

**ORDINANCE NO.**

**AN ORDINANCE GRANTING A NON-EXCLUSIVE FRANCHISE TO HOTWIRE INFRASTRUCTURE GROUP LLC, ITS AFFILIATES, SUCCESSORS AND ASSIGNS, TO CONSTRUCT, OPERATE AND MAINTAIN A SYSTEM NETWORK FOR THE PURPOSE OF TRANSMISSION OF CABLE AND INTERNET SERVICES WITHIN ALL INCORPORATED PORTIONS AND LOCATIONS OF THE CITY OF FOLEY, ALABAMA AND TO USE AND OCCUPY THE STREETS, ALLEYS AND OTHER PUBLIC PLACES OF CITY FOR SUCH PURPOSES.**

**PREAMBLE**

Hotwire Infrastructure Group LLC, a limited liability company duly organized and validly existing under the laws of the State of Delaware (herein "Grantee"), requested a broadband franchise. The City has reviewed Grantee's request and has determined to approve the request by adoption of this Ordinance (herein "Franchise").

Foley, Alabama (herein "Franchising Authority") hereby acknowledges that the Grantee has substantially complied with applicable law, and that the financial, legal, and technical ability of the Grantee is reasonably sufficient to provide services, facilities, and equipment necessary to meet the future needs of the community, and with the terms of this Franchise and having afforded the public adequate notice and opportunity for comment, desires to grant this Franchise to the Grantee for the construction, operation, and maintenance of a System on the terms set forth herein.

**SECTION 1**  
**DEFINITION OF TERMS**

**1.1 Terms.** For the purpose of this Franchise, the following terms, phrases, words, and abbreviations shall have the meanings ascribed to them below. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number:

A. "Affiliate" when used in relation to any person, means another person who owns or controls, is owned or controlled by, or is under common ownership or control with, such person.

B. "Broadband services" means the provision of connectivity to a high-speed, high-capacity transmission medium or to a technology supporting, in the provider-to-consumer (downstream) direction, a speed, in technical terms ("bandwidth"), with minimum download speeds of 25 megabits per second and minimum upload speeds of 25 megabits per second for either of the following:

- 1) To provide access to the Internet;
- 2) To provide computer processing, information sharing, information storage, information content, or protocol conversion, including any service application or information service over the electric delivery system of an electric provider, and includes any advanced communications capabilities that enable users to originate, send, and receive high-quality voice, data, graphics, video programming, and video communications using any technology including a broadband

system.

3) To provide interconnected voice over Internet protocol (VoIP) service.

C. "Broadband system" means Grantee's Facilities, consisting of a set of closed transmission fiber optic paths and any of the following materials: wires, cables (including fiber optic and copper cables, whether such cables are dark or lit, and whether such cables are in use or dormant), conduits, antennas, equipment, and associated signal generation, reception, and control equipment or other communication equipment fixtures (switching multiplexers, poles, routers, switches, servers, appurtenances, facilities, and ancillary or auxiliary equipment); that may be used to facilitate, directly or indirectly, the provision or transmission of broadband services / Services to Subscribers.

D. "Basic Cable" is the lowest priced tier of Cable Service that includes the retransmission of local broadcast television signals.

E. "Cable Act" means Title VI of the Communications Act of 1934, as amended.

F. "Cable Services" shall mean (1) the one-way transmission to Subscribers of (a) video programming, or (b) other programming service, and (2) Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

G. "Cable System" shall mean the Grantee's facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes video programming and which is provided to multiple Subscribers within the Service Area.

H. "Facilities" means all fiber optic and other cable, conduit, poles, wires, telecommunications, amplifiers, electronics, transmissions and reception equipment, pedestals, towers, dishes, supporting hardware, and related equipment and fixtures necessary and desirable to construct and maintain the System and to provide Services under this Agreement.

I. "FCC" means Federal Communications Commission, or successor governmental entity thereto.

J. "Franchise" means this Ordinance and the rights, obligations, and privileges granted to Grantee by it.

K. "Franchising Authority" means the City of Foley, Alabama, or the lawful successor, transferee, or assignee thereof.

L. "Grantee" means Hotwire Infrastructure Group LLC, a limited liability company duly organized and validly existing under the laws of the State of Delaware, or the lawful successor, transferee, or assignee thereof.

M. "Gross Revenue" means any and all revenue in whatever form, from any source received by the Grantee or an Affiliate of Grantee that would otherwise be subject to the payment of franchise fees pursuant to the provisions of 47 U.S.C. 542 derived from the operation of the System to provide Services, within the Service Area.

Gross Revenues does not include any revenue which cannot be collected by the Grantee and are identified as bad debt; provided, that if revenue previously representing bad debt is collected, this revenue shall be included in Gross Revenues for the collection period.

N. "Normal Business Hours" means those hours during which most similar businesses in the community are open to serve customers. In all cases, "normal business hours" must include some evening hours at least one (1) night per week and/or some weekend hours.

O. "Normal Operating Conditions" Those service conditions which are within the control of Grantee. Those conditions which are not within the control of Grantee, include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Those conditions which are within the control of Grantee include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or rebuild of the System.

P. "Person" means an individual, partnership, association, joint stock company, trust, corporation, or governmental entity.

O. "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 easements, 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 Franchising Authority in the Service Area which shall entitle the Franchising Authority and the Grantee to the use thereof for the purpose of installing, operating, repairing, and maintaining the System. Public Way shall also mean any easement now or hereafter held by the Franchising Authority within the Service Area for the purpose of public travel, or for utility or public service use dedicated for compatible uses, and shall include other easements or rights-of-way as shall within their proper use and meaning entitle the Franchising Authority and the Grantee to the use thereof for the purposes of installing and operating the Grantee's System over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments, and other property as may be ordinarily necessary and pertinent to the System

P. "Services" means cable and non-cable services offered over the Facilities, such as Broadband services or VoIP voice communications

Q. "Service Area" means areas within the present boundaries of the Franchising Authority that do not receive terrestrial cable service, subject to Section 4 hereof and shall include any additions thereto by annexation or other legal means.

R. "Service Interruption" means the loss of picture or sound on one (1) or more cable channels.

S. "Standard Installation" is defined as one hundred twenty-five (125) feet from the nearest tap to the Subscriber's terminal.

T. "Subscriber" means a Person who lawfully receives Services from the System with the Grantee's express permission.

U. “System” means Grantee’s “Cable System” and “Broadband System.”

## **SECTION 2** **GRANT OF FRANCHISE**

**2.1 Grant.** The Franchising Authority hereby grants to the Grantee a nonexclusive Franchise which authorizes the Grantee to construct and operate a System in, along, among, upon, across, above, over, under, or in any manner connected with Public Ways within the Service Area, and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain, or retain in, on, over, under, upon, across, or along any Public Way such facilities and equipment as may be necessary or appurtenant to the System to provide Broadband and/or Cable service, subject to compliance with the terms of this Franchise and all applicable state and federal laws and other ordinances of the Franchising Authority as set forth in Sections 2.2 and 2.7 below. Grantee may elect, e.g., for operational efficiencies or financing, to hold certain assets or conduct certain operations through one or more Affiliates, but in all events Grantee shall remain responsible for compliance with the terms and conditions of this Franchise.

**2.2 Compliance and Conflict of Laws.** The Grantee agrees to comply with the terms of generally applicable ordinances of the Franchising Authority and applicable state and federal law and regulations. In the event of a conflict between any ordinance of Franchising Authority and this Franchise, the Franchise shall control, provided however that the Grantee agrees that it is subject to the lawful exercise of the police power of the Franchising Authority and any generally applicable ordinances adopted by the City in compliance with such authority.

**2.3 Franchise Amendable.** The Franchise granted herein may be amended from time to time to allow the Grantee to innovate and implement new services and developments, provided, however, that no such amendments affecting the conditions of the Franchise shall be implemented without the mutual written consent of the Franchising Authority and the Grantee.

**2.4 Non-Discriminatory Service.** Construction and operation of the System will be performed by the Grantee in such a manner as to ensure that no individual or group of potential residential Subscribers in Grantee’s Service Area is denied access to services because of the income level of the residents of the local area in which such group resides.

**2.5 No Right of Property.** Anything contained herein to the contrary notwithstanding, the award of this Franchise shall not impart to the Grantee any right of ownership of Public Ways or Franchising Authority owned property.

**2.6 Franchise Binding.** The Franchise granted hereunder shall be binding upon the Grantee, its successors, lessees or assignees and the Franchising Authority. This Franchise shall inure to the benefit of any entity which is controlled by, or under common control with, the Grantee.

**2.7 Compliance with Laws, Rules and Regulations.** Grantee, at its expense, shall comply with all federal and state laws, orders and regulations applicable to the provision of Services. Further, Grantee shall comply with any direction of any public officer or officers of the Franchising Authority who shall legally impose any regulations, orders or duties upon the Grantee pursuant to this Franchise.

**2.8 Term.** The Franchise granted hereunder shall be for a term of ten (10) years commencing on the effective date of the Franchise as set forth in Section 10.1, unless otherwise lawfully terminated in accordance with the terms of this Franchise.

**SECTION 3**  
**CONDITIONS FOR USE OF PUBLIC WAY**

**3.1 Right-of-Way Construction.** Grantee shall comply with all applicable codes and ordinances of the Franchising Authority with respect to construction within a Public Way, and shall obtain all necessary permits and licenses required by federal, state and Franchising Authority law, ordinances and rules as required of other like users of the Public Ways, before commencing construction in the Franchising Authority.

**3.2 Compliance with Laws Applicable to Construction of a System.** Grantee shall comply with Franchising Authority ordinances relating to construction in a Public Way, including public works standards and various bond requirements, insurance requirements, and to all building and zoning ordinances currently or hereafter in force in the Franchising Authority. Also, the construction, installation, and maintenance of the System shall be completed by Grantee in a manner that is consistent with the laws, ordinances and construction standards of the State of Alabama, the Occupational Safety and Health Administration, the National Electrical Safety Code, and the FCC to the extent applicable, as well as all other applicable laws, rules, regulations and ordinances, federal, state and local, as the same may be modified or amended from time to time, pursuant to the Franchising Authority's exercise of its police powers.

**3.3 Description of System.** Grantee will maintain a detailed description of its System in accordance with the requirements of Section 3.14 hereof.

**3.4 Minimum Interference.** Grantee shall maintain its System so as to minimize any adverse impact on public improvements or facilities of others in a Public Way and which will not unnecessarily interfere with the usual and customary uses in the Public Way. Except as may otherwise be provided, Grantee shall reasonably notify all businesses and residents that may be affected by the proposed work prior to commencement of such work. The notice may be given by mail, bill messages, channel crawls, media alerts or local signage. All construction and maintenance by Grantee or its subcontractors shall be performed in accordance with industry standards and the requirements of this Franchise.

**3.5 Erection of Poles Prohibited.**

A. Grantee shall not erect, for any reason, any pole on or along any Public Way or in an existing aerial utility System without the prior approval of the Franchising Authority.

B. Grantee shall not erect, for any reason, any above ground facilities without prior approval of the Franchising Authority. Grantee shall minimize the number of pedestals, vaults, boxes, and other structures placed above-ground in any location to avoid creating a public safety problem and shall be of a size, design and appearance conforming to industry standards.

**3.6 Reservation of Public Way Rights.** Nothing in this Franchise shall be construed to prevent the Franchising Authority from constructing sewers, grading, paving, repairing or altering any Public Way, or laying down, repairing or removing water mains or constructing or



establishing any other public work within a Public Way. All such work shall be done by Franchising Authority in such reasonable manner as not to obstruct, injure or prevent the free use and operation of Grantee's facilities. If the facilities of Grantee shall interfere with the construction or repair of any Public Way or public improvement by the Franchising Authority, then all such facilities of the Grantee may be removed or replaced in such manner as shall be directed by the Franchising Authority. Such removal or replacement shall be at the expense of Grantee. The Grantee shall at all times have the right to abandon its property. However, any such abandonment shall be in accordance with this Franchise, and applicable state and federal law.

**3.7 Clearing Poles and Cables.** Grantee shall comply with all applicable Franchising Authority and State Codes with respect to the removal, trimming and cutting of trees and keeping its cables, underground conduits and related equipment clear of trees in and along the Public Ways.

**3.8 Temporary Disconnections.** Grantee shall be required, at its expense, to protect, support, temporarily disconnect, relocate in, or remove from, Public Ways, lands or places, any property of Grantee whenever required by Franchising Authority upon reasonable written notice by reason of traffic conditions, public safety, street construction or any other reasonable public purpose related to public health, safety and welfare.

**3.9 Moving Facilities.** Grantee, on the request of the Franchising Authority, or any Person holding a lawful permit issued by the Franchising Authority, or any issued by an appropriate State agency, shall temporarily move its wires, cables, poles or other System facilities to permit the moving of large objects, vehicles, buildings or other structures. The expense of such temporary moves shall be paid to Grantee by the Person requesting the same and Grantee shall have the authority to require such payment in advance. Grantee shall be given not less than ten (10) business days advance notice to arrange for such temporary moves.

**3.10 Underground Compliance.** Grantee shall cooperate with and participate fully in the State of Alabama underground facility locating program to ensure that damage and/or interference with other occupants' underground facilities is minimized.

**3.11 Property Damage and Repair.**

A. Grantee shall protect the Public Way and all public and private property from damage caused by the System. If damage occurs, Grantee shall promptly notify the property owner within twenty-four (24) hours in writing. Whenever the Grantee disturbs or damages any Public Way, other public property or any private property, the Grantee shall promptly restore the property to at least its prior condition, normal wear and tear excepted, at its own expense. Unless otherwise agreed by the property owner, restoration of damaged private property shall be completed within seven (7) days after the date of damage and restoration of public property shall be completed within thirty (30) days after the date of damage.

B. When Grantee excavates the surface of any street, Grantee shall be responsible for restoration of such excavation in accordance with all Franchising Authority ordinances, rules, regulations and standards. Throughout the Term of its Franchise, Grantee's System and related facilities including above-ground pedestals, vaults, boxes, generators, power supplies or structures of any kind, shall be maintained in proper order and repair. Grantee shall annually, or

upon request of the Franchising Authority promptly straighten pedestals and other structures and cover boxes as required for safety and the appearance of the System and streets and curbs.

C. If Grantee enters private property for the purposes of construction where there is no dedicated public easement, Grantee shall first secure the private property owner's written consent.

### **3.12 Permit Requirements.**

A. This Franchise establishes the general rules and scope of authority for Grantee to maintain and operate its System within the Public Way of the Franchising Authority. Grantee shall designate a responsible contact person including a telephone number available seven (7) days a week, twenty-four (24) hours a day, with whom representatives of the Franchising Authority can communicate with on all matters relating to System installation, construction, operation, and maintenance.

B. Prior to any excavation within the Public Way, Grantee shall obtain a permit, pay all applicable fees, and perform such work in accordance with applicable provisions of this Franchise, and/or other applicable ordinances or regulations with respect to excavation work, of the Franchising Authority Code and Public Way construction.

C. Grantee must be current with all Franchise requirements, including payment of required fees and charges and insurance before a permit is issued by Franchising Authority.

**3.13 System Drawings.** In accordance with the requirements in generally applicable ordinances of the Franchising Authority including those governing the Public Way use, and as required of like users by the Franchising Authority, Grantee shall keep and maintain accurate records and as-built drawings of its System constructed, reconstructed, or relocated within the Franchising Authority's Public Way. Grantee shall cooperate promptly and fully with the Franchising Authority and take all reasonable measures necessary to provide accurate and complete information regarding the nature and location of its System located within the Public Way when requested by the Franchising Authority for public improvements. Such location and identification shall be at the sole expense of Grantee without expense to the Franchising Authority, its employees, agents, or authorized contractors.

Prior to beginning any new installation, operation upgrade, repair and removal of the Broadband System, the Grantee shall provide to the Franchising Authority files showing the location of the System components involved, both before and after the proposed installation, operation upgrade, repair or removal.

The Franchising Authority reserves the right to request any additional information necessary to the maintenance or updating of the Franchising Authority's records regarding the location of the System and the Grantee agrees to provide any such information within thirty (30) days of said request.

**3.14 Grantee Responsible for Costs.** All earth, materials, sidewalks, pavings, crossings, utilities, public improvements, or improvements of any kind injured or removed by Grantee in its activities under its Franchise shall be fully repaired or replaced promptly by Grantee and as directed by the Franchising Authority as is required of like users of the Public Ways and as may be required in accordance with applicable Franchising Authority Public Works Standards and state law. Any such repair or replacement shall be at Grantee's sole expense and to the reasonable satisfaction of the Franchising Authority or owner thereof.

**3.15 Procedure for Enforcement and Administration Relating to Construction.** The Franchising Authority has the responsibility to manage and control use of the Public Way or utility easements within the Franchising Authority's jurisdictional boundaries, and has the authority to administer and enforce Public Way construction standards for Grantee's System on a non-discriminatory basis, including the authority to collect fees, review plans, and enforce the provisions of this Franchise, and may utilize the assistance of qualified independent third parties.

A. The Franchising Authority has the right to inspect all construction or installation work performed subject to the provisions of this Franchise and applicable ordinances of the Franchising Authority; and to make such tests as it shall find necessary to ensure compliance with the terms of this Franchise and applicable requirements of the Franchising Authority; provided, however, a representative of Grantee may be present for all such testing, which shall occur at time of minimum inconvenience to Subscribers (generally between the hours of midnight and 6:00 a.m.).

B. The Franchising Authority may withhold issuance of permits when Grantee is not in compliance with this Franchise or other applicable ordinances and requirements of the Franchising Authority. Other enforcement of non-compliance may be accomplished according to the procedures of this Franchise and other applicable Ordinances and laws.

C. Grantee acknowledges the Franchising Authority's police power in exercising its right to manage the public rights-of-way. Accordingly, Grantee will provide any information related to Grantee's use of the Public Way in compliance with any generally applicable ordinance.

**3.16 Work Performed by Others.**

A. Grantee shall make available to the Franchising Authority upon request the names and addresses of any Person, other than the Grantee, which performs services pursuant to this Franchise; provided however, that all provisions of this Ordinance remain the responsibility of Grantee.

B. All provisions of this Franchise shall apply to any of a Grantee's subcontractors or others performing any work or services pursuant to the provisions of this Franchise.



**SECTION 4**  
**SERVICE AREAS AND TECHNICAL STANDARDS**

**4.1 Geographical Coverage.** Grantee shall maintain its System to have the capability to pass every dwelling unit within the Service Area subject to the extension provisions in this Section. Appendix A includes a map showing the System Service Area. Upon request by the Franchising Authority, no more than once annually this map will be updated by Grantee.

**4.2 Required Extensions of the System.** Grantee will extend its service to areas outside Grantee's Service Area in accordance with the following extension formula:

Whenever the Grantee receives a request for Service from a potential Subscriber in an unserved area contiguous to Grantee's existing distribution facilities and within the jurisdictional boundaries of the Service Area where there are at least fifteen (15) residences within 1/4 mile from the portion of the Grantee's trunk or distribution cable which is to be extended, within 180 days after receipt of such request it shall extend its System to such potential Subscriber at no cost to such Subscriber other than the published Standard/non-Standard Installation fees charged to all Subscribers. Grantee shall have the right, but not the obligation, to extend the System into any area where another operator is providing Service. In no event shall Grantee be required to extend the System into any annexed area which is not contiguous to the present Service Area, any area primarily located on private property, such as a planned community or private development, without the consent of the applicable managerial authority (e.g., HOA or developer) in such area, or into any area which is financially or technically infeasible due to extraordinary circumstances, such as a runway or freeway crossing.

**4.3 Cable Service to Public Buildings.** The Grantee, upon request, shall provide without charge, a Standard Installation and one (1) outlet and free Basic Cable to those administrative buildings owned and occupied by the Franchising Authority, library(ies) fire station(s), police station(s), and K-12 public school(s) that are passed by its Cable System in the Service Area and listed on Appendix C. The Cable Service provided shall not be distributed beyond the originally installed outlet without authorization from the Grantee. The Cable Service provided shall not be used for commercial purposes, and such outlets shall not be located in areas open to the public. The Franchising Authority shall take reasonable precautions to prevent any use of the Grantee's Cable System in any manner that results in the inappropriate use thereof or any loss or damage to the Cable System. The Franchising Authority shall hold the Grantee harmless from any and all liability or claims arising out of the provision and use of Cable Service required by this Section. The Grantee shall not be required to provide an outlet to such buildings where a non-Standard Installation is required, unless the Franchising Authority or building owner/occupant agrees to pay the incremental cost of any necessary Cable System extension and/or non-Standard Installation. If additional outlets of Basic Cable are provided to such buildings, the building owner/occupant shall pay the actual cost associated therewith.

**4.4 Technical Standards.** The Grantee is responsible for ensuring that the Cable System is designed, installed and operated in a manner that fully complies with FCC rules in Subpart K of Part 76 of Chapter I of Title 47 of the Code of Federal Regulations as revised or amended from time to time. As provided in these rules, the Franchising Authority shall have, upon request, the right to obtain a copy of tests and records required in accordance with appropriate rules but has no authority, pursuant to federal law, to enforce compliance with such standards.

#### **4.5 Emergency Use.**

A. In accordance with and at the time required by the provisions of FCC Regulations Part 11, Subpart D, Section 11.51, and as other provisions which may from time to time be amended, the Grantee shall install, if it has not already done so, and maintain an Emergency Alert System (EAS) for use in transmitting Emergency Act Notifications (EAN) and Emergency Act Terminations (EAT) in local and state-wide situations as may be designated to be an emergency by the Local Primary (LP), the State Primary (SP) and/or the State Emergency Operations Center (SEOC), as those authorities are identified and defined within FCC Regulations, Section 11.18.

B. The Franchising Authority shall permit only appropriately trained and authorized persons to operate the EAS equipment and take reasonable precautions to prevent any use of the Grantee's System in any manner that results in inappropriate use, or any loss or damage to the System. Except to the extent expressly prohibited by law, the Franchising Authority agrees to hold the Grantee, its employees, officers and assigns harmless from any claims arising out of the emergency use of its facilities by the Franchising Authority, including, but not limited to, reasonable attorneys' fees and costs.

### **SECTION 5**

#### **CABLE SYSTEM DESIGN, SERVICES, AND PROGRAMMING**

##### **5.1 Cable System Design, Services, and Programming**

Grantee will maintain its Cable System to provide a minimum of two hundred (200) channels of programming options. The system will have an activated return path for delivery of digital services. The Grantee may modify the design of the System and its use of transmission technology.

In the event of any delay in obtaining permits, approvals or licenses to perform required make ready work ("permits") resulting from the failure or delay by the Franchising Authority or, any other regulatory authority, railroad, common carrier, electric utility, telecommunications carrier or local exchange carrier, to issue such permits upon a timely basis, Grantee's performance will be modified as necessary.

### **SECTION 6**

#### **REGULATION BY THE FRANCHISING AUTHORITY**

**6.1 Grantee Agrees to Franchising Authority's Rights.** The Franchising Authority reserves such rights and police powers which under applicable federal, state or Franchising Authority law or regulations, the Franchising Authority must reserve and maintain, as well as all of those rights and police powers that are specifically set forth in this Franchise. Grantee agrees to comply with any lawful action or applicable requirements of the Franchising Authority in the exercise of such rights and powers which either have been or shall be enacted or established subsequent to the granting of said Franchise.

**6.2 Franchising Authority's Transfer of Functions.** The Franchising Authority may delegate its obligations and duties under this Franchise to any elected official, officer, employee, department, agent or board of the Franchising Authority to the extent permitted by law, and the Grantee shall recognize the authority of any such delegate. The Franchising Authority shall provide the Grantee with written notices of any such delegation or transfer of functions.

**6.3 Franchising Authority's Right of Inspection.** The Franchising Authority may inspect all construction or installation work performed pursuant to the Franchise grant under this Franchise in order to ensure compliance with the terms of the Franchise grant, as well as all applicable statutes and ordinances.

**6.4 Franchise Fee.**

A. The Grantee shall pay to the Franchising Authority a franchise fee of five percent (5%) of annual Gross Revenue (as defined in Section 1.11). In accordance with the Cable Act, the twelve (12) month period applicable under the Franchise for the computation of the franchise fee shall be a calendar year. The franchise fee payment shall be due annually and payable within ninety (90) days after the close of the preceding calendar year. Each payment shall be accompanied by a brief report prepared by a representative of the Grantee showing the basis for the computation, substantially similar in form to Appendix B attached, and made part of this Franchise. Should the Grantee have the ability to do so and at the direction of the Franchising Authority, payments shall be deposited to a Franchising Authority account electronically.

B. **Limitation on Franchise Fee Actions.** The period of limitation for recovery of any franchise fee payable hereunder shall be three (3) years from the date on which payment by the Grantee is due.

C. All undisputed amounts due and owing under this Franchise and not paid by Grantee within ten (10) business days of receipt of notice from the Franchising Authority to the Grantee shall bear interest at the rate of one percent (1%) per month calculated from the date due until the date of actual payment provided, however, that if the foregoing rate is in excess of the maximum permitted by law in the State of Alabama, then such interest rate shall be adjusted downwards to the maximum rate permitted by applicable law.

D. The Franchise Fee obligation herein is a material requirement of this Franchise and is considered payment by the Grantee for use of Public Way.

**6.5 Accounting Standards.** Franchise Fee payments shall be prepared in accordance with generally accepted accounting standards as established by the Financial Accounting Standards Board.

**6.6 Auditing and Financial Records.** The Grantee shall use reasonable standards governing the nature, extent, and type of accounting system and accounting procedures for the purposes of promoting the efficient administration of the franchise fee requirement of this Franchise and which are consistent with GAAP.

The Grantee agrees that the Franchising Authority, upon thirty (30) days written notice to the Grantee, may during the term of this Franchise, but not more frequently than once each year, conduct an audit of the books, records, and accounts of the Grantee for the purpose of determining whether the Grantee has paid franchise fees in the amounts prescribed by Section 6.4 above. Such notice shall specifically reference the section of the Franchise to be reviewed, so that the Grantee may organize the necessary books and records for easy access by the Franchising Authority. The audit may be conducted by the Franchising Authority or by an independent certified public accounting firm retained by the Franchising Authority and shall be conducted at the sole expense of the Franchising Authority. The party conducting the audit shall prepare a written report containing its findings and the report shall be filed with the Franchising Authority and mailed to the Franchising Authority and Grantee. Grantee shall make available for inspection by authorized representatives of the Franchising Authority, its books, accounts and all other financial records at reasonable times and upon reasonable advance notice for the purpose of permitting exercise of the authorities conferred by this Section. The Grantee shall not be required to maintain any books or records for Franchise compliance purposes longer than three (3) years. Notwithstanding anything to the contrary set forth herein, and subject to the requirements of Alabama's Open Records Law, Grantee shall not be required to disclose information that it reasonably deems to be proprietary or confidential in nature, nor disclose books and records of any Affiliate that is not providing Cable Service in the Service Area. The Franchising Authority agrees to treat any information disclosed by the Grantee as confidential and only to disclose it to employees, representatives, and agents thereof that have a need to know, or in order to enforce the provisions hereof. The Grantee shall not be required to provide Subscriber information in violation of Section 631 of the Cable Act.

**6.7 Rates and Charges.** The Franchising Authority may regulate rates for the provision of Basic Cable and equipment as expressly permitted by federal or state law.

**6.8 Renewal of Franchise.**

A. The Franchising Authority and the Grantee agree that any proceedings undertaken by the Franchising Authority that relate to the renewal of the Grantee's Franchise shall be governed by and comply with the provisions of Section 626 of the Cable Act.

B. In addition to the procedures set forth in said Section 626(a), the Franchising Authority agrees to notify the Grantee of all of its assessments regarding the identity of future cable-related community needs and interests, as well as the past performance of the Grantee under the then current Franchise term. The Franchising Authority further agrees that such assessments shall be provided to the Grantee promptly so that the Grantee has adequate time to submit a proposal under Section 626(b) of the Cable Act and complete renewal of the Franchise prior to expiration of its term.

C. Notwithstanding anything to the contrary set forth in this Section 6.8, the Grantee and the Franchising Authority agree that at any time during the term of the then current

Franchise, while affording the public appropriate notice and opportunity to comment, the Franchising Authority and the Grantee may agree to undertake and finalize informal negotiations regarding renewal of the then current Franchise and the Franchising Authority may grant a renewal thereof.

D. The Grantee and the Franchising Authority consider the terms set forth in this Section to be consistent with the express provisions of Section 626 of the Cable Act.

**6.9 Conditions of Sale.** If a renewal or extension of the Grantee's Franchise is denied or the Franchise is lawfully terminated, and the Franchising Authority either lawfully acquires ownership of the System or by its actions lawfully effects a transfer of ownership of the System to another party, any such acquisition or transfer shall be at the price determined pursuant to the provisions set forth in Section 627 of the Cable Act.

The Grantee and the Franchising Authority agree that in the case of a final determination of a lawful revocation of the Franchise, the Grantee shall effectuate a transfer of its System to a qualified third party. Furthermore, the Grantee shall be authorized to continue to operate pursuant to the terms of its prior Franchise during this period. If the Grantee is unsuccessful in procuring a qualified transferee or assignee of its System, the Grantee and the Franchising Authority may avail themselves of any rights they may have pursuant to federal or state law. It is further agreed that the Grantee's continued operation of the System shall not be deemed to be a waiver, nor an extinguishment of, any rights of either the Franchising Authority or the Grantee.

**6.10 Transfer of Franchise.** The Grantee's right, title, or interest in the Franchise shall not be sold, transferred, assigned, or otherwise encumbered, other than to an entity controlling, controlled by, or under common control with the Grantee, without the prior consent of the Franchising Authority, such consent not to be unreasonably withheld. 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 System in order to secure indebtedness. Within thirty (30) days of receiving a request for transfer, the Franchising Authority 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 Franchising Authority has not taken action on the Grantee's request for transfer within one hundred twenty (120) days after receiving such request, consent by the Franchising Authority shall be deemed given.

## **SECTION 7**

### **CUSTOMER PRACTICES**



**7.1 No Discrimination.** The Grantee shall not, as to rates and charges, make or grant any preference or advantage to any Person, nor subject any Person to any prejudice or disadvantage. This Section shall not be construed to prohibit promotional or bulk discounts, or discounts that may be made available to seniors or the economically disadvantaged. Neither the Grantee nor any of its employees, agents, representatives, contractors, subcontractors, or consultants, nor any other Person, shall discriminate or permit discrimination between or among any Persons in the availability of Cable Services provided in connection with the System in the Service Area. It shall be the right of all Persons to receive all available services provided on the System so long as such Person's financial or other obligations to the Grantee are satisfied.

**7.2 Subscriber Privacy.** The Grantee agrees to comply with the provisions of Section 631 of the Cable Act.

**7.3 Notice to Subscriber.** Grantee shall provide written notices to those Subscribers notifying them of their privacy rights in accordance with the provisions of Section 631 of the Cable Act.

**7.4 Grantee Rules, Regulations.** The Grantee shall have authority to promulgate such rules, regulations, terms and conditions as it deems necessary in order to operate the Franchise granted under this Franchise. Copies of all rules, regulations, terms and conditions including Subscriber agreements together with any amendments, additions or deletions thereto, shall be made available to the Franchising Authority.

**7.5 Customer Service Standards.**

A. Compliance. Grantee shall comply with the following customer service standards.

B. System Office Hours and Telephone Availability.

(1) Grantee will maintain a local, toll-free, or collect call telephone access line which will be available to its Subscribers twenty-four (24) hours per day, seven (7) days per week.

(a) Trained Grantee representatives will be available to respond to customer telephone inquiries during Normal Business Hours.

(b) After Normal Business Hours, the access line may be answered by a service or an automated response system, including an answering machine. Inquiries received after Normal Business Hours must be responded to by a trained Grantee representative on the next business day.

(2) Under Normal Operating Conditions, telephone answer time by a customer representative or automated response unit, including wait time, will not exceed thirty (30) seconds when the connection is made. If the call needs to be transferred, transfer time will not exceed thirty (30) seconds.

(3) The Grantee will not be required to acquire equipment or perform surveys to measure compliance with the telephone answering standards above unless a historical record of Complaints indicates a clear failure to comply.

(4) Under Normal Operating Conditions, the customer will receive a busy signal less than 3 percent (3%) of the time.

(5) Grantee shall maintain a conveniently located customer service center, which shall include a place where Subscribers may pay their bills, pick up and return conveller boxes and comparable items and receive information on the Grantee and its services. Such service center shall be open during hours consistent with Grantee's standards for serving varying levels of customer traffic. Grantee may, upon presentation of a cost-benefit analysis, close such office should the cost of maintaining the office outweigh the benefit to the community.

C. Installations, Outages, and Service Calls. Under Normal Operating Conditions, each of the following five (5) standards will be met.

(1) Standard Installations will be performed within seven (7) business days after an order has been placed. "Standard" Installations are those that are located up to one hundred twenty-five (125) feet from the existing distribution System.

(2) Excluding conditions beyond the control of Grantee, Grantee's representatives will be available to begin working on Service Interruptions within twenty-four (24) hours of request. Grantee must begin actions to correct other service problems the next business day after notification of the service problem.

(3) The "appointment window" for Installations, service calls, and other Installation activities will be either at a specific time or, at a maximum, within a four (4) hour time block during Normal Business Hours. (The Grantee may schedule service calls and other Installation activities outside of Normal Business Hours for the express convenience of the customer.)

(4) Grantee may not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment.

(5) If Grantee's representative is running late for an appointment with a Subscriber and will not be able to keep the appointment as scheduled, the Subscriber will be contacted. The appointment will be rescheduled, as necessary, at a time which is convenient for the Subscriber.

D. Communications Between Grantee and Subscribers

(1) Notifications to Subscribers.

(a) The Grantee will provide written information on each of the following areas at the time of Installation of service, at least annually to all Subscribers, and at any time upon request:

- (i) Products and services offered;
- (ii) Prices and options for programming services and conditions of subscription to programming and other services;
- (iii) Installation and service maintenance policies;
- (iv) Instructions on how to use the Cable Service;
- (v) Channel positions programming carried on the System; and
- (vi) Billing and Complaint procedures, including the address and telephone number of the Franchising Authority.

(b) Subscribers will be notified of any changes in rates, programming services, or Channel positions as soon as possible in writing. Notice must be given to Subscribers a minimum of thirty (30) days in advance of such changes if the change is within the control of the Grantee. In addition, the Grantee will notify Subscribers thirty (30) days in advance of any significant changes in the other information required by the preceding subparagraph. Notwithstanding any other provision, Grantee shall not be required to provide prior notice of any rate change that is the result of a regulatory fee, franchise fee or any other fee, tax, assessment or charge of any kind imposed by any federal agency, state or Franchising Authority on the transaction between Grantee and the Subscriber.

(2) Billing.

(a) Bills will be clear, concise, and understandable. Bills must be fully itemized, with itemizations including, but not limited to, basic and

premium service charges and equipment charges. Bills will also clearly delineate all activity during the billing period, including optional charges, rebates, and credits.

(b) In case of a billing dispute, the Grantee must respond to a written Complaint from a Subscriber within thirty (30) days from receipt of the complaint.

(3) Refunds. Refund checks will be issued promptly, but no later than the customer's second cycle following resolution of the request.

(4) Credits. Credits for service will be issued no later than the customer's second billing cycle following the determination that a credit is warranted.

(5) Late Charges. Grantee may impose a reasonable monthly fee for any delinquent balance owed by a Subscriber.

E. Parental Control. Grantee shall fully comply with any lawful federal or state laws regarding parental control devices, including but limited to the provisions of Section 640 of the Cable Act.

F. Complaint Log. Subject to the privacy provisions of 47 U.S.C. § 521 et. seq., every Grantee shall prepare as necessary and maintain records of complaints made to them and the resolution of such complaints, including the date of such resolution. A "Complaint" is a written communication from a Subscriber related to the Grantee's Cable system or Service within the franchise area, including a billing or signal quality problem that is reasonably remediable by the Grantee, but does not include grievances regarding the content of programming or rates. For the purposes of this requirement, all complaints that result in the dispatch of a service technician shall be individually logged. Such complaint logs and summaries shall be on file for one (1) year, and copies of such complaint logs and summaries covering each calendar year shall be provided to the Franchising Authority upon request.

## SECTION

### 8

## REPORTS AND RECORDS OF GRANTEE

**8.1 Annual Reports Required.** Upon request the Grantee shall make available to the Franchising Authority the following annual reports not later than ninety (90) days after the request is made.

A. Any reports or documents which Grantee must file within a government agency and that specifically address the Grantee's obligation under this Franchise shall be provided to Franchising Authority, excepting federal and state income tax returns and forms, and such reports not required to be filed based on the federal Securities Act.

B. A copy of the consolidated report to its stockholders issued at the end of Grantee's fiscal year rendered by the Grantee's parent company for all of its operations, if such a report exists.

C. A copy of Grantee's consolidated profit and loss (income and expense) statement for all of its operations and a copy of such parent company's consolidated balance sheet for all of its operations, if such a report exists.

D. A copy of its annual reports to the FCC as well as a copy of such annual report made to any state agency which in the future may regulate such system, if such a report exists.

**SECTION**  
**9**  
**INSURANCE AND**  
**INDEMNIFICATION**

**9.1 Indemnification Against Liability.** The Grantee shall indemnify and save free and harmless, and by the acceptance of this Franchise, agrees to indemnify and save free and harmless the Franchising Authority, the Franchising Authority City Council, each member thereof, all officers, agents, employees and members of boards and commissions of the Franchising Authority from and against any and all liability by reason of or arising out of any and all claims, demands, causes of action or proceedings which may be asserted, prosecuted or established against them or any of them, for damage to persons or property of whatever nature arising out of the use by the Grantee of the Public Way, or of any other operations or activities of the Grantee pursuant to this Franchise and the operation of its System, whether such damage shall be caused by negligence or otherwise (including but not limited to any liability for damages for defamation and damages by reason of or arising out of any failure by the Grantee to secure consents from the owners, authorized distributors or licensees of programs to be delivered by the Grantee's Cable System or vehicle operations) and irrespective of the amount of the liability insurance policies required hereunder, but excepting there from liability arising out of any claim, demand, cause of action or proceeding resulting from the negligence or willful misconduct of the Franchising Authority, the Franchising Authority City Council, each member thereof, or officers, agents, employees or members of boards and commissions of the Franchising Authority, or resulting from the negligence or willful misconduct of persons distributing programs via the access channel over which persons and programming the Grantee cannot legally and does not exercise control.

**9.2 Duty to Defend.** The Grantee shall defend, and by the acceptance of this Franchise, agrees to defend at its own cost and expense the Franchising Authority, the Franchising Authority City Council each member thereof, all officers, agents, employees and members of board and commissions of the Franchising Authority against any and all claims, demands, actions or proceedings brought against them or any of them, in respect to the matters embraced by the indemnity set forth above in paragraph 9.1.



**9.3 No Liability Against Franchising Authority.** The Grantee shall have no recourse whatsoever against the Franchising Authority, the Franchising Authority City Council, any member thereof, or any officer, agent, employee or member of a board or commission of the Franchising Authority for any loss, cost, expense or damage occasioned by any requirement or duty imposed on Grantee by this Franchise or because of the enforcement of any such requirement or duty.

**9.4 General Comprehensive Liability Insurance Policy.** Concurrently with the filing of the acceptance of award of this Franchise, the Grantee shall furnish to the Franchising Authority a certificate of insurance evidencing that at all times during the existence of this Franchise Grantee shall maintain in full force and effect, at its own cost and expense, a Commercial General Liability Insurance Policy. Said policy shall include, but shall not be limited to, personal injury, broad form property damage, blanket contractual, completed operations, underground hazard, explosion and collapse hazard, independent contractors, vaults and products liability insurance. Said policy shall insure the Grantee, the Franchising Authority, the Franchising Authority City Council, each member thereof, all officers, agents, employees and members of board or commissions of the Franchising Authority against liability for all matters embraced in paragraph 9.1, with minimum combined single liability limit of two million dollars (\$2,000,000).

**9.5 Workers' Compensation Insurance.** The Grantee will obtain and maintain workers' compensation insurance for all Grantee's employees, and in case any work is sublet, Grantee will require any subcontractor similarly to provide workers' compensation insurance for all subcontractor's employees, in compliance with state laws, and to fully protect the City from any and all claims arising out of work-related occurrences. Grantee hereby indemnifies City for any damage resulting to it from failure of either Grantee or any subcontractor to obtain and maintain such insurance. Grantee will provide the City with a certificate of insurance indicating workers' compensation insurance prior to operations under this Franchise and the commencement of any construction, System Upgrade, reconstruction, or maintenance of the System. The certificate of insurance should confirm that the required endorsements are in effect.

**9.6 Additional Insured, Primary Coverage and Defense.** The policies of insurance shall contain an additional insured clause providing that Franchising Authority, the Franchising Authority City Council, each member thereof, all officers, agents, employees and members of boards and commissions of the Franchising Authority shall be named as an additional insured under said policy. Each such policy required above shall provide that it is to be considered primary insurance in the event a demand is made on the Franchising Authority.

**9.7 Notice.** Each of the above-listed policies of insurance shall contain a provision that a written notice of cancellation or reduction in coverage shall be delivered to the Franchising Authority Recorder thirty (30) days in advance of the effective date thereof. If such insurance is provided by a policy which also covers any other entity or person other than those above-named, then such policy shall contain the standard cross-liability enforcement. The Grantee agrees that it will not cancel or reduce said insurance coverage without the Franchising Authority having been given thirty (30) days prior written notice thereof by Grantee.

**9.8 Filing of Certified Copy with Franchising Authority.** A certificate of insurance coverage shall be filed in the office of the Franchising Authority concurrently upon the acceptance of the award of this Franchise as set forth in Section 9.4 above. An updated current year certificate of insurance coverage shall be filed with the Franchising Authority by January 31 of each year during the term of this Franchise.

**9.9 Third Parties.** Grantee shall be liable for the acts of its agents (contractors and subcontractors) and ensure that before commencement of work regarding construction, operation, and maintenance of the Cable System, any such agents have provided insurance in compliance with this Section.

**SECTION 10**  
**FRANCHISE EFFECTIVE**  
**DATE**

**10.1 Effective Date of Franchise.** The Franchise granted hereunder together with the rights, privileges and authority granted thereby, shall take effect and be in force immediately upon adoption by a vote of the Franchising Authority City Council, and subject to the following within thirty (30) days thereafter:

A. The Grantee shall file with the Franchising Authority an acceptance of this Franchise grant and promise to comply with and abide by all of its provisions, terms and conditions to the extent Grantee can legally do so in the form attached hereto as Appendix D. Such acceptances and promises shall be in writing, duly executed and sworn to, by or on behalf of the Grantee, before a Notary Public or other officer authorized by law to administer oaths.

B. The Grantee shall file with the Franchising Authority the certificate of insurance as set forth in Section 9.8 of this Franchise.

**10.2 Inducements Not Offered.** The Grantee, by acceptance of this Franchise awarded hereunder, acknowledges that it has not been induced to accept this Franchise by an understanding or promise or other statement, whether verbal or written, by or on behalf of the Franchising Authority concerning any term or condition of said Franchise that is not included in this Franchise.

**10.3 Grantee Accepts Terms of Franchise.** The Grantee, by acceptance of the Franchise awarded hereunder, acknowledges that it has thoroughly examined and is familiar with the terms and conditions of this Franchise.

**SECTION 11**  
**DEFAULT ENFORCEMENT AND TERMINATION OF FRANCHISE**

**11.1 Default.** Failure of the Grantee to perform any of the covenants set forth in this Franchise Agreement shall constitute a default by the Grantee under the Franchise Agreement. In the event the Grantee fails to timely pay the Franchise Fee as set forth in Section 6.4 above, the Franchising Authority shall send notice to the Grantee of such failure. Grantee shall have thirty (30) days from the date the notice is sent to either dispute the amount owed or the non-payment of the Franchise Fee, or pay the Franchise Fee in full along with any penalties, fees and interest that have accrued. Failure to either dispute or pay the required Franchise Fee in the time set forth above will result in an immediate termination and revocation of the Franchise.

In the event the Grantee timely disputes the notice of non-payment, the matter will be set on the agenda of the next regularly scheduled City Council meeting unless otherwise agreed to by the Grantee and Franchising Authority. At that meeting, the City Council will consider the dispute and make a determination regarding the amount owed, if any. Grantee shall have thirty (30) days from the date of the City Council meeting to pay the amount determined to be owed by the City Council. Failure to do so will result in an immediate termination and revocation of the Franchise.

**11.2 Revocation.** Except for non-payment of the Franchise Fee (as set forth in Section 11.1 above), should the Franchising Authority seek to revoke the Franchise, the Franchising Authority shall give written notice to the Grantee of its intent. The notice shall set forth the exact nature of the non-compliance. The Grantee shall have sixty (60) days from such notice to object in writing and to state its reasons for such objection. In the event the Franchising Authority has not received a satisfactory response from the Grantee, it may then seek termination of the Franchise at a public hearing. The Franchising Authority shall cause to be served upon the Grantee, at least thirty (30) days prior to such public hearing, a written notice specifying the time and place of such hearing and stating its intent to revoke the Franchise.

At the designated hearing, the Franchising Authority shall give the Grantee an opportunity to state its position on the matter, after which it shall determine whether or not the Franchise shall be revoked. The Grantee may appeal such determination to an appropriate court.

**11.3 Franchising Authority's Rights to Enforce.** The Franchising Authority may, at its sole discretion, take any lawful action which it deems appropriate to enforce the Franchise and the exercise of any of the remedies as set forth in this Franchise Agreement shall not constitute an election of remedies or otherwise be considered a waiver by the Franchising Authority to take any lawful action or exercise any appropriate remedy it deems appropriate to enforce the terms and conditions of this Franchise.

**11.4 Removal or Abandonment of Property.** Notwithstanding anything to the contrary, upon termination or revocation of the Franchise, the Grantee or its successors and assigns shall retain ownership of the System and shall be entitled at its option and expense to remove the System from all Public Ways, private property, or to abandon said System. Grantee shall have ninety (90) days from the date of the termination or revocation of the Franchise to remove the System from all Public Ways and private property, otherwise said System will be deemed abandoned by the Grantee and may be removed by the Franchising Authority at the expense of the Grantee.

**11.5 Restoration of Property.** Should the Grantee elect to remove its plant, structure, and equipment upon termination of the Franchise, the Grantee shall refill, at its own expense, any excavation that shall be made by it and shall leave all Public Ways and private property in as good condition as that prevailing prior to the Grantee's removal of its equipment and appliances, without affecting any electrical or telephone cables, wire, or attachments and poles after removal. The liability insurance and indemnity as provided under Section 9 herein shall continue in full force and effect during the period of removal and until substantial compliance by the Grantee with the terms and conditions of this paragraph.

**11.6 Restoration by Franchising Authority, Reimbursement of Costs.** In the event of a failure by the Grantee to complete any work required by Section 11.4 above, or any of the work required by Franchising Authority within the time as may be established and to the mutual satisfaction of the Franchising Authority and the Grantee, the Franchising Authority may cause such work to be done and the Grantee shall reimburse the Franchising Authority the costs thereof within ninety (90) days after receipt of an itemized list of such costs.

**11.7 Force Majeure.** The Grantee shall not be held in default under, or in noncompliance with, the provisions of the Franchise, 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 Grantee to anticipate and control. This provision includes work delays caused by waiting for utility providers to service or monitor their utility poles to which the Grantee's System is attached, as well as unavailability of materials and/or qualified labor to perform the work necessary.

Furthermore, the parties hereby agree that it is not the Franchising Authority's intention to subject the Grantee to penalties, fines, forfeitures or revocation of the Franchise for violations of the Franchise where the violation was a good faith error that resulted in no or minimal negative impact on the Subscribers within the Service Area, or where strict performance would result in practical difficulties and hardship to the Grantee which outweigh the benefit to be derived by the Franchising Authority and/or Subscribers.

**11.8 Remedies at Law.** Nothing in this Franchise Agreement shall be construed to prevent the Franchising Authority from seeking to enforce any provision of this Franchise Agreement, or seek any remedies available to the Franchising Authority, against Grantee in a Court of competent jurisdiction.

**SECTION 12**  
**MISCELLANEOUS**  
**PROVISIONS**

**12.1 Actions of Parties.** In any action by the Franchising Authority or the Grantee that is mandated or permitted under the terms hereof, such party shall act in a reasonable, expeditious, and timely manner. Furthermore, in any instance where approval or consent is required under the terms hereof, such approval or consent shall not be unreasonably withheld.

**12.2 Entire Agreement.** This Franchise, when effective as provided herein, will constitute the entire Franchise and agreement between the Grantee and the Franchising Authority. Amendments to this Franchise shall be mutually agreed to in writing by the parties.

**12.3 Notice.** Unless expressly otherwise agreed between the parties, every notice or response required by this Franchise to be served upon the Franchising Authority or the Grantee shall be in writing, and shall be deemed to have been duly given to the required party when placed in a properly sealed and correctly addressed envelope: a) upon receipt when hand delivered with receipt/acknowledgment, b) upon receipt when sent certified, registered or national express mail service, or c) within five (5) business days after having been posted in the regular mail.

The notices or responses to the Franchising Authority shall be addressed as follows:

City Clerk  
City of Foley  
P.O. Box 1750  
Foley, AL 36536

The notices or responses to the Grantee shall be addressed as

follows: Hotwire Infrastructure Group LLC  
Attn: Jonathan Bullock  
Chief Strategy Officer  
2100 West Cypress Creek Road  
Fort Lauderdale, FL33309

With a copy to

Antonio Contarini

Antonio.contarini@hotwirecommunication.com

Ross Lieberman

Ross.lieberman@hotwirecommunication.com



The Franchising Authority and the Grantee may designate such other address or addresses from time to time by giving notice to the other in the manner provided for in this Section.

**12.4 Descriptive Headings.** The captions to sections and subsections contained herein are intended solely to facilitate the reading thereof. Such captions shall not affect the meaning or interpretation of the text herein.

**12.5 Severability.** If any provision of this Franchise is held by any court or by any federal or state agency of competent jurisdiction to be invalid as conflicting with any federal or state law, rule, or regulation now or hereafter in effect, or is held by such court or agency to be modified in any way in order to conform to the requirements of any such law, rule, or regulation, such provision will be considered a separate, distinct, and independent part of this Franchise, and such holding will not affect the validity and enforceability of all other provisions hereof. In the event that such law, rule, or regulation is subsequently repealed, rescinded, amended, or otherwise changed, so that the provision hereof which had been held invalid or modified is no longer in conflict with such law, rule, or regulation, said provision will thereupon return to full force and effect and will thereafter be binding on Franchising Authority and Grantee, provided that Franchising Authority will give Grantee thirty (30) days written notice of such change before requiring compliance with said provision or such longer period of time as may be reasonably required for Grantee to comply with such provision.

**12.6 Receivership and Foreclosure.**

A. Receivership. A Franchise granted hereunder shall, at the option of Franchising Authority, cease and terminate one hundred twenty (120) days after appointment of a receiver or receivers, or trustee or trustees, to take over and conduct the business of Grantee, whether in a receivership, reorganization, bankruptcy, or other action or proceeding, unless such receivership of trusteeship shall have been vacated prior to the expiration of said one hundred twenty (120) days, or unless: • • •

(1) Such receivers or trustees have; within, one hundred twenty (120) days after their election or appointment, fully complied with all the terms and provisions of this Section and the Franchise granted pursuant hereto, and the receivership or trustees within such one hundred twenty (120) days shall have remedied all the faults under the Franchise or provided a plan for the remedy of such faults which is satisfactory to the Franchising Authority.

(2) Such receivers or trustees shall, within said one hundred twenty (120) days, execute an agreement duly approved by the court having jurisdiction in the premises, whereby such receivers or trustees assume and agree to be bound by each and every term, provision, and limitation of the Franchise granted.

B. Foreclosure. In the case of a foreclosure or other judicial sale of the Franchise property, or any material part thereof, Franchising Authority may serve notice of termination upon Grantee and the successful bidder at such sale, in which event the Franchise granted and

all rights and privileges of the Grantee hereunder shall cease and terminate thirty (30) days after service of such notice, unless:

(1) Franchising Authority shall have approved the transfer of the Franchise, as and in the manner that this Section provides.

(2) Such successful bidder shall have covenanted and agreed with Franchising Authority to assume and be bound by all terms and conditions of the Franchise.

**12.7 Publication.**

A. This Franchise shall be published in accordance with the requirements of City and state law.

B. Cost of Publication. Grantee shall assume any cost of publication of this Franchise, as such publication may be required by law, and such cost is payable upon a Grantee's filing of its written acceptance of this Franchise as provided in Section I 0.1A of this Franchise.

**12.8 Governing Law.**

This Franchise granted and every question arising hereunder shall be construed or determined according to the laws of the State of Alabama and applicable federal law.

Considered and approved this \_\_\_\_\_ day of \_\_\_\_\_, 2024

**As to Foley,**

Signature: \_\_\_\_\_

Date \_\_\_\_\_

**As to Hotwire Infrastructure Group LLC**

Signature: \_\_\_\_\_

Date \_\_\_\_\_

**APPENDIX A  
SYSTEM MAP**

**APPENDIX B**  
**FRANCHISE FEE PAYMENT WORKSHEET**

**APPENDIX C**  
**CABLE SERVICE TO PUBLIC BUILDING**