to-day operational control of the Franchisee or the system.

C. Upon receipt of an application pursuant to this Section 23 from a third party unaffiliated with the Franchisee, the City shall have the right to match the terms of the offer from the proposed unaffiliated third party in its entirety. The City must provide Franchisee with written notice of its decision whether or not to exercise its right of acquisition and reasonable proof of its ability to effectuate same hereunder within thirty (30) days of receipt of the proposed transfer. Falcon agrees to allow the City reasonable access to its financial and other records for the purposes herein mentioned.

24. COMPLIANCE WITH STATE AND FEDERAL LAW

The Franchisee and the City shall at all times comply with all applicable State and Federal laws and the applicable rules and regulations of administrative agencies. If the Federal Communications Commission (FCC) or any other federal or state governmental body or agency enacts any law or regulation or exercises any paramount jurisdiction over the subject matter of this Agreement or any franchise granted hereunder, the jurisdiction of the City shall cease and no longer exist to the extent such superseding jurisdiction shall preempt or preclude the exercise of like jurisdiction by the City. The City and the Franchisee reserve all rights they each may possess under law, unless expressly waived herein.

25. NOTICE TO FRANCHISEE

Except as otherwise provided in this Agreement, the City shall not meet to take any action terminating or adversely affecting the Franchisee's franchise unless the City has notified the Franchisee by certified mail at least twenty (20) days prior to such meeting, as to its time, place and purpose. The notice provided for in this section shall be in addition to, and not in lieu of, any other notice to the Franchisee provided for in this Agreement. All notices, requests, demands and other communications required or permitted hereunder shall be in writing and shall be deemed to have been duly given if mailed by certified mail return receipt requested, addressed to the Franchisee's corporate office as follows:

Falcon Community Cable, L.P.
10900 Wilshire Boulevard, 15th Floor
Los Angeles, California 90024
Attn: Government Affairs Department

With a copy to:

Falcon Holding Group Regional Manager
5026 South Highway 27
Somerset, KY 42501

26. **STREET OCCUPANCY**

A. Franchisee shall utilize existing poles, conduits and other facilities whenever possible, but may construct or install new, different, or additional poles, conduits, or other facilities whether on the public way or on privately owned property with the written approval of the appropriate government authority, and, if necessary the property owner. Such approval shall not be unreasonably withheld by the governmental agency. The City may from time to time issue reasonable rules and regulations concerning the installation and maintenance of the Cable Television System and Utility lines installed in the public rights of way.

B. All transmission lines, equipment and structures shall be so installed and located as to cause minimum interference with the rights and appearance and reasonable convenience of property owners who adjoin on any public way and at all times shall be kept and maintained in a safe condition and in good order and repair. The Franchisee shall at all times employ reasonable care and shall use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries or nuisances to the public.

C. Franchisee shall have the authority to trim trees on public property at its own expense as may be necessary to protect its wires and facilities, subject to the direction of the City or other appropriate governmental authority.

D. Franchisee must remove, replace or modify at its own expense the installation of any of its facilities within any public right of way when required to do so by the city to allow the City to change, maintain, repair, or improve a public thoroughfare.

E. On streets and roads where electrical and telephone utility wiring are located underground, whether at the time of initial construction or thereafter, the cable must also be located underground at Franchisee's expense. Between a street or road and the Customer's residence, the cable must be located underground if the electrical and telephone utility wiring are located underground. If either electric or telephone utility wiring is aerial, Franchisee may install aerial cable except where a property owner or resident requests underground installation and agrees to bear the additional cost over aerial installation.

F. Franchisee must restore private property and public thoroughfares to their former condition, the latter in a manner approved by the City. If such restoration is not satisfactorily performed within a reasonable time, the City, or the property owner in the case of private property, may, after prior notice too the Franchisee, arrange to make repairs.

G. At the request of any holder of a valid building moving permit, and upon sufficient notice, Franchisee must temporarily raise, lower or cut its wires as necessary to facilitate such move upon not less than seventy-two (72) hours notice. The direct expense of such temporary changes, including standby time, must be paid by the permit holder. Franchisee may require such payment in advance.

27. ACCESS TO PUBLIC AND PRIVATE PROPERTY

A. Franchisee shall have the right to enter and have access to the property and premises of the City for purposes of installing cable TV service or recovering and removing Franchisee's property and equipment when a Customer's service is terminated and a Customer refuses to return such equipment to the Franchisee.

B. Upon request by Franchisee, the City shall promptly exercise any rights it may have to permit or enable Franchisee to obtain or utilize easements with respect to any residential multiple unit dwelling, trailer park, condominium, apartment complex, subdivision or other property as required to facilitate Franchisee's use thereof for purposes of providing system service to the tenants, residents or lawful occupants thereof. In any such proceeding, the restitution to the Owner for the amount of space utilized by the system, considering the enhanced value to the premises resulting from the installation of cable television facilities, shall be a one-time charge of \$1.00 per dwelling unit.

28. NONDISCRIMINATION IN EMPLOYMENT

The Franchisee shall neither refuse to hire nor discharge from employment nor discriminate against any person in compensation, terms, conditions, or privileges of employment because of age, sex, race, color, creed, or national origin. The Franchisee shall insure that employees are treated without regard to their age, sex, race, color, creed or national origin.

29. FRANCHISEE MAY ISSUE RULES

The Franchisee shall have the authority to issue such rules, regulations, terms and conditions of its business as shall be reasonably necessary to enable it to exercise its rights and perform its services under this Agreement and the Rules of the FCC, and to assure uninterrupted service to each and all of its Customers. Such rules and regulations shall not be deemed to have the force of law.

30. **SEVERABILITY OF AGREEMENT PROVISIONS**

If any section of this Agreement or the franchise, or any portion thereof, is held invalid or unconstitutional by any court of competent jurisdiction or administrative agency, such decision shall not affect the validity of the remaining portions of the Agreement or franchise.

31. **EFFECTIVE DATE**

This Agreement shall become effective upon the date of its adoption by the City and execution by both parties hereto. Any failure by the City to follow proper procedures under state or local law in adopting this Agreement or granting a franchise shall not abrogate the rights or obligations of either the Franchisee or the City under this Agreement. If, following adoption of this Agreement, it is subsequently determined that proper legal procedures have not been followed by the City, it shall be the responsibility of the City to rectify any procedural defects and ratify the terms of this Agreement.

32. **FAILURE OF CITY TO ENFORCE THIS AGREEMENT**

Franchisee shall not be excused from complying with any terms and conditions of this Agreement by any failure of the City upon any one or more occasions to insist upon or to see compliance with such terms or conditions.

33. **TIME IS OF THE ESSENCE**

Whenever this Agreement sets forth any time for an act to be performed by or on behalf of Franchisee, such time shall be deemed to be of the essence.

FIRST READING: August 24, 1998

14th PASSED AND APPROVED by the City Council of Somerset, this the day of September, 1998, at the second reading.

BY: James R. Williams

TITLE: Mayor

ATTEST: Diana Hodsey

TITLE: City Clerk

ACCEPTED BY Falcon Community Cable, L.P.

BY: _____

TITLE: _____

ATTEST: _____

TITLE: _____