

ORDINANCE NO _____
COUNTY OF BARBOUR, WEST VIRGINIA

AN ORDINANCE GRANTING A NON-EXCLUSIVE
FRANCHISE TO RAPID COMMUNICATIONS, LLC
TO OPERATE AND MAINTAIN A CABLE SYSTEM IN THE
COUNTY OF BARBOUR SETTING FORTH CONDITIONS
ACCOMPANYING THE GRANT OF A FRANCHISE.

Be it ordained by the County Commissioners of the County of Barbour, West Virginia,
and it is hereby ordained by the Authority of the same as follows:

SECTION 1

STATEMENT OF INTENT AND PURPOSE;

AUTHORITY;

- 1.01. Statement of Intent and Purpose. The County of Barbour "County" intends, by the adoption of this Ordinance, to authorize the operation of a Cable System by Rapid Communications, LLC, within the County territorial boundaries.
- 1.02. Authority. To the extent that the same may be lawfully given and subject to the provisions of any and all acts of the State of West Virginia and regulations issued thereunder, now or in the future, and insofar as the State of West Virginia has delegated to the County the authority to grant a Franchise for the provision of cable television service and other communication and information services within the County territorial boundaries, in consideration of the faithful performance and observation of the conditions and reservations mutually agreed upon herein, the County hereby exercises its authority to grant a non-exclusive Franchise permitting the operation, of a cable television system and the provision of other communications and information services within the County.

SECTION 2

SHORT TITLE

This ordinance shall be known and cited as the "County of Barbour Cable Franchise Ordinance." Within this document it shall also be referred to as "this Franchise."

SECTION 3

instrument number
93967

DEFINITIONS

For the purpose of this Franchise, the following terms, phrases, words, and their derivations shall have the meaning given herein. Words not defined shall be given their common and ordinary meaning.

- 3.01. "Cable Service" means: (i) the one-way transmission to subscribers of video programming or other programming service; and (ii) subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.
- 3.02. "Cable Service Territory" shall mean the area to be served by Rapid Communications, LLC, which includes the County of Barbour, West Virginia.
- 3.03. "Council" means County Council of the County of Barbour, West Virginia
- 3.04. "County" shall mean the County of Barbour, West Virginia
- 3.05. "FCC" shall mean the Federal Communications Commission.
- 3.06. "Grantee" shall mean Rapid Communications, LLC, and its successors, transferees, or assigns.
- 3.07. "Gross Revenues" means all Subscriber revenues derived from the provision of Cable Service, including monthly fees charged to subscribers for Basic Service; monthly fees charged to subscribers for any optional service; pay television fees; pay-per-view fees; FM service fees; commercial service fees; premium service fees; monthly fees charged to subscribers for any tier of service other than Basic Service; installation, disconnection, and reconnection fees; and converter rentals or sales. This sum shall be the basis for computing the fee imposed pursuant to Section 10.01 hereof. Items to be deducted in computing Gross Revenues include premium service programming fees; and any taxes furnished by the Grantee, which are imposed upon the Grantee or upon any subscriber or user by the state, county, County or other governmental unit.
- 3.08. "Owner" shall mean a person with a legal or equitable interest in ownership of real property.
- 3.09. "Person" shall mean any corporation, partnership, proprietorship, individual or organization, governmental organization, or any natural person.
- 3.10. "Public Property" shall mean any real property owned by the County, other than a street.
- 3.11. "Street" shall mean the surface of and the space above and below any public street, road, highway, freeway, lane, path, public way, alley, court, sidewalk, boulevard, parkway, drive, or any easement or right-of-way, alley, court,

sidewalk, boulevard, parkway, drive, or any easement or right-of-way now or hereafter held by the County, or dedicated to the County, or to general public use.

- 3.12. "System" shall mean a 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 a community, but such term does not include: (1) a facility that serves only to retransmit the television signals of one or more television broadcast station; (2) a facility that serves subscribers without using any public right-of-way; (3) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Communications Act of 1934, except that such facility shall be considered a cable system (other than for purposes of section 621(c)) to the extent such facility is used in the transmission of video programming directly to subscribers; or (4) any facilities of any electronic utility used solely for operating its electric utility systems.
- 3.13. "Subscriber" shall mean any person or entity who subscribes to cable television service provided by Grantee by means of the System.

SECTION 4

GRANT OF AUTHORITY

- 4.01. Grant of Franchise. For the purpose of providing Cable Service and other communications and information services, Grantee may erect, install, construct, repair, replace, reconstruct, and retain in, on, over, under, upon, across, and along the Streets and Public Property such lines, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, pedestals, attachments, and other property and equipment as are necessary and appropriate to cable and information services. Grantee is also authorized to utilize public rights of way and to utilize easements within the County that have been dedicated for compatible uses, as provided for in Section 621(a) (2) of the Cable Communications Policy Act of 1984, as amended.
- 4.02. Franchise Term. The initial term of this Franchise shall commence on _____ 2008, and shall expire fifteen (15) years from said date, unless renewed as herein provided.

SECTION 5

DESIGN AND SERVICES PROVISIONS

- 5.01. Technical Requirements. Grantee shall construct and maintain a System that meets at least the technical standards applied by the FCC. Procedures for testing technical capacity of the System shall conform with the technical and testing standards applied to cable systems by the FCC.
- 5.02. Interference with Reception Outside Cable System. Grantee's installation shall be installed, maintained and operated in a manner that shall not interfere with television or radio reception by means other than by the cable-type systems.

SECTION 6

CONSTRUCTION PROVISIONS

- 6.01. Construction Requirements. Grantee shall make use of existing poles and other facilities available to Grantee. Grantee may also erect its own poles and install its own conduit. All poles and conduit installed within the County shall be made available for attachment of use by Grantee, at just and reasonable rates applied to public utilities under the formula presently established in 47 U.S.C. §224.
- 6.02. Construction Codes and Permits. Grantee shall obtain any required permits from the County before commencing construction involving the opening or disturbance of any street or public property. Grantee shall comply with all applicable building and zoning codes. Grantee shall arrange its lines, cables, and other appurtenances, on any street or public property, in such a manner as to cause no unreasonable interference with the usual and customary use of said street or public property by a person.
- 6.03. Repair of Streets and Public Property. Any and all streets or public property that are disturbed or damaged during the construction, operation, or maintenance of the System shall be promptly repaired by Grantee, at its expense and to the condition prior to the disturbance or damage.
- 6.04. Movement of Facilities. In the event it is necessary temporarily to move or remove any of Grantee's wires, cable, poles, or other facilities placed pursuant to this Franchise, in order lawfully to move a large object, vehicle, building, or other structure over the streets of the County, upon two (2) weeks notice by the County to Grantee, Grantee shall move, at the expense of the person requesting the temporary removal, such of this franchise as may be required to facilitate such movements.
- 6.05. Prudent Installation and Operation. Grantee agrees that its installation and operation shall be installed, located, and maintained so as not to endanger or

interfere with the life and property of any person or thing; nor interfere with improvements which the County may deem proper; nor hinder or obstruct the free use of streets, alleys, bridges, or other public or private property. In the event the County relocates a street or makes any other change requiring the removal of utility installations, or in the event Grantee does interfere with the public or private property of others, Grantee, at its sole expense, will remove its installation at this location. In the event that a utility is reimbursed by the County for the placement of cable underground or the movement of cable, Grantee shall be reimbursed on the same terms and conditions.

SECTION 7

OPERATION AND MAINTENANCE

7.01. Maintenance and Complaints.

- a. Grantee shall maintain a local or toll-free telephone number available to accept service calls and complaints from subscribers.
- b. Grantee shall render efficient service, make repairs promptly, and interrupt service only for good cause.
- c. Any complaints from Subscribers shall be investigated and acted upon as soon as possible.

7.02. Safety.

- a. Grantee shall at all times take reasonable precautions for preventing failures and accidents which are likely to cause damage or injury to the public, to employees of Grantee, and to public or private property.
- b. All lines, equipment, and facilities within the County shall at all times be kept and maintained in a safe and suitable condition, and in good order and repair.

7.03. Subscriber Practices.

- a. Grantee shall not deny service, deny access, or otherwise discriminate against Subscribers on the basis of race, color, religion, natural origin, sex, or age. Grantee shall adhere to the equal employment opportunity requirements of the FCC.
- b. Grantee may conduct promotional campaigns in which standard rates are uniformly discounted or waived.
- c. Grantee may make special contracts for non-profit, charitable, educational, governmental, and religious organizations.

- d. Grantee may offer bulk rate discounts for multiple dwellings, hotels, motels, and similar institutions.

SECTION 8

FRANCHISE FEE

- 8.01. Amount. Grantee shall annually pay to the County five (5) percent of Gross Revenues, as a franchise fee. The foregoing payment shall be compensation for use of streets and other public property.
- 8.02. Payment Periods. Payment shall be submitted annually on or before January 31 of each year.

SECTION 9

REMEDIES, DEFENSES, INSURANCE

- 9.01. Laws Governing. This Franchise shall be governed by and construed in accordance with the laws of the State of West Virginia, and applicable Federal law.
- 9.02. Notice of Violation. The County shall provide Grantee with a detailed written notice of any Franchise violation upon which it proposes to take action, and a sixty- (60) day period within which Grantee may cure an alleged violation. This sixty-day period shall not begin to run in the event the alleged violation is beyond the Grantee's control or the Grantee is diligently pursuing corrective action. Grantee may, within fifteen (15) days of receiving such notice, notify the Municipality that there is a dispute as to whether a violation has, in fact, occurred. Such notice by Grantee to the County shall detail the matter disputed by Grantee. The County shall hear Grantee's dispute at the next regularly scheduled County meeting. The County and Grantee shall bear their own costs and attorney's fees.
- 9.03. Indemnity.
- (a) Grantee shall indemnify and hold harmless the County at all time during the term of this Franchise, from and against all claims, and including reasonable attorney's fees and legal costs, for injury or damage to persons or property, both real and personal, caused by the construction, erection, operation, and maintenance of the System.
 - (b) It is expressly understood that the County has no control, standard or regulation pertaining to the subject matter of programs distributed by Grantee. Grantee agrees to indemnify and save harmless the County, its officers and employees

from all claims, suits and actions at law or equity for libel, slander, patent or copyright infringements; that in the event the County is made a party to Defendant in any action arising out of the subject matter of programs transmitted by Grantee. Grantee shall at its sole cost and expense defend such action and appeals therefrom, including those involving the County.

- 9.04. Liability Insurance. Throughout the term of this Franchise, Grantee shall maintain a policy of liability insurance covering the Grantee, and naming the County as an additional insured, in the minimum amounts of:

- a. \$1,000,000 for property damage in any one occurrence:
- b. \$1,000,000 for bodily injury to any one person; and
- c. \$1,000,000 for bodily injury in any one occurrence.

County may request that Grantee provide a Certificate of Insurance for the required amounts to the County.

- 9.05. Other Remedies.

- a. From and after of effective date of Franchise, it shall be unlawful for any person to establish, operate, or to carry on the business of distributing to any persons in the Cable Service Territory any television signals or radio signals by means of a System unless a Franchise therefore has first been obtained pursuant to the provisions of this Ordinance, and unless such Franchise is in full force and effect.
- b. No person shall interrupt or receive signals from the System unless specifically authorized to do so by Grantee.
- c. No person shall tamper with, remove, or injure any cable, wires, or equipment used with the System unless specifically authorized to do so by Grantee.
- d. No person shall intentionally deprive Grantee of a lawful charge for cable service.
- e. No person shall resell Grantee's cable services without Grantee's express, written consent.
- f. The County and Grantee are expressly reserved their applicable rights and remedies available in law or in equity.

- 9.06. Conditions of Access. In addition to the provisions of Section 4.01, no party who owns or controls any residential multiple dwelling unit, trailer park, condominium, or apartment complex, or subdivision, shall interfere with the right of any tenant or lawful resident thereof to receive service from Grantee.

SECTION 10

VARIANCE AND RENEWAL

- 10.01. Variance. Applications for a variance to the Franchise, to accommodate a significant change in circumstances, to prevent unreasonable hardship to Grantee, or to permit technical variations that will satisfy the purpose of the Franchise, may be made by the Grantee to the County. The County shall review the application within fourteen (14) calendar days, or the earliest meeting of the County, and shall issue a report of the findings of the County and shall act on a request within forty-five (45) days.

SECTION 11

MISCELLANEOUS

- 11.01. Severability. If any law, ordinance, regulation, or court decision shall render any provision of this Franchise invalid, the remaining provisions of the Franchise shall remain in full force and effect.
- 11.02. Assignability. Grantee shall have the right to assign its rights and privileges hereunder; such assignment to become effective only upon the assignee's filing with the County a written acceptance of the rights and subject to the terms and conditions herein.
- 11.03. Regulations. County reserves the right to adopt such additional regulations as it deems necessary in the exercise of its police power, provided that such regulation shall be reasonable and not in conflict with the rights granted by ordinance or in this contract.
- 11.04. Force Majeure. Prevention or delay of any performance under this Franchise due to circumstances beyond the control of Grantee or the County, unforeseen circumstances, or acts of God, shall not be deemed noncompliance with or a violation of this Franchise.
- 11.05. More Favorable Terms. In the event that the County approves or permits a System to operate in the Cable Service Territory on terms more favorable than those contained in this Franchise; such more favorable terms shall be applicable in this Franchise.
- 11.06. Regulatory Bodies. Grantee shall conduct the operation of its business in accordance with the rules, regulations, and statutes, as amended from time to time, of the Federal Communications Commission and any other duly authorized federal, state, or local authority having jurisdiction. In particular, the Grantee shall, at all times, comply with the rules and regulation governing cable television operations promulgated by the FCC, specifically those set out in The Cable

Communications Policy Act of 1984, as amended, and of the FCC Rules and Regulations, and any FCC Rules and Regulations regarding technical and engineering specifications involved in the construction of the CATV system and signal carriage thereon.

- 11.07. Modification of FCC Rules. Consistent with the requirements of The Cable Communications Policy Act of 1984, and of the FCC Rules, any modification of The Cable Communications Policy Act of 1984 resulting from amendment thereto by the FCC shall be to the extent applicable, be considered as a part of this Franchise as of the effective date of the amendment made by the Cable Communications Policy Act of 1984 and the FCC.
- 11.08. Repealer. All Ordinances or parts of Ordinances that are inconsistent herewith are hereby repealed.
- 11.09. This Ordinance shall be effective upon acceptance by the Grantee.

PASSED AND ADOPTED THIS 2nd day of June A.D. 2008.

County of Barbour, West Virginia

BY

Timothy L. McDowell

BY

Steven H. Sins

BY

Phil Hunt

ACCEPTANCE BY GRANTEE

Grantee's acceptance of this Ordinance No _____ is a binding contract upon the Grantee and Grantee's acceptance of this Ordinance establishes a binding contractual relationship between the County of Barbour County, West Virginia and the Grantee in accordance with the provisions and conditions set forth in the Ordinance and Grantee here, by virtue of having its Executive Vice President and Assistant Secretary sign this Ordinance, agrees to be legally bound by all of the provisions and conditions set forth in it.

By: _____

Title: _____