

NON-EXCLUSIVE FRANCHISE AGREEMENT

(Foley, Alabama – Mediacom Southeast LLC)

THIS FRANCHISE AGREEMENT (hereinafter "Agreement") is entered into by and between the CITY OF FOLEY, ALABAMA, an Alabama municipal corporation (hereinafter "City"), and Mediacom Southeast LLC, a Delaware limited liability company with its principal place of business at 1 Mediacom Way Mediacom Park, NY 10918 (hereinafter "Provider");

W I T N E S S E T H :

WHEREAS, the Provider desires to use public rights-of-way in the present and future corporate limits of the City to build, install, operate, repair, replace and expand its cable system; and

WHEREAS, it is the policy of the City to permit such entry into to the corporate limits and such use of the rights-of-way for the provision of Cable Services, data services, information and other communications services, subject to the duty and authority of the City to manage its streets, public property and rights-of-way, and to require fair and reasonable compensation from cable providers for the use thereof on a competitively neutral and nondiscriminatory basis; and

WHEREAS, the City, in exercise of its management of public rightsofway, believes that it is in the best interest of the public to grant the Provider a nonexclusive franchise to occupy certain rights-of-way in the City upon the terms and conditions contained below; and

WHEREAS, the Provider agrees to terms and conditions imposed by the City hereby;

NOW, THEREFORE, in consideration of the mutual covenants and agreements of the parties contained herein, and in consideration for the payments of money called for herein, and for other good and valuable consideration, the City and the Provider hereby covenant and agree as follows:

ARTICLE 1. GENERAL.

1.1 Agreement. Upon approval by the City Council and execution by the parties, this Agreement shall be deemed to constitute a contract by and between City and Provider.

1.2 Definitions. For purposes of this Agreement, the following terms, words and phrases shall have the meanings set forth below. When not inconsistent with the context, words used in the singular number shall include the plural number, and words in the plural number shall include the singular.

C. **"Cable Act"** means Title VI of the Cable Act of 1934, as amended.

D. **"Cable Services"** means (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.

E. **"Equipment"** of the Provider means all those things necessary to the operation of the System.

F. **"Governing Body"** or **"City Council"** means the City Council of the City of Foley, Alabama.

G. **"Gross Revenues"** means revenues derived from the operation of the Cable System in the Service Area; provided, however, that Gross Revenues shall not include franchise fees, the FCC User Fee or any tax, fee or assessment of general applicability collected by the Provider from Subscribers for pass-through to a government agency.

H. **"Person"** means any natural being as well as any corporate entity, business association or other business entity including, but not limited to, a partnership, sole proprietorship, political subdivision, public or private agency of any kind, utility, successor or assign of any of the foregoing, or any other legally recognizable entity.

I. **"Rights-of-way"** means the surface and space above and below any public street, boulevard, road, highway, freeway, lane, alley, sidewalk, parkway, driveway, or other public ways of travel located within the corporate limits of the City, as they exist now or in the future. Rights-of-way shall not mean any property owned by the City which is not dedicated for public travel.

J. **"Service Area"** means the present boundaries of the City and shall include any additions thereto by annexation or other legal means.

K. **"Subscriber"** means a person who lawfully receives Cable Service of the System with the Provider's express permission.

L. **"System" or "Cable System"** means the Provider'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.

1.3 Franchise Description. The City hereby grants to the Provider the non-exclusive but limited right, privilege, and franchise to construct, maintain, operate, repair, and replace its System along the Rights-of-way of the City, subject to the terms and conditions contained herein, for the transmission and distribution of Cable Services, data services, information and other communications services or for any other lawful purposes.

1.4 Other Licenses. The Provider acknowledges that it has obtained or will obtain the necessary approvals, licenses or permits required by federal, state and local laws to provide Cable Service consistent with the provisions of this Agreement, including any approval by the Public Service Commission.

1.5 Relationship. Nothing herein shall be deemed to create a joint venture, employer-employee, or principal-agent relationship between the parties, and neither party is authorized to, nor shall either party act toward third persons or the public in a manner that would indicate any such relationship with each other.

ARTICLE 2. COMPENSATION.

2.1 Annual Franchise Fees. The Provider shall pay to the City an annual franchise fee in an amount equal to five percent (5%) of Gross Revenues from the preceding calendar year.

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 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 Provider showing the basis for the computation. This brief report shall show sufficient information to allow the City to verify the amount of Franchise Fees being paid by Provider. Additionally, the City shall have the right to inspect the books and records of the Provider related to the computation of the Franchise Fee at the request of the City.

The Provider agrees that the City and its agents, employees and contractors shall have the right to review Provider's corporate, financial and other books and records at its business office during normal business hours upon advance notice for the purpose of ensuring the Provider's compliance with this Section 2.1. The period of limitation for recovery by the City of any franchise fee payable hereunder shall be three (3) years from the date on which payment by the Provider is due to the City.

2.2 Other Fees. The Provider shall also pay all such generally applicable ad valorem taxes,

service fees, business license fees, sales taxes, permit fees, right-of-way fees, or other taxes and fees as may now or hereafter be lawfully imposed on the Provider.

2.3 Interest. If any payment is not received by the City on the date due, the Provider shall pay interest on any such unpaid portion at the rate of one percent (1.0%) per month from the first day after the same shall become due until paid to the City.

2.4 Non-waiver. Any acceptance of all or a part of any fee hereunder shall not be construed as a waiver or release of the City's right to collect the full amount owed hereunder, nor shall it be construed as an accord or agreement that the amount paid is correct.

ARTICLE 3. TERM.

3.1 Term. The franchise rights granted to Provider shall commence on the date this Agreement is fully executed and shall continue for the remainder of the calendar year in which it was executed and for a period of TEN (10) calendar years thereafter (i.e., expiring on December 31, 2027), unless sooner terminated, revoked or cancelled as herein provided.

3.2 Renewal. Neither party has the unilateral right to renew this Agreement. The City and the Provider agree that any proceedings undertaken by the City that relate to the renewal of the Provider's franchise shall be governed by and comply with the renewal provisions of federal law.

ARTICLE 4. CONSTRUCTION REQUIREMENTS

4.1 Quality. All work involved in the installation, operation upgrade, repair and removal of Equipment shall be performed in a safe, thorough and reliable manner using materials of good and durable quality. If, at any time, it is determined by the City or any other agency or authority of competent jurisdiction that any Equipment violates any health or safety law or regulation, the City shall notify Provider, in writing, of such determination and the Provider shall, at its own cost and expense, promptly correct all such conditions or remove such Equipment, at its option

4.2 Liability Limitation/Notice. Neither the City nor its officers, employees or agents shall be liable to the Provider as a result of or in connection with the protection, breaking through, movement, removal, alteration, or relocation of any Equipment by or on behalf of the Provider or the City in connection with any emergency, public work, public improvement, alteration or any municipal structure, any change in the grade or line of any Street, or the elimination, discontinuation, and closing of any Street, as provided in this Agreement, provided that, with respect to any action by or on behalf of the City, except in case of Emergency, (i) the City has provided such notice to Provider as may be required by this Agreement; (ii) the City has

followed the notice and other requirements imposed by Alabama law; and (iii) for those actions described in Section 6 of this Agreement, the requirements of Section 6 shall apply.

4.3 New Grades or Lines. If the grades or lines of any Street are changed at any time during the Term, then the Provider shall, at its own cost and expense and upon the request of the City, protect or promptly alter or relocate Equipment so as to conform with such new grades or lines. If the Provider refuses or neglects to so protect, alter or relocate Equipment within thirty (30) days (or such other period of time as may be agreed upon by the City and the Provider) after notice to the Provider by the City, the City shall have the right to break through, remove, alter, or relocate such Equipment. Provider shall also reimburse the City for or bear any additional cost actually incurred by the City that the City would not otherwise have incurred if Provider had not refused or failed to comply with the City's request to protect, alter or remove Equipment under this Section 4.3.

4.4 Protection of Streets. In connection with the installation, operation, upgrade or repair or removal of Equipment by Provider, the Provider shall, at its own cost and expense, protect the Streets and any City-owned structures thereon, thereunder or thereover, and shall obtain the prior approval of the City, before altering the Streets or any such structures. Any such alteration shall be made by the Provider, at its sole cost and expense, in a manner prescribed by the City to protect the Streets and any City-owned structures thereon. The Provider shall be liable, at its own cost and expense, to replace or repair, in a manner as may be reasonably specified by the City, any Street or City-owned structure thereon, thereunder or thereover that may become disturbed or damaged as a result of the installation, operation, upgrade, repair or removal of Equipment. If the Provider does not commence such replacement or repair after thirty (30) days' notice, the City may make such replacement or repair and the Provider shall pay the reasonable cost of the same.

4.5 No Obstruction. Except in cases of Emergency, in connection with the installation, operation, upgrade, repair or removal of Equipment, the Provider shall not obstruct the sidewalks, streets, subways, railways, rivers or other traffic within the corporate limits of the City without the prior consent of the City. Equipment shall be located so as to cause minimum interference with the use of the Streets and adjoining property.

4.6 Underground Utilities. The Provider shall comply with any current or future City ordinances requiring the placement of Equipment underground. Nothing herein is intended to obligate the Provider to bear the cost of placing existing Equipment underground pursuant to a current or future City ordinance.

4.7 Moving Equipment. Upon receipt of a request from any Person holding a permit to move any structure, the Provider and such Person shall negotiate, in accordance with Provider's tariffs, reasonable terms and conditions and a time that is reasonable under the circumstances to

move any Equipment to permit the moving of said structure. The Provider may impose a charge in accordance with state and federal law, or if such law is not applicable, a reasonable charge on any Person other than the City for any such movement of Equipment, or such charge as may be otherwise agreed to by the parties.

4.8 Safety Precautions. The Provider shall, at its own cost and expense, undertake all efforts required by applicable law to prevent accidents at its worksites, including the placing and maintenance of proper guards, fences, barricades, watchmen and suitable and sufficient lighting.

4.9 Moving Equipment in Case of Emergency. The City may, at any time, in case of fire, disaster, or other emergency, cut or move Equipment in which event the City shall not incur any liability to the Provider or any other Person. If circumstances do not permit the Provider to be consulted prior to any such cutting or movement of Equipment, the City shall provide notice to the Provider promptly after any action taken by the City. All costs to repair or replace such Equipment damaged or destroyed by the reasonable action of the City shall be borne by the Provider.

4.10 Location of Lines. Prior to beginning any new installation, operation upgrade, repair and removal of Equipment, the Provider shall provide to the City files showing the location of the Equipment lines involved, both before and after the proposed installation, operation upgrade, repair or removal.

Within thirty (30) days of the execution of this Agreement, Provider shall provide to the City CAD/GIS files showing the location of all existing Equipment, if any. The required CAD/GIS files shall be provided to:

Kelly Tomkins
GIS Specialist
117 West Laurel Avenue
Foley, Alabama 36535

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

ARTICLE 5. POLICE POWERS.

5.1 Reservation of Police Powers. The City expressly reserves, and the Provider expressly recognizes, the City's right and duty to adopt, from time to time, in addition to provisions herein

contained, such ordinances and rules and regulations as the City may deem necessary in the exercise of its police power for the protection of the health, safety and welfare of its citizens and their properties.

5.2 Right-of-Way. All construction, repair, maintenance, or other work which takes place on, under, above, or otherwise such that it has any impact on the streets, rights-of-way or public places of the City shall be in accordance with all applicable federal, State and local standards, codes, and ordinances as they exist now or in the future. In addition, the following rules shall also apply to the Provider's use of the rights-of-way (and in the event of an irreconcilable conflict between these rules and the general standards, codes, and ordinances, the more stringent of the rules shall apply):

- A. All facilities will, wherever practicable, be placed underground;
- B. Any necessary aboveground construction will be coordinated with Riviera Utilities;
- C. No street, alley, bridge, right-of-way or other public place used by the Provider shall be obstructed longer than necessary during its work of construction or repair, and the shall be restored to the same good order and condition as soon as possible;
- D. No part of any street, alley, bridge, right-of-way, or other public place of the City, including any public drain, sewer, catch basin, water pipe, pavement or other public improvement, shall be damaged, and in the event any damage occurs, the Provider shall repair or replace the same as promptly as possible in as good or better condition; and
- E. The Provider shall, in addition to its duties and obligations to indemnify and hold the City harmless under other provisions of this Agreement, indemnify and save the City harmless from any and all liability, costs, expenses, causes of action, judgments, or other damages arising out of or related to the Provider's (or its agents', contractors' or employees') acts, omissions, or presence in the City or in the rights-of-way.

5.3 Compliance with current and future laws. Except as specifically provided herein, or as otherwise mandated by law, the privilege granted to the Provider by this Agreement does not exempt or excuse the Provider from the police power and all other municipal authority and laws including, but not limited to, those relating to zoning, permitting, traffic control, construction and excavation, planning, aesthetics, and the environment.

ARTICLE 6. SEVERABILITY.

6.1 Severability. If any section, sentence, paragraph, term or provision of this Agreement is for any reason determined to be or rendered illegal, invalid or superseded by other lawful authority, including any state or federal, legislative, regulatory or administrative authority having

jurisdiction thereof, or is determined to be unconstitutional, illegal or invalid by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such determination shall have no effect on the validity of any other section, sentence, paragraph, term or provision, all of which shall remain in full force and effect for the term of this Agreement or any renewal or renewals thereof. Provided that if the invalidated portion is considered a material consideration for entering into this Agreement, the parties will negotiate, in good faith, an amendment to this Agreement. As used herein, "material consideration" for the City is its ability to collect the fees called for herein during the term of this Agreement and its ability to manage the rightsofway in a manner similar to that provided in this Agreement. For the Provider, "material consideration" is its ability to use the rightsofway to expand its Cable System.

ARTICLE 7. EXPIRATION OR TERMINATION.

7.1 Default. Time of payment and performance of material covenants are of the essence in the Agreement. The following will be events of default:

- A. Payment. The failure of Provider to make timely payments of the fees as required under Article 2 of this Agreement and such failure continues for a period of thirty (30) days after notice from the City of such failure. ;
- A. Other Covenants. The failure of Provider to perform any of the material covenants required by the Agreement, and such failure continues for a period of 30 days after notice from the City of such failure. If the nature of the violation is such that it cannot be cured within 30 days, the cure period may be extended by the City, provided that Provider is diligently pursuing a cure in the reasonable judgment of the City.

7.2 Termination for Defaults Not Cured. The City may terminate this Agreement for material defaults that are not cured within the time allowed by this Section 7 by providing notice to Provider at least 30 days prior to termination. Provider may avoid termination by completely curing the default unless the notice of termination is the third notice of termination within a 12-month period for 3 unrelated material defaults. Provider may challenge a notice of termination by providing a written protest to the Mayor within 10 business days of the date of the notice of termination. The Mayor, upon receipt of the protest will either grant the protest, in which case the Agreement will remain in place, or refer the matter to the City Council for a decision.

The Provider will be given at least thirty (30) days prior notice of the public hearing to be held before the City Council. At the hearing, Provider will be provided a fair opportunity for full participation, including the right to be represented by legal counsel, to compel testimony of officials, agents, employees or consultants of the City, and other persons as permitted by law. A complete transcript will be made of such hearing.

Following the hearing, if the City determines that the Franchise will be revoked, the City will promptly provide Grantee with its decision in writing. The decision of the City Council will be final. The Grantee may appeal such decision to a court of competent jurisdiction; any appeal shall be limited to the record of the hearing before the City Council and shall not be overturned except for a finding of abuse of discretion or violation of state or federal law.

7.3 Remedies at Law. In the event the Provider or the City fail to fulfill any of their respective obligations under this Agreement, the City or the Provider, whichever the case may be, shall have a breach of contract claim and remedy against the other, in addition to any other remedy provided herein or by law; provided, however, that no remedy that would have the effect of amending the specific provisions of this Agreement shall become effective without such action that would be necessary to formally amend the Agreement.

7.4 Third Party Beneficiaries. The benefits and protection provided by this Agreement shall inure solely to the benefit of the City and the Provider. This Agreement shall not be deemed to create any right in any person who is not a party and shall not be construed in any respect to be a contract in whole or in part for the benefit of any third party (other than the permitted successors and assigns of a party hereto). Without limiting the generality of the foregoing, no end users, customers, or clients of the Provider's Cable System are third party beneficiaries of this Agreement.

7.4 Rights of Provider Upon Expiration or Termination. Upon expiration or termination of this Agreement, whether by lapse of time, by agreement between the Provider and the City, or by revocation or forfeiture, the Provider shall have the right, but not the obligation, to remove from the Rightsofway any and all of its Equipment, fixtures and improvements, but in such event, it shall be the duty of the Provider, immediately upon such removal, to restore the rightsof way to as good a condition as the same was before the removal was effected, and furthermore, the Provider shall comply with any then-existing ordinances and permits required for work in the rights-of-way and restoration of the same. The Provider shall in all cases have the right of abandonment of its Equipment and the City may declare that all rights, title and interest to the Equipment belong to the City with all rights of ownership, including but not limited to, the right to connect and use the Equipment or to affect a transfer of all right, title and interest in the Equipment to another Person for operation.

7.5 No Condemnation. None of the declaration, connection, use, transfer or other actions by the City under this Article 7 shall constitute a condemnation by the City or a sale or dedication under threat or in lieu of condemnation.

ARTICLE 8. PARTIES' DESIGNEES.

8.1 City's Designee and Address. The Mayor or his/her designee(s) shall serve as the City's representative regarding administration of this Agreement. Unless later specified, all notices from the Provider to the City pursuant to or concerning this Agreement shall be delivered to the Mayor at P.O. Box 1750, Foley, Alabama, 36536, or such other officer and address as the City may designate by written notice to the Provider.

8.2 Provider's Designee and Address. The Government Relations Manager shall serve as the Provider's representative, regarding administration of this Agreement. Unless otherwise specified herein, all notices from the City to the Provider pursuant to or concerning this Agreement, shall be delivered to the Provider's representative at 1613 Nantahala Beach Rd. Gulf Breeze, FL 32563, or such other office as the Provider may designate by written notice to the City.

ARTICLE 9. INSURANCE AND INDEMNIFICATION

9.1 Insurance. Prior to commencing construction or installation activities in the City pursuant to this Agreement, the Provider shall secure and maintain in full force and effect, at its own cost and expense, a comprehensive general liability insurance policy in the amount of \$1,000,000.00 per person and \$1,000,000.00 as to each occurrence for bodily injury and property damage issued by a company licensed to do business in Alabama and which is satisfactory to the City. In addition, the Provider shall secure and maintain worker's compensation coverage as required by the laws of the State of Alabama. The City shall be named as an additional insured on these policies which shall be primary to any policies held by the City, and Provider shall deliver to the City a certificate of insurance designating the City as an additional insured on each policy and extension or renewal thereof. An endorsement shall be included with the policy that states that the policy shall not be cancelled without giving thirty (30) days written notice of such cancellation to the City.

9.2 Indemnification. The Provider agrees to indemnify, defend and hold the City and its officers, employees, and agents harmless from and against any and all claims, demands, liens, and all liability or damage of whatsoever kind on account of or arising from the Provider's acts or omissions pursuant to or related to this Agreement, and to pay any and all costs, including reasonable attorneys' fees, incurred by the City in defense of such claims. The City shall first give written notice to the Provider of any claim, demand, lien, liability, or damage with respect to which the City seeks indemnification and, unless in the City's judgment a conflict of interest may exist between the parties with respect to the claim, demand, lien, liability, or damage, the City shall permit the Provider to assume the defense of such with counsel of the Provider's choosing, unless the City reasonably objects such counsel. Notwithstanding any provision of this section to the contrary, the Provider shall not be obligated to indemnify, defend or hold the City harmless to the extent any claim, demand, lien, damage, or liability arises solely and exclusively out of negligent acts or omissions of the City. This provision shall survive the termination or

expiration of this agreement, and it shall be in addition to and supplementary of any insurance coverage.

ARTICLE 10. GENERAL PROVISIONS.

10.1 Binding Agreement. The parties both represent that, when fully executed, this Agreement shall constitute a legal and binding obligation of the parties. Each party further represents that it has complied with all relevant statutes, ordinances, resolutions, bylaws and other legal requirements applicable to their operation in entering into this Agreement.

10.2 Governing Law and Venue. This Agreement is entered into in the County of Baldwin, State of Alabama, and it involves property rights in Baldwin County, Alabama; therefore it is the intention of the parties that Alabama's substantive law shall be applied to all rights, remedies and interpretations hereunder and that all actions brought for the breach of this Agreement or for enforcement of rights under this Agreement shall be brought in a court of competent jurisdiction located in the judicial circuit or district embracing Baldwin County, Alabama.

10.3 Interpretation of Agreement. Whenever the context of any provision shall require it, the singular number shall be held to include the plural number, and vice versa, and the use of any gender shall include any other and all genders. The paragraphs and section headings in this Agreement are for convenience only and do not constitute a part of the provisions hereof. Both parties hereby stipulate that they have had an opportunity to review and revise this agreement through negotiations, and notwithstanding any laws or rules of construction to the contrary, this Agreement shall be interpreted according to its plain meaning and shall not be strictly construed against the drafting party.

10.4 Amendments. This Agreement may only be modified or amended by written agreement signed by both parties. No oral modifications or amendments shall be effective. No amendment shall be effective unless and until the City Council first properly authorizes the Mayor to execute the amendment.

10.5 Binding Agreement. This Agreement shall be binding upon the successors and assigns of each of the parties.

10.6 Entire Agreement. This Agreement constitutes the full and complete agreement and understanding of the parties hereto. Neither party is relying on any fact or representation or commitment by the other party that is not included herein. All prior offers demands and representations of the parties are revoked and nullified unless expressly contained herein.

10.7 Assignment. This Agreement and the rights to operate within the City cannot be assigned by the Provider, in whole or in part, without the prior written approval of the City. When and if

such an assignment is approved, the receiving party shall be deemed an assignee and shall assume all obligations of Provider.

[THE NEXT PAGE IS THE SIGNATURE PAGE]

IN WITNESS WHEREOF, the parties have set their hands and seals this the ____ day of _____, 20____.

CITY OF FOLEY, ALABAMA

By: _____
Its: Mayor

ATTEST:

By: _____
Its: City Clerk/Administrator

STATE OF ALABAMA)
COUNTY OF BALDWIN)

Now before me, the undersigned authority in and for said County and State, personally appeared _____ and _____, respectively as Mayor and City Clerk of the City of Foley, Alabama, and being informed and advised of the contents of the foregoing instrument, they executed the same voluntarily on the date indicated above for and on behalf of the City of Foley, Alabama with the full intent and authority to bind said City of Foley, Alabama.

(SEAL)

NOTARY PUBLIC
My Commission Expires: _____

MEDIACOM SOUTHEAST, LLC

By: _____
Title: _____

STATE OF _____)
COUNTY OF _____)

Now before me, the undersigned authority in and for said County and State, personally appeared _____, as the _____ of _____, and being informed and advised of the contents of the foregoing instrument, he/she executed the same voluntarily on the date indicated above for and on behalf of said entity with the full intent and authority to bind said entity.

(SEAL)

NOTARY PUBLIC
My Commission Expires: _____