

A FRANCHISE AGREEMENT

Between

The Town of Ancram, County of Columbia, State of New

York and

Berkshire Cable Corp.

l/k/a

Consolidated Communications

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*This Franchise Agreement is between the Town of Ancram, New York, hereinafter referred to as the “Grantor, Franchise Authority or Municipality” and Berkshire Cable Corp. locally known as CONSOLIDATED COMMUNICATIONS, hereinafter referred to as the “Grantee or Franchisee.”*

***WHEREAS**, the Grantor finds that the financial, legal and technical ability of the Grantee is sufficient to provide services, facilities and equipment necessary to meet the future cable-related needs of the community, and*

***WHEREAS**, having afforded the public adequate notice and opportunity for comment, Grantor desires to enter into this Franchise with the Grantee for the construction and operation of a cable system on the terms set forth herein; and*

***WHEREAS**, the Grantor and Grantee have complied with all federal and State-mandated procedural and substantive requirements pertinent to this franchise;*

***WHEREAS**, the Board, in granting this franchise, embodied in the agreement the results of its review and negotiations with Consolidated Communications and has determined that said franchise agreement and Consolidated Communications respectively, fulfills and will fulfill the needs of the Town of Ancram, NY, with respect to cable television service and complies with the standards and requirements of the New York State Public Service Commission (NYSPSC);*

*NOW, **THEREFORE**, in consideration of the forgoing clauses, which clauses are hereby made a part of this franchise agreement, and the mutual covenants and agreements herein contained, the Franchise Authority and Grantee agree as follows:*

1.0	DEFINITION OF TERMS .....	6
<b>PART I -- THE FRANCHISE .....</b>		<b>8</b>
2.0	GRANT OF FRANCHISE .....	8
3.0	NON-EXCLUSIVE NATURE OF THIS FRANCHISE .....	8
4.0	TERRITORIAL LIMITS .....	8
5.0	FRANCHISE SUBJECT TO LAW AND REGULATION.....	9
6.0	CONDITIONS ON USE OF STREETS AND PUBLIC GROUNDS.....	9
7.0	ASSIGNMENT OR TRANSFER OF FRANCHISE.....	10
8.0	DEFAULT, REVOCATION, TERMINATION. ABANDONMENT .....	11
9.0	SEVERABILITY .....	13
10.0	EFFECTIVE DATE AND TERM .....	13
<b>PART II — THE SYSTEM .....</b>		<b>13</b>
11.0	SYSTEM SPECIFICATIONS.....	13
12.0	SYSTEM PERFORMANCE STANDARDS.....	15
13.0	SYSTEM MAINTENANCE AND REPAIR .....	16
<b>PART III — THE SERVICE .....</b>		<b>16</b>
14.0	GENERAL SERVICE OBLIGATION .....	16
15.0	MUNICIPAL AND SCHOOL SERVICE .....	16
16.0	PUBLIC, EDUCATIONAL AND GOVERNMENTAL ACCESS.....	17
<b>PART IV — FRANCHISEE’S OBLIGATIONS TO THE MUNICIPALITY.....</b>		<b>17</b>
17.0	FRANCHISE FEE .....	17
18.0	FRANCHISE FE INDEMNITY AND INSURANCE .....	17
19.0	RATES AND CHARGES .....	18

<b>20.0</b>	<b>EMPLOYMENT PRACTICES</b> .....	<b>18</b>
<b>21.0</b>	<b>MUNICIPALITY’S RIGHT TO INQUIRE ABOUT AND INSPECT SYSTEM</b> .....	<b>18</b>
<b>22.0</b>	<b>MUNICIPALITY’S RIGHT TO INSPECT BOOKS AND RECORDS</b> .....	<b>19</b>
<b>23.0</b>	<b>REPORTS TO BE FILED BY FRANCHISEE WITH THE MUNICIPALITY</b> .....	<b>19</b>
<b>24.0</b>	<b>MANDATORY RECORDKEEPING</b> .....	<b>20</b>
<b>25.0</b>	<b>EMERGENCY USE</b> .....	<b>20</b>
<b>PART V -- FRANCHISEE’S OBLIGATIONS TO SUBSCRIBERS AND CUSTOMER SERVICE REQUIREMENTS</b> .....		<b>20</b>
<b>26.0</b>	<b>COMPLIANCE WITH FEDERAL AND STATE LAW AND REGULATION</b> .....	<b>20</b>
<b>27.0</b>	<b>EMPLOYEE IDENTIFICATION/TRAINING</b> .....	<b>21</b>
<b>28.0</b>	<b>MISCELLANEOUS PROVISIONS</b> .....	<b>21</b>
<b>PART VI — GUARANTEE OF FRANCHISEE’S PERFORMANCE</b> .....		<b>22</b>
<b>29.0</b>	<b>GUARANTEE OF PERFORMANCE</b> .....	<b>22</b>
<b>30.0</b>	<b>FAILURE OF FRANCHISEE TO ENFORCE FRANCHISE PROVISIONS</b> .....	<b>23</b>
<b>31.0</b>	<b>ENTIRE AGREEMENT</b> .....	<b>23</b>

## 1.0 **DEFINITION OF TERMS**

1.1 “**Area Outage**”: a total or partial loss of video, audio, data or other signals carried on the cable television system in a location affecting six or more subscribers. 1.2 “**Cable communications system**” (also herein referenced as “cable system” and “system”): the facility, which is the subject of this franchise, consisting of antennae, wire, coaxial cable, amplifiers, towers, microwave links, wave guide, optical fibers, optical transmitters and receivers, satellite receive/transmit antennae, and/or other equipment designed and constructed for the purpose of producing, receiving, amplifying, storing, processing, or distributing audio, video, digital or other forms of electronic, electromechanical, optical, or electrical signals to multiple subscribers within the Municipality.

1.3 “**Cable Service(s)**”: the transmission to subscribers of (a) video programming (meaning programming provided by, or comparable to programming provided by, a television broadcast station); and (b) other programming (meaning information that a cable operator makes available to all subscribers generally), including subscriber interaction utilizing the addressable capacity and capability of the cable system.

1.4 “**Capability**”: the ability of the Franchisee to activate a described technological or service aspect of the cable communications system without delay.

1.5 “**FCC**”: the Federal Communications Commission.

1.6 “**Franchise Fee**”: the percentage, as specified in this franchise, of Consolidated Communications’ “**Gross Revenue**” remitted by Consolidated to the Municipality in exchange for the rights granted pursuant to the franchise.

1.7 “**Franchisee**”: Consolidated Communications, and its lawful successors and assignees.

1.8 “**Grantor**” or “**Municipality**”: the Town of Ancram.

1.9 “**Gross Revenue**”: any revenue, as determined in accordance with generally accepted accounting principles, collected by the Grantee from the operation of the Cable System to provide Cable Services in the Service Area, provided, however that Gross Revenue shall not include: (1) any taxes, fees or assessments of general applicability collected by the Grantee from subscribers, including, but not limited to, the FCC user fee; (2) unrecovered bad debt; (3) credits, refunds and deposits issued or paid to subscribers; (4) any other exclusions available under applicable law.

1.10 “**Material provision**”: a term in this franchise agreement, as further described herein, deemed critical to the balance of the overall agreement between the Municipality and the Franchisee embodied in this franchise, wherein violation of said clause by the Franchisee, without redress, or the effective elimination of said clause from this franchise by an act of Congress or judicial decision may result or require, with the approval of the PSC, in the revocation or renegotiation of this franchise, in whole or in part.

1.11 “**Non-material provisions**”: all terms in this franchise agreement not deemed to constitute a “material provision”, as defined and described herein, but constituting obligations upon the Franchisee, nonetheless.

1.12 “**PSC**”: the New York State Public Service Commission or any successor State agency with similar responsibilities.

## **PART I -- THE FRANCHISE**

### **2.0 GRANT OF FRANCHISE**

2.1 The Franchisee is hereby granted, subject to the terms and conditions of the franchise, the right, privilege, and authority to operate and maintain a cable communications system within the streets, alleys, and public ways of the Municipality.

2.2 The Franchisee may erect, install, extend, repair, replace, and retain in, on, over, under, or upon, across and along the public streets, alleys, and ways within the Municipality, such wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, pedestals, attachments, and other property and equipment as are necessary and appurtenant to the operation and maintenance of the cable communications system in conformance with the Municipality's specifications.

2.3 Nothing in this franchise shall be deemed to waive the requirements of the various codes and ordinances of the Municipality regarding permits, fees to be paid, or manner of construction.

2.4 No privilege nor power of domain shall be deemed to be bestowed by this franchise other than that conferred pursuant to statutory law.

### **3.0 NON-EXCLUSIVE NATURE OF THIS FRANCHISE**

3.1 This franchise shall not be construed as any limitation upon the right of the Municipality to grant to other persons rights, privileges, or authorities similar to the rights, privileges, and authorities herein set forth, in the same or other streets, alleys, or other public ways or public places. The Municipality specifically reserves the right to grant at any time such additional franchises for this purpose as it deems appropriate.

3.2 In accordance with PSC Rule 895.3, this franchise shall not contain economic or regulatory burdens which, when taken as a whole, are greater or lesser than those burdens placed upon any other cable television franchise operating within the municipal territorial limits relating to this franchise.

### **4.0 TERRITORIAL LIMITS**

4.1 The rights and privileges awarded pursuant to this franchise shall relate to and cover the entire present territorial limits of the Municipality and any area annexed thereto during the term of this franchise.

## **5.0 FRANCHISE SUBJECT TO LAW AND REGULATION**

5.1 All terms and conditions of this franchise are subject to Federal and State law and to the rules and regulations of the FCC and the PSC.

5.2 All terms and conditions of this franchise are subject to the approval of the PSC.

5.3 All rights and privileges granted hereby are subject to the police power of the Municipality to adopt and enforce generally applicable local laws, ordinances, rules and regulations necessary to the health, safety and general welfare of the public; provided, however, that such regulations are reasonable and not materially in conflict with the privileges granted in this franchise. This Franchise is a contract and except as to those changes which are the result of the Grantor's lawful exercise of its general police power, any amendment of this Franchise must be done in accordance with PSC Rule 892.1.

5.4 Within thirty (30) days of the effective date of this franchise, the Franchisee shall provide the Municipality with a copy of the NY PSC's certificate of confirmation.

5.5 The Town Supervisor will be responsible for the continuing administration of the franchise, upon approval of the entire Town Board.

## **6.0 CONDITIONS ON USE OF STREETS AND PUBLIC GROUNDS**

6.1 Any work which requires the disturbance of any Street or which will interfere with traffic shall not be undertaken without prior notification to and approval of the Municipality.

6.2 No poles, underground conduits or other wire-holding structures shall be erected by the Franchisee without the approval of the appropriate municipal official through established permit procedures to the extent that same now or hereafter may exist, with regard to the location, height, type and any other pertinent aspect of such wire-holding facilities; however, such approval may not be unreasonably withheld.

6.3 All structures, lines and equipment erected by the Franchisee within the Municipality shall be so located as to cause minimum interference with the proper use of streets, alleys, easements and other public ways and places, and to cause minimum interference with rights or reasonable convenience of property owners who adjoin any of the said streets, alleys or other public ways and places. Existing poles, posts and other structures of the electric power company or any telephone company or any other public utility which may be available to the Franchisee shall be used to the extent practicable in order to minimize interference with travel. Where both power and telephone utilities are placed underground, the Franchisee's cable also shall be placed underground.

6.4 The Franchisee shall have the right and authority to remove, trim, cut, and keep clear trees and bushes upon and overhanging all streets, alleys, easements, sidewalks, and public places in the Municipality to the minimum extent necessary to keep same clear of poles, wires, cables, conduits and fixtures. At least five (5) business days prior to commencing any tree trimming, the Franchisee will inform in writing affected property

owners and the municipal official responsible for monitoring the Franchisee's construction activities.

6.5 In the case of any disturbance of pavement, sidewalk, driveway or other surfacing, the Franchisee shall, at its own cost and expense in the manner provided and approved by the municipal official responsible for monitoring the Franchisee's construction activities, and within 30 days, replace and restore such pavement, sidewalk, driveway or surfacing so disturbed to as good a condition as existed before said work was commenced. In the event that any municipal property is damaged or destroyed by the Franchisee, such property shall be repaired or replaced by the Franchisee within thirty (30) days and restored to as good a condition as existed before said work was commenced.

6.6 All structures and all lines, equipment and connections, in, over, under and upon streets, sidewalks, alleys and public ways and places of the Municipality, wherever situated or located, shall at all times be kept and maintained in a safe, suitable, and substantial condition, and in good order and repair.

6.7 In exercising rights pursuant hereto, the Franchisee shall not endanger or interfere with the lives of persons, nor interfere with any installations of the Municipality, any public utility serving the Municipality or any other person permitted to use the streets and public grounds, nor unnecessarily hinder or obstruct the free use of the streets and public grounds. The grant of this franchise does not establish priority for use over other present or future permit or franchise holders or the Municipality's own use of the streets and public grounds. The Municipality shall at all times control the distribution of space in, over, under or across all streets and public grounds that are occupied by the cable communications system. All rights granted for the construction and operation of the cable communications system shall be subject to the continuing right of the Municipality to require such reconstruction, relocation, change or discontinuance of the facilities and equipment used by the Franchisee in the streets, alleys, avenues, and highways of the Municipality, as shall in the opinion of the Municipality be necessary in the public interest.

6.8 Nothing in this franchise shall hinder the right of the Municipality or any governmental authority to perform or carry on, directly or indirectly, any public works or public improvements of any description. Should the cable communications system in any way interfere with the construction, maintenance, or repair of such public works or public improvements, the Franchisee shall, at its own cost and expense, protect or relocate its cable communications system, or part thereof, as reasonably directed by the Municipality.

## **7.0 ASSIGNMENT OR TRANSFER OF FRANCHISE**

7.1 In accordance with PSC Rule 895.1(s), no change in control of the Franchisee, the system, or the franchise granted herein shall occur without the prior written consent of the Municipality and prior approval of the PSC. The Franchise granted hereunder shall not be assigned, other than to an affiliated entity controlling, controlled by, or under common control with the Grantee or Grantee's ultimate parent company, without the prior consent of the Grantor, such consent not to be unreasonably withheld or delayed.

No such consent shall be required, however, for a transfer in trust, by mortgage, by other hypothecation, or by assignment of any rights, title, or interest of the Grantee in the Franchise or Cable System to secure indebtedness. Within thirty (30) days of receiving a request for transfer, the Grantor shall notify the Grantee in writing of any additional information it reasonably requires to determine the legal, financial and technical qualifications of the transferee. If the Grantor has not taken action on the Grantee's request for transfer within one hundred twenty (120) days after receiving such request, consent by the Grantor shall be deemed given.

7.2 At least sixty (60) days before a proposed change of control requiring consent is scheduled to become effective, the Franchisee shall petition in writing for the Municipality's written consent of such proposal.

7.3 In determining whether to approve said petition, the Municipality, in addition to those conditions detailed in PSC Rule 895.1(s)(2), may consider the applicant's:

- a) Technical ability;
- b) Financial ability;
- c) Good character; and
- d) Other qualifications necessary to continue to operate the cable television system consistent with the terms of the franchise.

7.4 A copy of the completed sales agreement, or a functionally equivalent instrument, between the Franchisee and proposed transferee or assignee shall be provided to the Municipality, upon request of the latter.

7.5 The Municipality may approve said petition contingent on compliance with additional standards, terms, or conditions within its regulatory purview and consistent with findings resulting from its review of the aforementioned petition.

7.6 In the event that the Municipality refuses to grant the aforementioned petition, it shall set forth specific reasons for its decision in writing by municipal resolution.

## **8.0 DEFAULT, REVOCATION, TERMINATION, ABANDONMENT**

8.1 The Municipality may revoke this franchise and all rights of the Franchisee hereunder for any of the following reasons:

- a) The Franchisee fails, after thirty (30) days prior written notice from the Municipality, to comply or to take reasonable steps to comply with a material provision or material provisions of this franchise as defined in this section. Notwithstanding the above, when the Franchisee is once again in compliance, the right to revoke this franchise shall no longer pertain with respect to the condition that precipitated the notice;
  - 1) For the purposes of this section, material provisions are deemed to be those establishing the Municipality's right to:

- i) collect from the Franchisee the Franchise Fee, currently three percent 3% of Gross Revenue as defined herein, less any amount payable by the Franchisee to the PSC, as per section 17.0;
  - ii) require that the Franchisee maintain and improve the cable communications system as per section 11.0;
  - iii) require public, educational, and government access to the cable communications system as per section 16.0;
  - iv) establish reasonable consumer protection provisions;
  - v) evaluate and approve transfers and assignments of the cable communications system as defined in section 7.0 of this franchise.
- b) The Franchisee attempts or does practice a fraud or deceit in its securing of this franchise; or
- c) The Franchisee practices fraud or displays repeated negligence in the accurate reporting of information to the Municipality, including but not limited to information pertaining to the Franchisee's calculation of the Municipality's Franchise Fee; or
- d) The Franchisee fails to pay any legally owed taxes or fees due the Municipality, unless the amount of such payment is part of a good faith dispute; in which case the payments in question will be put in escrow until the dispute is settled; or
- e) The Franchisee fails to maintain adequate insurance as specified in this franchise.

8.2 Notwithstanding the above, no revocation shall be effective unless and until the Municipality shall have adopted an ordinance or resolution setting forth the cause and reason for the revocation and the effective date thereof, which ordinance or resolution shall not be adopted until after the expiration of the written notice (re: Section 8.0 a) to the Franchisee and an opportunity for the Franchisee to be fully and fairly heard.

8.3 In no event, and notwithstanding any contrary provision in this section or elsewhere in this franchise, shall this franchise be subject to revocation or termination, or the Franchisee be liable for non-compliance with or delay in the performance of any obligation hereunder, where its failure to cure or to take reasonable steps to cure is directly attributable to reason of *force majeure*. The term "*force majeure*" as used herein shall mean the following: Acts of God; acts of public enemies; orders of any kind of the government of the United States of America or of the State of New York or any of their departments, agencies, political subdivision, or officials, or any civil or military authority, whether legal or illegal; insurrections; riots; epidemics; landslides; lightning; earthquakes; fires; hurricanes; volcanic activity; storms; floods; washouts; droughts; civil disturbances; explosions; strikes; labor work actions and unavailability of essential equipment, personnel, services and/or materials beyond the reasonable control of the Licensee; and the inability of Licensee to obtain, on customary and reasonable terms, easements, permits or licenses for the attachment or placement of the System, or parts

thereof, to any pole or underground conduit not owned by Licensee, or any other cause or event not reasonably within the control of the disabled party.

8.4 In the event of such circumstances as described in Section 8.3, the Franchisee may be excused from its obligations herein during the course of any such events or conditions, only upon application to and approval by the Municipality. Such application shall include clear evidence as to how such events have prevented the Franchisee from meeting its obligations. Upon approval by the Municipality of the Franchisee's application, the time specified for performance of the Franchisee's obligations hereunder shall extend for such reasonable time thereafter as may be determined by the Municipality; such approval may not be unreasonably withheld.

8.5 Upon revocation, the Franchisee shall remove all portions of the system from all public ways and places at the expense of the Franchisee, subject to the provisions of applicable Federal and State law.

8.6 The Franchisee shall not abandon any service or portion thereof required to be provided pursuant to the terms of this franchise without the prior written consent of the Municipality.

## **9.0 SEVERABILITY**

9.1 Should any provision of this franchise be held invalid by a court of competent jurisdiction or rendered a nullity by Federal or state legislative or regulatory action, the remaining provisions of this franchise shall remain in full force and effect.

## **10.0 EFFECTIVE DATE AND TERM**

10.1 The effective date of this franchise shall be the date this franchise is granted a certificate of confirmation from the PSC.

10.2 The term of this franchise shall be five (5) years from the effective date.

## **PART II — THE SYSTEM**

### **11.0 SYSTEM SPECIFICATIONS**

11.1 Subject to FCC and PSC regulations, policies, and standards, and subject to the cable communication systems' capability of providing the services and facilities prescribed in this franchise, the technical design of the cable communications system serving the Municipality shall be at the option of the Franchisee and as further described in this section.

11.2 The Franchisee shall maintain its systems subject to the conditions as follows:

- a) the Franchisee shall be subject to maintaining the following customer service standards:

- I. Trained company representatives will be available to answer telephone inquiries twenty four hours a day, seven days a week, three hundred and sixty five days per year.
  - II. Under normal operating conditions, telephone answer time, including wait time, shall not exceed thirty (30) seconds when the connection is made. These standards shall be met no less than ninety (90) percent of the time under normal operating conditions, measured on a quarterly basis.
  - III. The operator will not be required to measure compliance with answering standards referenced in 11.2.II unless a historical record of complaints evidences a clear failure to comply.
  - IV. Under normal operating conditions, installation, outage and service call standards will be met no less than ninety-five percent (95%) of the time measured on a quarterly basis.
    - i. Standard installations, meaning those aerial drops 175 feet or less under 125 feet from the existing distribution system and buried connections 150 feet or less from the existing distribution system, will be performed within seven (7) business days or as negotiated with the customer.
    - ii. Excluding conditions beyond the operator's control, work on service interruptions will begin no later than 24 hours after the problem occurs.
    - iii. Time blocks for installation services must not exceed a four hour window during normal business hours.
    - iv. The operator must not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment other than in the event of circumstances beyond the operator's control.
  - V. Customers will be notified in writing of any changes in rates or programming services with at least thirty (30) day notice other than an event outside of the control of the operator.
- b) the Franchisee will provide service to all areas with an average of 30-25 homes per aerial mile or greater without contribution in aid of construction by subscribers; In cases of a request for service not meeting the above criteria, the Franchisee will extend service to prospective subscribers who are willing to contribute the cost of construction in accordance with the formula  $C/LE - CA/P = SC$  where C equals the cost of construction of new plant; CA equals the average cost of construction per mile in the primary service area; P equals the minimum number of dwelling units per mile which would require the Franchisee to provide service in the primary service area; LE equals the number of dwelling units requesting service in the line extension area; SC equals subscriber contribution-in-aid of construction in the line extension area.

- c) No subscriber will be unreasonably denied service however non- incumbent providers are granted a grace period of 36 months to comply with section 11.2.b.
- d) Grantee shall have the right, but not the obligation, to extend the system into any portion of the Service Area where another operator is providing cable television service, into any annexed area that is not adjacent to the present service territory or where such extensions are technically or financially infeasible due to extraordinary circumstances.
- e) Whenever a potential subscriber located in a line extension area requests service, the Franchisee shall, within 30 days of the request, conduct a survey to determine the number of potential subscribers located in the line extension area and shall inform each of the potential subscribers of the contribution-in-aid of construction. During a three year period commencing with initiation of service to a particular line extension, a pro-rated refund shall be paid to previous subscribers of said extension as new subscribers are added to the extension. The amount of such refund, if any, shall be determined by application of the SC formula each time a new subscriber is added. The refunds shall be paid annually to subscribers, or former subscribers entitled to receive them.
- f) Cable Service shall be provided to any subscriber who demands service within seven (7) business days of the request for service and who is located within ~~one hundred twenty five (125) feet~~ of aerial feeder cable or 150 feet of underground feeder service, and that the charge for the installation for any subscriber so situated will not be in excess of the standard installation charge.

11.3 The Franchisee will comply with all applicable federal & state regulations regarding the Emergency Alert System.

11.4 The Cable System shall be designed, constructed and operated so as to meet those technical standards adopted by the FCC relating to Cable Systems contained in part 76 of the FCC's rules and regulations as may from time to time, be amended.

11.5 The Company will comply with Part 895.5 of the PSC Rules.

## **12.0 SYSTEM PERFORMANCE STANDARDS**

12.1 All signals carried by the cable communications system shall be transmitted with a degree of technical quality not less than that prescribed by rules of the federal and state regulatory agencies having jurisdiction.

12.2 Operation of the cable communications system shall be such that no interference will be caused to broadcast and satellite television and radio reception, telephone communication, amateur radio communication, aircraft and emergency communications, or other similar installation or communication within the franchise area.

### **13.0 SYSTEM MAINTENANCE AND REPAIR**

13.1 The Franchisee shall establish and adhere to maintenance policies which guarantee delivery of service to subscribers at or above the performance standards set forth herein.

13.2 When interruption of service is necessary for the purpose of making repairs, adjustments, or installations, the Franchisee shall do so at such time and in such manner as will cause the least possible inconvenience to subscribers. Unless such interruption is unforeseen or immediately necessary, the Franchisee shall give reasonable notice thereof to subscribers.

13.3 The company shall have a toll-free telephone so that requests for repairs or adjustments can be received at any time, during normal business hours.

13.4 The response of the Franchisee to such requests shall be in accordance with Federal and State law and regulation at a minimum and, at all times, commensurate with the Franchisee's responsibility to maintain service to each subscriber with the degree of quality specified herein.

## **PART III — THE SERVICE**

### **14.0 GENERAL SERVICE OBLIGATION**

14.1 The Franchisee shall not unlawfully discriminate against any such person as to the availability, maintenance, and pricing of such Cable Service, nor will access to Cable Service be denied to any group of potential residential subscribers because of the income of the residents of the local area in which they reside.

### **15.0 MUNICIPAL AND SCHOOL SERVICE**

15.1 The Franchisee shall provide service as agreed between the Franchisee and the Municipality, without installation or monthly charge, to a single receiver location in all municipal and public school buildings within the municipality.

15.2 The Cable Service provided pursuant to this Section shall not be used for commercial purposes and such outlets shall not be located in areas open to the public. The Grantor shall take reasonable precautions to prevent any use of the Grantee's Cable System that results in the inappropriate use thereof or any loss or damage to the Cable System. The Grantor shall hold the Grantee harmless for any and all liability or claims arising out of the provision and use of the Public, Educational and Government Access channels, provided pursuant to Section 16.0 below and Cable Service required by subsection 15.1 above. The Grantee shall not be required to provide any outlet to any such building where a standard drop of more than two hundred fifty (250) feet is required, unless the Grantor of building owner/occupant agrees to pay the incremental cost of any necessary extension or installation.

**16.0 PUBLIC, EDUCATIONAL AND GOVERNMENTAL ACCESS**

16.1 The Company will comply with Part 895.4 of the PSC Rules.

**PART IV — FRANCHISEE’S OBLIGATIONS TO THE MUNICIPALITY**

**17.0 FRANCHISE FEE**

17.1 Beginning with the effective date of this franchise, the Franchisee shall pay to the Municipality during the term of this franchise a Franchise Fee equal to three percent (3%) of the Franchisee’s Gross Revenue for the preceding calendar year. Such payment shall be made on an annual basis for the periods January 1 through December 31. Each such payment shall be due no later than April 1 of the following year for the calendar year being measured.

17.2 The Franchisee may apply Franchise Fees as credit against special franchise assessments as permitted by section 626 of the Real Property Tax Law of the State of New York.

17.3 In the event that the Franchise Fees herein required are not tendered on or before the dates fixed in Section 17.1 above, interest due on such fee shall accrue from the date due at the rate of one percent (1%) above the annual Prime Rate.

**18.0 INDEMNITY AND INSURANCE**

18.1

A. The Grantee shall maintain throughout the term of the Franchise insurance in amounts at least as follows:

Workers' Compensation	Statutory Limits
Commercial General Liability	\$1,000,000 per occurrence, Combined Single Liability (C.S.L.) \$2,000,000 General Aggregate
Auto Liability including coverage on all owned, non-owned hired autos Umbrella Liability	\$1,000,000 per occurrence C.S.L.
Umbrella Liability	\$2,000,000 per occurrence C.S.L.

B. The Grantor shall be added as an additional insured to the above Commercial General Liability Auto Liability and Umbrella Liability insurance coverage.

18.2 The Franchisee shall indemnify and save the Municipality harmless from any and all losses sustained by the Municipality by reason of any suit, judgment, execution, claim

or demand whatsoever, including expenses, disbursements and reasonable attorney's fees, resulting from acts or omissions on the part of Franchisee in the construction erection, operation, maintenance or repair of its cable communications system within the Municipality pursuant to the exercise by Franchisee of the franchise rights granted herein, and for this purpose, Franchisee shall carry property damages and public liability insurance written by an insurance company licensed to do business in the State of New York in the amounts specified herein. Notwithstanding the foregoing, the Franchisee shall not be obligated to indemnify the Municipality for any damages, liability or claims resulting from the willful misconduct or negligence of the Municipality or for the Municipality's use of the Cable System, including any PEG channels.

Indemnification under this provision shall be contingent upon the Municipality giving to a Franchisee such reasonable notice as not to prejudice the Franchisee's ability to defend the Municipality.

18.3 All such Franchisee insurance policies and certificates of insurance shall stipulate that the coverages afforded under the policies will not be cancelled until at least thirty (30) days prior written notice has been given to the Municipality.

18.4 Not later than sixty (60) days after the effective date of this franchise, the Franchisee shall furnish to the Municipality certificates of insurance.

## **19.0 RATES AND CHARGES**

19.0 Rates and charges imposed by the Franchisee for cable television service shall be subject to the regulations of the F.C.C.

19.1 The Franchisee shall comply with all notice requirements contained in Federal and State law and regulations pertaining to rates and charges for cable television service.

19.2 The Franchisee shall not unfairly discriminate against individuals or classes of individuals in the establishment and application of its rates and charges for service.

## **20.0 EMPLOYMENT PRACTICES**

20.1 The Franchisee will not refuse to hire or employ, nor bar or discharge from employment, nor discriminate against any person in compensation or in terms, conditions or privileges of employment because of age, race, creed, color, national origin, or sex.

## **21.0 MUNICIPALITY'S RIGHT TO INQUIRE ABOUT AND INSPECT SYSTEM**

21.1 The Municipality, at any time, may make reasonable inquiries related to its regulatory responsibilities, concerning the management and operation of the cable communication system by the Franchisee. The Franchisee shall respond to such inquiries forthrightly and within two weeks.

21.2 Where repeated subscriber complaints causes the Municipality to question the reliability or technical quality of Cable Service, the Municipality shall have the right and

authority to require the Franchisee to, test, analyze, and report on the performance of the cable communications system. The Franchisee shall cooperate fully with the Municipality in performing such testing.

21.3 At all reasonable times and for the purpose of enforcement of this franchise, the Franchisee shall permit examination by any duly authorized representative of the Municipality, of the local cable communication system facilities, together with any appurtenant property of the Franchisee situated within the Municipality.

21.4 The Franchisee shall provide the Municipality with current Service Area maps promptly upon request, including “as built” maps showing both fiber and copper wire installations and capabilities within the Service Area.

## **22.0 MUNICIPALITY’S RIGHT TO INSPECT BOOKS AND RECORDS**

22.1. Grantee shall permit any duly authorized representative of the Grantor, upon receipt of advance written notice to examine during normal business hours and on a non-disruptive basis any and all records as is reasonably necessary to ensure Grantee’s compliance with the Franchise. Such notice shall specifically reference the subsection of the Franchise that is under review so that the Grantee may organize the necessary books and records for easy access by the Grantor. The Grantee shall not be required to maintain any books and records for Franchise compliance purposes longer than three (3) years, except for service complaints, which shall be kept for one (1) year as specified above. The Grantee shall not be required to provide Subscriber information in violation of Section 631 of the Cable Act. The Grantor agrees to treat as confidential any books; records or maps that constitute proprietary or confidential information to the extent Grantee make the Grantor aware of such confidentiality and to the extent permitted by law. If the Grantor believes it must release any such confidential books or records in the course of enforcing this Franchise, or for any other reason, it shall advise Grantee in advance so that Grantee may take appropriate steps to protect its interests. Until otherwise ordered by a court or agency of competent jurisdiction, the Grantor agrees that, to the extent permitted by state and federal law, it shall deny access to any of Grantee’s books and records marked confidential, as set forth above, to any Person.

## **23.0 REPORTS TO BE FILED BY FRANCHISEE WITH THE MUNICIPALITY**

23.1 Upon written request of the Municipality, the Franchisee shall file with the Municipality a copy of any technical, operational, or financial report the Franchisee submits to the PSC, the FCC, or other governmental entities that concern, directly or indirectly, the Franchisee’s operation of the cable communications system in the Municipality.

23.2 The Franchisee, upon written request from the Municipality, shall make available for viewing by the Municipality such additional information and records with respect to the operation, affairs, transactions or property of the cable communications system and the service provided to the Municipality under this franchise, as may be reasonably

necessary and appropriate to the performance of any of the rights, functions or duties of the Municipality in connection with this franchise as determined by the Municipality.

23.3 Any valid reporting requirements contained in this franchise may be satisfied with systemwide statistics, except for reporting requirements related to franchise fees and customer complaints.

23.4 Franchisee shall provide the Municipality with regular updates showing changes to Service Area maps and planned new construction.

#### **24.0 MANDATORY RECORDKEEPING**

24.1 The Franchisee shall comply with all record keeping requirements established by Federal and State law and regulation.

24.2 The Franchise shall maintain a full and complete set of plans, records and “as built” maps showing the exact location of all cable installed or in use in the territorial limits of the Municipality. In accordance with PSC Rule 896.6 (a), the Franchisee shall maintain an up-to-date map or other technical records showing the physical location of all cable routes, service areas, receive sites and other interconnection points. The scale of such maps and detail of other technical information shall be such as to permit the determination of franchise areas and subscribers served.

24.3 All records, logs, and maps maintained pursuant to this franchise shall be subject to inspection by the Municipality or its designee during the Franchisee’s regular business hours subject to Section 22.1 herein.

#### **25.0 EMERGENCY USE**

25.1 Grantee shall comply with all federal and state Emergency Alert System (“EAS”), requirements.

### **PART V -- FRANCHISEE’S OBLIGATIONS TO SUBSCRIBERS AND CUSTOMER SERVICE REQUIREMENTS**

#### **26.0 COMPLIANCE WITH FEDERAL AND STATE LAW AND REGULATION**

26.1 The Franchisee shall comply with all Federal and State laws and regulations, as well as with all industry codes of good practice, that regulate the Franchisee’s customer service responsibilities. In the event of conflicting provisions, the Franchise shall comply with the provision establishing a stricter standard. The franchisee will comply with the customer service and consumer protection standards set forth in PSC Rules Parts 890 and 896.

**27.0 EMPLOYEE IDENTIFICATION/TRAINING**

27.1 Each employee of the Franchisee, including employees of contractors and subcontractors employed by the Franchisee, shall have prominent picture identification that clearly identifies the employee as a representative of the Franchisee. All vehicles of the Franchisee, including those of contractors and subcontractors employed by the Franchisee, shall be clearly and consistently identified with the Franchisee's logo or name.

**28.0 MISCELLANEOUS PROVISIONS**

28.1 The Franchisee shall ensure that the subscriber's premises are restored to their original condition if damaged by the Franchisee's employees or agents in any respect in connection with the installation, repair, or disconnection of Cable Service. The Franchisee is liable for breaches of customer service standards and all other provisions of this franchise by its contractors, subcontractors or agents.

28.2 a) Every notice and/or request to be served upon the Town/Franchising Authority shall be delivered by hand or sent by Federal Express or other express receipted delivery service or certified mail (postage prepaid) to the following address:

Town of Ancram,  
Town Hall  
1416 County Route 7  
Ancram, New York 12502  
ATTN: Town Supervisor,

or such other address as the Franchising Authority may specify in writing to the Licensee.

Every notice served upon the Franchisee shall be delivered by hand or sent by Federal Express or other express receipted delivery service or certified mail (postage prepaid) to the following address:

Attn: VP, Regulatory / Governmental Relations,  
Consolidated Communications,  
121 S. 17<sup>th</sup> Street  
Mattoon, IL 61938, and

Attn: Legal Department,  
Consolidated Communications  
350 S. Loop 336 W  
Conroe, TX 77304

or such other address as the Franchisee may specify in writing to the Grantor. The delivery shall be equivalent to direct personal notice, direction or order, and shall be deemed to have been given at the time of receipt of such notice.

b) All required notices shall be in writing.

c) Issuing Authority shall provide written notice within ten (10) days of Issuing Authority's receipt from any other Person(s) of an application or request for a franchise(s), license(s), consent(s), certificate(s), authorization(s), or exemption(s) to provide Cable Services, video services, or other television services utilizing any system or technology requiring use of the public rights of way.

## **PART VI — GUARANTEE OF FRANCHISEE'S PERFORMANCE**

### **29.0 GUARANTEE OF PERFORMANCE**

29.1 Not later than thirty (30) days after the effective date of this franchise, the Franchisee shall obtain and maintain during the entire term of this franchise at its sole cost and expense, a performance bond to be posted in the amount ten thousand dollars (\$10,000), in a form satisfactory to the Municipality to guarantee the faithful performance by the Franchisee of its obligations as provided in this franchise.

29.2 The performance bond shall be subject to but not be limited to the following conditions:

a) The total amount of the bond shall be forfeited in favor of the Municipality in the event, after thirty days written notice to the franchisee with opportunity for the latter to cure or challenge:

(i) The franchisee abandons service to any portion of the Municipality at any time during the term of the franchisee;

(ii) The franchisee assigns the franchise without the express written consent of the Municipality;

(iii) The franchisee fails to comply with sections 20.0, 18.0, and 11.0 pertaining to non-discrimination, insurance, and the cable system; or the franchise is revoked pursuant to section 8.0; provided, that the bond may not be forfeited if the insurance required by section 18.0 is in effect but the insurance company has failed to furnish the evidence required under that section.

b) Not less than thirty days prior written notice to the Municipality shall be provided of the franchisee's intention to cancel, materially change, or not to renew the initial provisions of the bond.

29.3 Upon written application by the franchisee, the Municipality may at its sole option, permit the amount of the bond to be reduced or the Municipality may waive the requirements for a performance bond altogether subject to the conditions set forth below:

a) No reduction or waiver shall occur prior to one year following the commencement of this franchise agreement.

b) Reductions granted or denied upon application by the franchisee shall be without prejudice to the franchisee's subsequent applications; however, no application shall be made within one year of any prior application.

29.4 The rights reserved to the Municipality with respect to use of the performance bond are in addition to all other rights of the Municipality whether reserved by this franchise or authorized by law, and no action, proceeding or exercise of a right with respect to such fund shall affect any other rights the Municipality may have.

**30.0 EFFECT OF MUNICIPALITY'S FAILURE TO ENFORCE FRANCHISE PROVISIONS**

30.1 The Franchisee shall comply with any and all provisions of this franchise and applicable state and federal law and regulation. Once a breach of a provision or provisions is identified by the Municipality and the Franchisee is finally adjudged to have breached a provision or provisions as provided in this franchise, the penalty or revocation provisions of this franchise shall pertain as applicable.

30.2 Any fines or other claim arising out of any actual breach of this franchise shall be effective from the date such breach is found to have commenced. The Franchisee's responsibility to cure any such breach or remit any such fines or claims shall not be diminished by the failure of the Municipality to enforce any provision of this franchise and the Franchisee hereby agrees to waive any statute of limitations that may be applicable to any such breach during the term of this franchise.

**32.0 ENTIRE AGREEMENT**

32.1 This Franchise sets forth the entire agreement between the parties respecting the subject matter hereof. All agreements, covenants, representations and warranties, express and implied, oral and written, of the parties with regard to the subject matter hereof are contained herein. No other agreements, covenants, representations or warranties, express or implied, oral or written, have been made by any party to another with respect to the matter of this Franchise. All prior and contemporaneous conversations, negotiations, possible and alleged agreements, representations, covenants and warranties with respect to the subject matter hereof are waived, merged herein and therein and superseded hereby and thereby.

**TOWN OF ANCRAM**

\_\_\_\_\_ Date: \_\_\_\_\_  
Art Bassin, Town Supervisor

**NEW YORK PUBLIC SERVICE COMMISSION**

\_\_\_\_\_ Date: \_\_\_\_\_  
BY:

**BERKSHIRE CABLE CORP. L/K/A  
CONSOLIDATED COMMUNICATIONS**

\_\_\_\_\_ Date: \_\_\_\_\_