

24-00884

ORDINANCE

ENACTING AN ORDINANCE AND AUTHORIZING THE MAYOR-PRESIDENT TO EXECUTE AN AGREEMENT GRANTING COX COMMUNICATIONS LOUISIANA, LLC, FOR AN INITIAL TERM THROUGH DECEMBER 31, 2038, THE RIGHT TO CONSTRUCT, OPERATE, AND MAINTAIN THE CABLE SYSTEM TO PROVIDE CABLE SERVICE, IN THE CITY-PARISH'S ROW. THROUGHOUT THE TERM OF THIS AGREEMENT, COX COMMUNICATIONS LOUISIANA, LLC, SHALL PAY TO THE CITY-PARISH, AS COMPENSATION FOR USE OF THE CITY-PARISH ROW, A FRANCHISE FEE EQUAL TO 5% OF THE GROSS REVENUES. FRANCHISE AGREEMENT SHALL BE APPROVED BY THE OFFICE OF THE PARISH ATTORNEY AS TO FORM AND LEGALITY.

WHEREAS, COX COMMUNICATIONS LOUISIANA, L.L.C., has made application to the City of Baton Rouge and the Parish of East Baton Rouge, Louisiana, for the franchise and authority to construct, operate, and maintain a cable system to provide cable service within public streets and rights-of-ways that are under the jurisdiction of the City of Baton Rouge and Parish of East Baton Rouge, Louisiana; and

WHEREAS, after examining the adequacy and feasibility of the proposal of COX COMMUNICATIONS LOUISIANA, L.L.C. and upon full public proceedings affording due process, it has been determined that the public interest would be served by adoption of this Ordinance granting to COX COMMUNICATIONS LOUISIANA, L.L.C. a franchise and right for the installation, operation and maintenance of a cable system within public streets and rights-of-ways of the said City and Parish (City/Parish).

BE IT ORDAINED by the Metropolitan Council of the Parish of East Baton Rouge and City of Baton Rouge that:

FRANCHISE AGREEMENT

This Franchise Agreement ("**Franchise Agreement**" or "**Agreement**") by and between Cox Communications Louisiana, L.L.C. ("**Cox**" or the "**Company**"), and the City of Baton Rouge/Parish of East Baton Rouge ("**City-Parish**"). Cox and City-Parish shall sometimes be referred to separately as a "Party," and collectively as the "Parties."

A. **Definitions.**

1. "**Applicable Law**" means all federal, Louisiana, or City-Parish laws, regulations, ordinances, or court decisions applicable to the terms and conditions of this Agreement, including any amendments.
2. "**Applicable Standards**" means all applicable engineering and safety standards and specifications governing the installation, maintenance, and operation of Company's Cable System and associated equipment and facilities, as well as the performance of all work in or around the Public Way, and includes the most current versions of National Electrical Safety Code ("NESC"), the National Electrical Code ("NEC"), and the regulations of the Occupational Safety and Health Administration ("OSHA"), each of which is incorporated by reference into this Agreement, as well as other industry safety and engineering requirements, standards or specifications, of City-Parish, or other federal, State, or local authority with jurisdiction over such System, as such requirements may be revised, modified, restated, supplemented or updated by the City-Parish or governmental authority.
3. "**Cable Service**" or "**Service**" shall have the meaning set forth in Section 602(6) of the Cable Act (47 U.S.C. §522(6)).
4. "**Cable Service Area**" means the present jurisdictional boundaries of the City-Parish as of the Effective Date and shall include any additions thereto by annexation or other legal means, subject to the exceptions in Section H(1).
5. "**Cable Communications System**" or "**Cable System**" or "**System**" shall have the meaning set forth in Section 602(7) of the Cable Act (47 U.S.C. §522(7)).
6. "**Gross Revenues**" shall mean all revenues received from Subscribers for the provision of Cable Service, including franchise fees and all revenues received from non-subscribers for advertising disseminated through Cable Service and home shopping services. Gross revenues shall not include all of the following items:
 - a. Amounts billed and collected from Subscribers to recover any tax, surcharge, or governmental fee.
 - b. Any revenue not actually received, even if billed, such as bad debt.
 - c. Any revenue received by any affiliate or any other person in exchange for supplying goods or services to the Cable Service provider.

- d. Any amounts attributable to refunds, rebates, or discounts.
 - e. Any revenues from sales or rental of property, except such property the Subscriber is required to buy or rent exclusively from the Cable Service provider to receive Cable Service.
 - f. Any revenues from services provided over the Cable System or other wireline facilities used to distribute video programming services that are not classified as Cable Services including without limitation revenue received from telecommunications services, information services but not excluding Cable Services, Internet access services, and directory or Internet advertising revenues, including but not limited to yellow pages, white pages, banner advertisements, and electronic publishing advertising. Where the sale of any non-Cable Service is bundled with the sale of one or more Cable Services and sold for a single non itemized price, the revenues from such bundled packages shall be allocated to Gross Revenues on a proportional basis equal to the standard non-discounted rates of each such Cable Service and non-Cable Service when sold on a stand-alone unbundled basis.
 - g. Any revenues from sales for resale with respect to which the purchaser is required to pay a franchise fee, provided the purchaser certifies in writing that it will resell the service and pay a franchise fee with respect thereto.
 - h. Any amounts attributable to a reimbursement of costs, including but not limited to the reimbursements by programmers of marketing costs incurred for the promotion or introduction of video programming.
 - i. Any revenues from providing or maintaining inside wiring.
7. **"Public Way"** shall mean the surface of, and the space above and below any public street, highway, freeway, bridge, land path, alley, court, boulevard, sidewalk, parkway, way, lane, public way, drive, circle, or other public right-of-way, including, but not limited to, public utility servitudes dedicated utility strips, or rights-of-way dedicated for compatible uses and any temporary or permanent fixtures or improvements located thereon now or hereafter held by the City-Parish in the Cable Service Area which shall entitle the City-Parish and the Company to the use thereof for the purpose of installing, operating, repairing, and maintaining the Cable System. Public Way shall also mean any servitude now or hereafter held by the City-Parish within the Cable Service Area for the purpose of public travel, or for utility or public service use dedicated for compatible uses, and shall include other servitudes or rights-of-way as shall within their proper use and meaning entitle the City-Parish and the Company to the use thereof for the purposes of installing, operating, repairing, and maintaining the Company's Cable System over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments, power

supplies, network reliability units, and other property as may be necessary or pertinent to the Cable System.

8. "**Section 621 Order**" means the Third Report and Order in MB Docket No. 05-311 adopted by the Federal Communications Commission ("FCC") on August 1, 2019, as modified by any non-appealable decision of a court of competent jurisdiction or any subsequent order of the FCC.
9. "**Subscriber**" means any person lawfully receiving any Service provided by the Company by means of or in connection with the System whether or not a fee is paid for such Service.

B. **Franchise.** The City-Parish hereby grants the Company the privilege to use the Public Way to construct, operate, and maintain the Cable System in the City-Parish to provide Cable Service (hereinafter referred to as the "**Franchise**"), subject to the terms and conditions provided herein. The Company shall be required to file permit applications for use of the Public Way and comply with all generally applicable, non-discriminatory construction permit requirements.

C. **Term.** The term of this Agreement shall be from the Effective Date of this Agreement through December 31, 2038. The term may be extended or renewed upon mutual agreement of the Parties in compliance with Applicable Law.

D. **Compensation to City-Parish.**

1. **Franchise Fee.** During the term of this Agreement, Company shall pay to City-Parish an annual fee equal to 5% of the Gross Revenues (the "**Franchise Fee**"). The Company reserves the right to identify and pass through the Franchise Fee on Subscriber bills. All such fees collected will be forwarded to City-Parish monthly and shall be due thirty (30) days after the end of each month. For purposes of this Agreement, unless otherwise prohibited by Applicable law, Franchise Fees shall be paid pursuant to the Gross Revenues definition in Section A(6).
2. The Franchise Fee payable hereunder shall be paid and received in lieu of any tax, license, charge, fee, or any other character of charge for use and occupancy of the Public Ways.
3. **Franchise Fee Report.** Each Franchise Fee payment shall be accompanied by a brief report from a representative of the Company showing the basis for the computation and the number of subscribers by month.
4. **Late Fees.** If the amount of the Franchise Fees due are not paid timely, there shall be collected with said Franchise Fee, interest at the rate of one percent (1%) per month, or fractional part thereof. Interest will be computed from the first day of the month next following the month for which the Franchise Fee is due. In the event of suit to collect a late Franchise Fee payment, Company is

responsible for the City-Parish's attorney's fees and all costs and expenses of litigation. All interest due for subsequent months will be assessed and due as of the first day of each succeeding month. The City-Parish is authorized to employ private counsel to assist in the collection of any franchise late fee or interest due under this Agreement. Prior to retaining private counsel or filing suit to collect any unpaid fees, the City-Parish shall provide Company notice and an opportunity to cure pursuant to Section Q of this Agreement.

5. The period of limitation for recovery of any Franchise Fee payable hereunder shall be four (4) years from the date on which payment by the Company is due.
6. **Right to Audit.** The City-Parish, upon reasonable request, may review the business records of Company to the extent necessary to ensure payment of the Franchise Fee. However, the City-Parish may not employ, appoint, or retain any person or entity for compensation that is dependent in any manner upon the outcome of any such audit, including the audit findings, the recovery of fees, or the recovery of any other payments. Each party shall bear its own costs and fees incurred in connection with an audit. The above notwithstanding, if the audit reveals a material discrepancy in underpayments of more than ten percent (10%) Company shall pay the audit costs.
 - a. **Audit Limitation Period.** Any audit conducted in accordance with Section (D) (6) shall not address any period more than three (3) years before the date the audit is commenced in accordance with La. R.S. 45:1367.

E. PEG Access Channels.

1. Company shall provide one (1) channel (Channel 21) for governmental access programming ("Government Access Channel"). The Government Access Channel is currently Channel 21 and shall not be changed to a different channel location without prior written notice at least thirty (30) days to the City-Parish. Company shall make every reasonable effort to coordinate the cablecasting of PEG access programming on the Cable System on the same Channel designation as such programming is currently cablecast within the City-Parish. The reasonable costs any such channel relocation, including any reasonable re-branding and communications with subscribers and the public concerning the change shall be paid for by Company and shall not be passed through to subscribers as a Franchise Fee or PEG Fee.
2. Company shall provide one (1) additional channel for educational access ("Educational Access Channel") to air educational access programming for the East Baton Rouge Parish School System (the "System") provided: (i) there is insufficient time available on the Government Access Channel identified in E.1 above, or on Company's local

origination channel, to air all the programming sought to be aired by the System, provided that such programming is not scrolled text; (ii) the System certifies to the Company that it is able and willing to air non-commercial educational programming twenty-four (24) hours a day, seven (7) days per week, and at least eight (8) hours of non-repeat programming per day, not including scrolled text; and (iii) the System assumes all costs and expense associated with the production and operation of the Educational Access Channel and the aforesaid programming. Company shall have six (6) months to activate such Educational Access Channel after the System certifies compliance with subsections (i), (ii) and (iii) above.

3. The operation of the Government Access Channel and Educational Access Channel shall be the responsibility of City-Parish, and Company's only obligation is the responsibility for the transmission of such channel. The City-Parish will be responsible to ensure that all transmissions, retransmissions, content, or programming that may be requested to be transmitted over a channel or facility by Company in the future, if any, are provided or submitted to Company, at Company's designated connection point, shall be in a manner or form that is capable of being accepted and transmitted by Company, without requirement for additional alteration or change in the format or content by Company, over the network of Company, and which is compatible with the technology or protocol utilized by Company to deliver Cable Services.

F. Municipal Services and Facilities.

1. **Service to Public Buildings.** For any administrative buildings owned and occupied by the City-Parish, including fire station(s), police station(s), and K-12 public school(s) that are passed by its Cable System constructed or acquired by the City-Parish after June 1, 2024, Company shall, upon request, provide without charge to the City-Parish, one standard installation and one outlet of basic cable to those administrative buildings owned and occupied by the City-Parish, fire station(s), police station(s), and K-12 public school(s) that are passed by its Cable System. If service is requested at any building that is not passed by Company's Cable System, the cost-sharing provisions of Section I, below, shall apply. The Cable Service provided shall not be distributed beyond the originally installed outlet without authorization from the Company. The Cable Service provided shall not be used to distribute or sell services in or throughout such buildings or for other commercial purposes, and such outlets shall not be located in areas open to the public. The CP shall take reasonable precautions to prevent any use of the Company's Cable System in any manner that results in the inappropriate use thereof or any loss or damage to the Cable System. The C-P shall hold the Company harmless from any and all liability or claims arising out of the provision and use of Cable Service required by this Section, including but

not limited to, those arising from copyright liability. The Company shall not be required to provide an outlet to such buildings where the drop line from the feeder cable to said buildings or premises exceeds 125 cable feet, unless the appropriate governmental entity agrees to pay the incremental cost of such drop line in excess of 125 cable feet. If additional outlets of Basic Cable are provided to such buildings, the building owner shall pay the usual installation and service fees associated therewith, including, but not limited to, labor and materials.

G. PEG Fee.

1. Company shall remit to the City-Parish one-half of one percent (0.05%) of Gross Revenues, as defined in Section (A)(4) of this Agreement, in lieu of any in-kind compensation and grants. Payments under this Section are paid in accordance with 47 U.S.C. Section 531 and 541(a)(4)(B) and shall be used by the City-Parish as allowed by federal law only to support the capital costs incurred for the construction and operation of PEG access channel content and facilities. Company may identify and collect the amount of the PEG capital contribution as a separate line-item on the regular bill of each Subscriber. Payments under this Section shall be made in the same manner as and as part of Company's payment of fees under Section (D)(1), and all administrative provisions in Section (D)(1) applicable to such fees shall apply to payments under this Section.
2. The Parties agree the PEG Access Channel(s) and Municipal Services and Facilities addressed in Sections E and F and the provisions outlined in this Section G are subject to the provisions of the Section 621 Order. In the event the Company, as permitted under the Section 621 Order, determines to implement charges for, the PEG return lines and associated equipment, and/or the Municipal Services and Facilities (collectively and individually the "**Complimentary Services**"), the Company will provide one hundred twenty (120) days advance written notice before any charges may be imposed. Upon written notice from the Company, the City-Parish shall review the list of Complimentary Services received as outlined in Sections E, F and G, and the City-Parish shall have the right to discontinue receipt of all or apportion of those Complimentary Services provided by the Company. The remaining Complimentary Services not discontinued by City-Parish will be billed to City-Parish monthly for payment as agreed between the Parties, at no more than Company's documented additional marginal costs of providing such services (at City-Parish's option the payment of such marginal costs may be credited against the Company's payment of Franchise Fees). In the event the Section 621 Order is reversed or whether as a result of a subsequent FCC order, a final non-appealable court decision, or federal legislation, within thirty (30) days of the result becoming final, Company will discontinue any charges for

Complimentary Service, and provide such Complimentary Services to the City-Parish free of charge.

H. Emergency Message. Company shall carry all federal, state, and local alerts provided over the "Federal Emergency Alert System" through Company's Cable Services in the event of a public safety emergency, which at a minimum will include the concurrent rebroadcast of local broadcast channels.

I. Required Extensions of Service.

1. The Company agrees to provide Cable Service to all residences in the Cable Service Area, subject to the density requirements specified in this Section. Whenever the Company receives a request for Cable Service from a potential Subscriber in a contiguous unserved area where there are at least forty (40) residences within one (1) mile from the portion of the Company's trunk or distribution cable which is to be extended, the Company shall extend its Cable System to such Subscribers at no cost to said Subscribers for the Cable System extension, other than the applicable installation charge; provided that such extension is technically feasible, and if it will not adversely affect the operation, financial condition, or market development of the Cable System. Notwithstanding the foregoing, the Company shall have the right, but not the obligation, to extend the Cable System into any portion of the Cable Service Area where another operator is providing Cable Service, into any annexed area which is not contiguous to the present Service Area of the Company, or into any area which is financially or technically infeasible due to extraordinary circumstances, such as a runway or freeway crossing.

2. **2. Subscriber Charges for Extensions of Service.** If a potential Subscriber resides in an area that does not meet the density requirements of Section H(1) above, the Company shall only be required to extend the Cable System if the Subscribers in that area are willing to share the capital costs of extending the Cable System by making a capital contribution in aid of construction, including cost of material, labor, and easements. Specifically, the Company shall contribute a capital amount equal to the construction cost per mile, multiplied by a fraction whose numerator equals the actual number of residences per mile of its trunk or distribution cable, and whose denominator equals forty (40). Subscribers who request service hereunder shall bear the remaining construction costs on a pro rata basis. The Company may require that the payment of the capital contribution in aid of construction borne by such potential Subscribers be paid in advance. Subscribers shall also be responsible for any applicable installation charges to extend the Cable System from the tap to the residence.

J. Customer Service. Company shall comply with customer service requirements consistent with 47 C.F.R. Section 76.309(c), as well all other generally applicable, non-discriminatory

customer service requirements for the service offered its Cable System to the extent required under Applicable Law.

K. Compliance with Laws. Company shall comply with all Applicable Laws, including 47 U.S.C. Section 541(a)(3).

L. Obligations of City-Parish.

1. City-Parish agrees to subject the construction and installation of the Cable System to the same process and review as it subjects the installation and construction of other providers seeking to install, maintain, and operate similar types of systems or Cable Service.
2. City-Parish agrees not to unreasonably block, restrict, or limit the construction and installation of the Cable System.
3. City-Parish agrees to process any and all applicable permits for the installation, construction, maintenance, repair, removal, and other activities associated with the Cable System in a timely and prompt manner.

M. Construction of System and Use of Public Way.

1. **Conditions of Occupancy.** The Cable System installed by the Company pursuant to the terms hereof shall be located so as to cause a minimum of interference with the proper use of Public Ways by the City-Parish, other service providers, utilities, and the public, and property owners who own property that adjoins any of such Public Ways. After any construction, installation, maintenance, and/or removal work within the Public Way, Company shall replace and restore the Public Way to a condition reasonably comparable to the condition of the Public Way existing immediately prior to such disturbance.
2. **Standards.** Construction, operation, and maintenance of the Cable System shall be performed in an orderly and workmanlike manner. All such work shall be performed in substantial accordance with Applicable Law, and all Applicable Standards.
3. **Aerial and Underground Construction.** In those areas of the Service Area where all of the transmission or distribution wireline facilities of the respective public utilities providing telephone communications and electric services are underground, the Company likewise shall construct, operate, and maintain all of its transmission and distribution facilities underground; provided that such facilities are actually capable of In those areas of the Service Area where the transmission or distribution facilities of the respective public utilities providing telephone communications, and electric services are both aerial and underground, the Company shall have the sole discretion to construct, operate, and maintain all of its transmission and distribution facilities, or any part thereof, aerially or underground. Nothing contained in

this Section shall require the Company to construct, operate, and maintain underground any ground-mounted appurtenances such as Subscriber taps, line extenders, system passive devices (splitters, directional couplers), amplifiers, power supplies, network reliability units, pedestals, or other related equipment.

a. Notwithstanding anything to the contrary contained in this Section, in the event that all of the transmission or distribution facilities of the respective public utilities providing telephone communications and electric services are placed underground after the Effective Date of this Franchise, the Company shall only be required to construct, operate, and maintain all of its System facilities underground if it is given reasonable notice and access to the public utilities' facilities at the time that such are placed underground.

b. The City-Parish shall provide the Company with written notice of the issuance of building or development permits for planned commercial/residential developments within the Cable Service Area requiring undergrounding of cable facilities. To the extent allowed by Applicable Law, the City-Parish agrees to require as a condition of issuing any permit for open trenching to any utility or developer, that the utility or developer give the Company reasonable access to open trenches for deployment of cable facilities and written notice of the date of availability of trenches.

4. **As Built Maps.** On an annual basis, Company shall file with City-Parish an updated set of "as built" plans of the completed Cable System facilities located within the Public Way.
5. **Relocation at Request of the City-Parish.** If, at any time during the period of the Franchise, the City-Parish shall lawfully elect to vacate, relocate, abandon, alter, reconstruct or change any street, sidewalk, alley or other Public Way, the Company, upon either receipt of no less than thirty (30) days written notice by the City-Parish, shall remove or relocate its overhead or underground wires, cables, conduits, manholes and other fixtures at its own expense. However, if public funds are available to any entity using such Public Way for the purpose of defraying the cost of any of the foregoing, the City-Parish shall cooperate with the Company in making application for such funds on behalf of the Company. Should the Company refuse or fail to remove its equipment or plant as provided for herein within thirty (30) days of receipt of written notification, unless a longer period is agreed to by the Parties, the City-Parish shall have the right to cut and/or remove or do such work or cause it to be done without liability, and at Company's expense. Company shall be required to pay one of City-Parish's actual and documented costs of removing and relocating Company's

System facilities, within sixty (60) days after it has received an invoice from the City-Parish. The City-Parish agrees to meet with Company and to not unreasonably deny Company request for an extension of any relocation request of City-Parish beyond the thirty (30) day initial relocation period.

6. **Relocation at Request of Third Party.** The Company shall, on the request of any person holding a lawful building moving permit issued by the City-Parish, protect, support, raise, lower, temporarily disconnect, relocate in or remove from any Public Way, as necessary, any property of the Company, provided: (a) the expense of such is paid by said person benefiting from the relocation, including, if required by the Company, making such payment in advance; and (b) the Company is given reasonable advance written notice to prepare for such changes. For purposes of this Section, "reasonable advance written notice" shall be no less than thirty (30) days in the event of a temporary relocation, and no less than one hundred twenty (120) days for a permanent relocation.
7. **Trimming of Trees and Shrubbery.** Company shall have the authority to trim trees upon and overhanging streets, alleys, sidewalks, and public places of the City-Parish so as to prevent the branches of such trees from coming in contact or otherwise interfering with wires, cables, fixtures and facilities of Company. All trimming, cutting or other removal of trees or natural growth shall be done under the supervision and direction of and at the expense of Company and performed in accordance with the American National Standard (ANSI) A300 for tree care operations as well as all applicable local and state horticulture laws. All trimming, cutting or other removal of trees or natural growth shall be done in accordance with the applicable provisions of La. R.S. 3:3801 through La. R.S. 3:3816.

N. Indemnification.

1. 1. **Indemnification.** Company shall indemnify, defend, and hold harmless the City-Parish, its elected officers, employees, agents, and representatives (collectively the City-Parish"), against all claims, costs, losses, expenses, demands, actions, or causes of action, including reasonable attorney's fees, and other costs and expenses of litigation, which may be asserted against or incurred by or for which the City-Parish may be liable, which arise from the negligence or willful misconduct of Company, its employees, agents, or subcontractors arising out of the construction, operation, maintenance, upgrade, repair or removal of its Cable System, except to the extent those claims, costs, losses, expenses, demands, actions, or causes of action which arise from the gross negligence or willful misconduct of the City-Parish. To the extent allowed by Louisiana law, City-Parish shall be responsible for damages, liability or claims to the extent resulting

from the gross negligence or willful misconduct of City-Parish.

2. **Timely Notice of Claim.** The City-Parish shall give Company timely written notice of its obligation to indemnify and defend the City-Parish after the City-Parish's receipt of a claim or action pursuant to this Section. For purposes of this Section, the word "timely" shall mean within a time period that does not cause material prejudice to the respective positions of the Parties.
3. With respect to Company's indemnity obligations set forth above, Company shall provide the defense of any claims brought against City-Parish by selecting counsel of Company's choice to defend the claim, subject to the consent of City-Parish, which shall not be unreasonably withheld. Nothing herein shall be deemed to prevent City-Parish from cooperating with Company and participating in the defense of any litigation by its own counsel at its own cost and expense, provided, however, that after consultation with City-Parish, Company shall have the right to defend, settle or compromise any claim or action arising hereunder, and Company shall have the authority to decide the appropriateness and the amount of any such settlement. In the event that the terms of any such settlement do not include the release of City Parish and City-Parish does not consent to the terms of any such settlement or compromise, Company shall not settle the claim or action, but its obligation to indemnify City-Parish shall in no event exceed the amount of such settlement.
4. City-Parish shall be responsible for its own acts of negligence or willful misconduct, or breaches of obligation committed by City-Parish for which City Parish is legally responsible, subject to any and all defenses and limitations of liability provided by law. Company shall not be required to indemnify City-Parish to the extent acts of City-Parish constitute willful misconduct or negligence on the part of City-Parish, its officers, employees, agents, attorneys, consultants, independent contractors or third parties.
5. **Not a Limitation.** The City-Parish does not waive, and shall not be deemed to have waived, any rights against Company that it may have by reason of this indemnification, or because of any of the insurance policies described in this Agreement. Nor does the City-Parish waive any governmental immunity that it has under Louisiana law. The indemnification by Company shall apply to all damages, penalties, and claims of any kind, regardless of whether any insurance policy shall have been determined to be applicable to any such damages or claims. The Company does not waive, and shall not be deemed to have waived, any rights against City-Parish that it may have by reason of this indemnification. Nor does the Company waive any affirmative defense immunity that it has under Louisiana law. To the extent consistent with applicable federal and Louisiana law, including governmental immunity regulations, the indemnification by City-Parish shall

apply to all damages, penalties, and claims of any kind, regardless of whether any insurance policy shall have been determined to be applicable to any such damages or claims.

O. Insurance Requirements. Company agrees to either obtain a policy of public liability insurance in an amount not less than \$1,000,000 with the City-Parish named as an additional insured under such policy or provide the City-Parish with proof of self-insurance in an amount not less than \$1,000,000.

P. Dispute Resolution Process

1. **Dispute Resolution.** Except for an action seeking a temporary restraining order or an injunction or to compel compliance with this dispute resolution procedure, the Parties can invoke the dispute resolution procedures in this Article at any time to resolve a controversy, claim, or breach arising under this Agreement. Each Party will bear its own costs for dispute resolution activity.

2. **Initial Meeting.** At either Party's written request, each Party will designate knowledgeable, responsible, senior representatives to meet and negotiate in good faith to resolve a dispute. The representatives will have discretion to decide the format, frequency, duration, and conclusion of these discussions. The Parties will conduct any meeting in-person or via conference call, as reasonably appropriate.

3. **Executive Meeting.** If sixty (60) days after the first in-person meeting of the senior representatives, the parties have not resolved the dispute to their mutual satisfaction, each Party will designate executive representatives at the director level or above to meet and negotiate in good faith to resolve the dispute.

4. **Unresolved Dispute.** If after sixty (60) days from the first executive-level, in-person meeting, the Parties have not resolved the dispute to their mutual satisfaction; either may mutually agree to non-binding mediation, and/or invoke any legal means available to resolve the dispute, including enforcement of the default procedures set out in this Agreement.

5. **Confidential Settlement.** Unless the Parties otherwise agree in writing, communication between the Parties under this Article will be treated as confidential information developed for settlement purposes, exempt from discovery and inadmissible in litigation.

6. **Business as Usual.** During any dispute resolution procedure or lawsuit, the Parties will continue providing services to each other and performing their obligations under this Agreement.

Q. Breach of Agreement. Should either Party claim that a breach of any part of this Agreement has occurred, that party will provide prompt written notice to the other, specifying the

nature of the breach; and upon receipt the other Party shall cure such breach within sixty (60) days. In the event that, by nature of the default, such default cannot be cured within the sixty (60) day period, the breaching Party shall diligently initiate reasonable steps, acceptable to the non-breaching Party, to remedy such default, and shall promptly and diligently perform such cure to completion, which shall not exceed an additional sixty (60) days without the prior written approval of the non-breaching Party.

R. Termination.

1. The City-Parish reserves the right to terminate this Agreement at any time for uncured non-compliance with any material term of the Agreement or for Company's failure to comply with all Applicable Laws, provided that the City-Parish first provides Company sixty (60) days written notice specifying the nature of the non-compliance or failure to comply, and (b) an opportunity to cure as provided in Section Q.
2. Public Hearing. In the event that the Company fails to cure the alleged default within the specified time period the City-Parish shall schedule a public hearing to investigate the default and possible termination or imposition of other penalties. The City-Parish shall provide the Company at least ten (10) days prior written notice of such hearing, which notice shall specify the time, place and purpose of such hearing. At such hearing, the Grantee shall be provided a full and fair opportunity to be heard. At conclusion of hearing the City-Parish may, to the extent consistent with Applicable Law terminate the Agreement and/or pursue any other available legal or equitable remedies.
3. The City-Parish also reserves the right to terminate and cancel this Franchise and all rights and privileges of Company under this Agreement in the event that Company:
 - a. Becomes insolvent, unable or unwilling to pay its legal debts, or is adjudged a bankrupt; or
 - b. Practices any fraud or deceit;

R. **Removal of Facilities Upon Termination.** Upon termination of this Agreement for any reason, Company shall remove its System facilities from the Public Way within six (6) months of the effective date of the termination. After removal of the facilities Company shall restore the Public Way to its condition immediately prior to the removal of its facilities. If not so removed within that time period, City-Parish shall have the right, but not the obligation, to treat Company's facilities as abandoned and to take title, remove, store, sell, or otherwise dispose of such facilities without liability, and at Company's expense. Company shall be required to pay one hundred and twenty percent (1) of City-Parish's actual and documented costs of taking title, removing, storing, selling, or otherwise

disposing of such facilities within ninety (90) Days after it has received an invoice from the City-Parish.

S. Notices. Any notice to be give under this Agreement shall be in writing and may be delivered to either personally, by facsimile or by certified or registered mail with postage prepaid and return receipt requested, addressed as follows:

If to City-Parish:

City of Baton Rouge/Parish of East Baton Rouge Council
Administrator's Office
222 St. Louis Street, 3rd Floor
PO Box 1471
Baton Rouge, LA 70821
Attn: Council Administrator

with a copy to:

Parish Attorney's Office
222 St. Louis Street
PO Box 1471
Baton Rouge, LA 70821
Attn: Parish Attorney

If to Company:

Cox Communications Louisiane, L.L.C.
7401 Florida Boulevard
Baton Rouge, LA 70806
Attn: Senior Vice President and Regional Manager

with a copy to:

Cox Communications, Inc.
6205B Peachtree-Dunwoody Road
Atlanta, GA 30328
Attention: Vice President of Regulatory & Government
Affairs

- T. Modification.** This Agreement may be amended or modified only by a written instrument executed by both Parties.
- U. Transfer or Assignment.** Cox may not assign or transfer this Agreement or any interest therein without the prior consent of City-Parish except to any affiliate of Cox. Any assignment or transfer to an affiliate shall require thirty (30) days' notice to the City-Parish. No assignment or transfer shall be effective absent an acknowledgement that the transferee is bound by the terms and conditions of this Agreement.
- V. Entire Agreement.** This Agreement constitutes the entire agreement between City Parish and Company with respect to the subject matter contained herein and supersedes all prior or contemporaneous discussions, agreements, and/or representations of or between City-Parish and Company regarding the subject matter hereof.
- W. Waiver.** Failure on the part of either Party to enforce any provision of this Agreement shall not be construed as a waiver of the right to compel enforcement of such provision or any other provision.
- X. Miscellaneous.**
1. Company and City-Parish each hereby warrants that it has the requisite power and authority to enter into this Agreement and to perform according to the terms hereof.
 2. The headings used in the Agreement are inserted for convenience or reference only and are not intended to define, limit or affect the interpretation of any term or provision hereof. The singular shall include the plural; the masculine gender shall include the feminine and neutral gender.
 3. Company and City-Parish shall cooperate fully with one another in the execution of any and all other documents and in the completion of any additional actions including, without limitation, the processing of permits that may be necessary or appropriate to give full force and effect to the terms and intent of this Agreement.

4. Nothing contained in this Agreement is intended or shall be construed as creating or conferring any rights, benefits, or remedies upon, or creating any obligations of the Parties hereto toward any person or entity not a party to this Agreement, unless otherwise expressly set forth herein.

Y. Equal Protection. Company acknowledges that the City-Parish retains the right and privilege to grant similar franchises to other companies, however, with respect to franchises granted to another company to enter into the Public Way for the purpose of constructing or operating a similar type of Cable System, or for the purpose of providing Cable Services in a similar manner, within the Cable Service Area, the City-Parish agrees that if any such franchise contains terms and conditions that, when viewed as a whole, impose less onerous than those imposed upon Company by this Franchise Agreement, shall be deemed automatically amended to provide Cox the benefit of such terms and conditions of any such franchise determined by Cox to be less onerous than those contained in this Franchise Agreement.

Z. Force Majeure. The Company shall not be held in default under, or in noncompliance with the provisions of this Agreement, nor suffer any enforcement or penalty relating to noncompliance or default, where such noncompliance or alleged defaults occurred or were caused by circumstances reasonably beyond the ability of the Company to anticipate and control. This provision includes, but is not limited to, severe or unusual weather conditions, fire, flood, or other acts of God, strikes, work delays caused by failure of utility providers to service, maintain or monitor their utility poles to which Company's Cable System is attached, as well as unavailability of materials and/or qualified labor to perform the work necessary.

AA. Binding Effect. This Agreement shall be binding upon and for the benefit of each of the Parties and their respective past and present principals, managers, City-Parish Council members, officers, directors, shareholders, agents, employees, attorneys, successors and assigns and any parents, subsidiaries or affiliated corporations or entities, as applicable.

BB. Counterpart Execution. This Agreement may be signed in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same agreement. Signature pages may be transmitted by facsimile and any signature transmitted by facsimile will be given the same force and effect as an original signature.