

COUNTY COMMISSION

BALDWIN COUNTY
312 Courthouse Square, Suite 12
BAY MINETTE, ALABAMA 36507
(251) 937-0264
Fax (251) 580-2500
www.baldwincountyal.gov

MEMBERS
DISTRICT 1. JAMES E. BALL
2. JOE DAVIS, III
3. BILLIE JO UNDERWOOD
4. CHARLES F. GRUBER

June 2, 2020

Mr. C. Wayne Hutchens, President
AT&T Alabama
1884 Data Drive
First Floor
Hoover, Alabama 35244
Attn. Marti Sawzak

RE: BellSouth Telecommunications, LLC d/b/a AT&T Alabama - Video Services Franchise Agreement

Dear Mr. Hutchens:

The Baldwin County Commission, during its regularly scheduled meeting held on June 2, 2020, approved/authorized the provisions of Resolution #2011-085 (**enclosed**) of the Baldwin County Commission to be binding on BellSouth Telecommunications, LLC d/b/a AT&T Alabama ("AT&T Alabama"), pursuant to AT&T Alabama executing an instrument entitled *Second Addendum to Video Services Agreement* between AT&T Alabama and the Baldwin County Commission. This *Agreement* shall be for five (5) years commencing upon its effective date on August 10, 2020, as last executed among the parties, and expiring on August 10, 2025, unless terminated in another manner as prescribed by said *Agreement*.

Please find enclosed three (3) **fully executed original** *Agreements*, for your file.

If you have any questions or need further assistance, please do not hesitate to contact me at (251) 972-8515 or Anu Gary, Administrative Services Manager at (251) 580-2564.

Sincerely,

BILLIE JO UNDERWOOD, Chairman
Baldwin County Commission

BJU/mnm Item DA1

cc: Heather Gwynn
Cian Harrison
Ron Cink

ENCLOSURE(S)

SECOND ADDENDUM TO VIDEO SERVICES AGREEMENT

THIS AGREEMENT (“Agreement”) dated June 2, 2020, (“Effective Date”) is made by and between BellSouth Telecommunications, LLC d/b/a AT&T Alabama (“AT&T Alabama”) (formerly a corporation but now a limited liability company), and the county of Baldwin, (“Baldwin County”) Alabama, a municipal corporation (“Baldwin County”). AT&T Alabama and Baldwin County shall sometimes be referred to separately as a “Party,” and collectively as the “Parties.”

RECITALS

WHEREAS, Baldwin County and BellSouth Telecommunications, LLC d/b/a AT&T Alabama (“AT&T Alabama”) entered into an agreement styled “Agreement Authorizing AT&T Alabama to Provide IP Video Services Within the Unincorporated Areas of Baldwin County Alabama” on August 10, 2010 and subsequently entered into an agreement styled “Acceptance and Addendum to Video Services Agreement” on August 10, 2015, (collectively, the “Agreement”) regarding the provision by AT&T Alabama of its integrated Internet Protocol (“IP”) enabled broadband platform of voice, data and video services (“IP Network”), the video component of which is a switched, two-way, point-to-point and interactive service (“IP Video Service”);

WHEREAS, page 27 set forth the original term of the Agreement to expire five (5) years from the effective date of August 10, 2010 – or August 10, 2015, but allows for extending the Agreement upon written mutual agreement of the Parties, which was done by mutual agreement (“Acceptance and Addendum to Video Services Agreement”) of the Parties from the effective date of August 10, 2015 – or August 10, 2020, but allows for extending the Agreement upon written mutual agreement of the Parties;

WHEREAS, Baldwin County and AT&T Alabama desire to extend the terms of the Agreement for an additional five (5) years and agree that there is sufficient mutual consideration for renewing and extending the term of the Agreement; and

AGREEMENTS

NOW, THEREFORE, in consideration of the mutual covenants contained herein and in the original and addendum “Agreement,” for other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, Baldwin County and AT&T Alabama agree as follows:

1. Page 27 of the “Agreement” is to be amended by changing the date of termination from August 10, 2020 to August 10, 2025. The term may be extended upon mutual agreement of the Parties in writing.
2. Unless amended by the terms of this Second Addendum, all other terms and conditions of the collective (Original and Addendum) “Agreement,” shall remain unchanged and in full force and effect throughout the extended term. In the event the terms and conditions of the “Agreement” conflict with the terms of this Second Addendum, this Second Addendum shall be deemed to supersede and override the terms of the “Agreement.”

3. This Second Addendum incorporates and includes all prior and contemporaneous negotiations, correspondence, conversations, agreements and understandings between the parties concerning the subject matter hereof. No deviation from the terms hereof shall be predicated upon any prior or contemporaneous representations, agreements or understandings, whether oral or written.

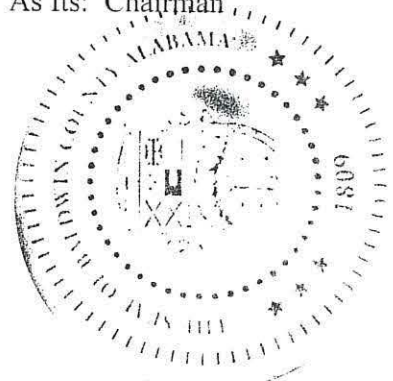
IN WITNESS WHEREOF, the parties have executed this Second Addendum to Video Services Agreement, provided in the form as three (3) original copies for the records of BellSouth Telecommunications, LLC, d/b/a AT&T Alabama and three (3) original copies for the records of the Baldwin County Commission, between BellSouth Telecommunications, LLC, d/b/a AT&T Alabama and Baldwin County, Alabama on this the 2nd day of June, 2020, such Addendum to Video Services agreement effective commencing on August 10, 2020 and expiring on August 10, 2025.

BALDWIN COUNTY COMMISSION

BY: Billie Jo Underwood
BILLIE JO UNDERWOOD
As Its: Chairman

ATTEST:

BY: Wayne A. Dyess
WAYNE A. DYESS
As Its: County Administrator



STATE OF ALABAMA

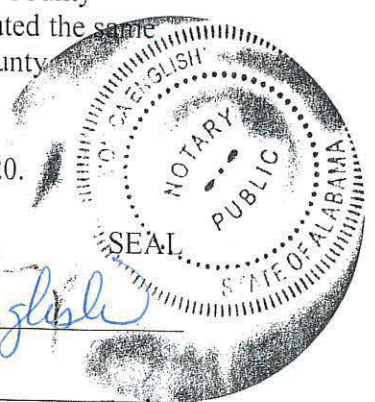
COUNTY OF BALDWIN

I, Monica English, the undersigned authority, a Notary Public, in and for Baldwin County and the State of Alabama, hereby certify that BILLIE JO UNDERWOOD, as Chairman of the Baldwin County Commission, and WAYNE A. DYESS, as Administrator of the Baldwin County Commission, whose names are signed to the foregoing instrument and who are known to me, acknowledged before me on this day that, being informed of the contents of said instrument, they, as such Chairman of the Baldwin County Commission and County Administrator of the Baldwin County Commission, and with full authority, executed the same voluntarily on the day the same bears date for and as the fact of said Baldwin County Commission.

GIVEN under my hand and seal this the 2nd day of June, 2020.

Monica English
Notary Public
My Commission Expires

My Commission Expires:
May 5, 2024



AT&T ALABAMA

By: C. Wayne Hutchens
Name: C. Wayne Hutchens
Title: President – AT&T Alabama

State of Alabama)
County of Shelby)

Sworn to and subscribed before me this 15th day of May, 2020.

Martha Sawzak
NOTARY PUBLIC

My Commission Expires: 12/3/2022





COUNTY COMMISSION

BALDWIN COUNTY
312 Courthouse Square, Suite 12
Bay Minette, Alabama 36507
(251) 580-2564
(251) 580-2500 Fax
agary@baldwincountyal.gov
www.baldwincountyal.gov

ANU GARY
Records Manager

MONICA E. TAYLOR
Assistant Records Manager

August 24, 2015

Ms. Marti Sawzak
AT&T Services, Inc.
Legal Department
Suite 43-061
675 W. Peachtree Street NW
Atlanta, Georgia 30308

RE: AT&T Alabama Franchise Agreement Renewal for Competitive Video Services

Dear Ms. Sawzak:

Please find enclosed three (3) **fully executed original** *Agreements* approved during the August 4, 2015, Baldwin County Commission meeting between the Commission and AT&T Alabama. This *Agreement* commenced on August 10, 2015, and shall expire on August 10, 2020.

If you have any questions or need further assistance, please do not hesitate to contact Ron Cink, Budget Director/Interim County Administrator, at (251) 580-2550.

Sincerely,

ANU GARY, Records Manager
Baldwin County Commission

AG/met Item DA1

cc: Ron Cink

ENCLOSURE(S)

RECEIVED
AUG 19 2015

BY: MEH

ACCEPTANCE AND ADDENDUM TO VIDEO SERVICES AGREEMENT

THIS ACCEPTANCE AND ADDENDUM TO VIDEO SERVICES AGREEMENT (“ADDENDUM”) dated August 10, 2015, (“Effective Date”) is made by and between BellSouth Telecommunications, LLC d/b/a AT&T Alabama (“AT&T Alabama”), and the County of Baldwin, Alabama, a political subdivision of the State of Alabama, through the Baldwin County Commission (“County”). AT&T Alabama and County shall sometimes be referred to separately as a “Party,” and collectively as the “Parties.”

RECITALS

WHEREAS, County of Baldwin and BellSouth Telecommunications, LLC d/b/a AT&T Alabama (“AT&T Alabama”) entered into an agreement styled “Agreement” (“Agreement”) on August 10, 2010, regarding the provision by AT&T Alabama of its integrated Internet Protocol (“IP”) enabled broadband platform of voice, data and video services (“IP Network”), the video component of which is a switched, two-way, point-to-point and interactive service (“IP Video Service”); and

WHEREAS, County of Baldwin subsequently adopted Resolution #2011-085, which adopted regulations for Cable Television Service and Competitive Video Service in the Unincorporated Areas of Baldwin County, Alabama; and

WHEREAS, paragraph 22 and the “Witness” paragraph on page 27 set for the term of the “Agreement” to expire effective August 10, 2015, but allow for extending the Agreement upon written mutual agreement of the parties; and

WHEREAS, AT&T Alabama accepts the terms of Resolution #2011-085, subject to the provisions of the “Agreement” as amended in this Addendum; and

WHEREAS, County of Baldwin and AT&T Alabama desire to extend the terms of the “Agreement” for an additional five (5) years and agree that there is sufficient mutual consideration for renewing and extending the term of the “Agreement.”

AGREEMENTS

NOW, THEREFORE, in consideration of the mutual covenants contained herein and in the original “Agreement,” and for other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the County of Baldwin and AT&T Alabama agree as follows:

1. Paragraphs 1 and 17 of the Agreement are amended to refer to the more recent Resolution of the County, Resolution #2011-085, effective May 3, 2011 and removing the reference to Resolution #98-56 and Resolution #2006-33.
2. Page 27 of the “Agreement” is hereby amended by changing the date of expiration from August 10, 2015 to August 10, 2020.

3. Paragraph 78 of the "Agreement" is amended as follows:

78. AT&T Alabama agrees to indemnify, save harmless, and defend the County, its past, present, and future officers, agents, and employees, from and against all liability for damages and/or for any liability or claims resulting from causes of action, injury or death to persons or damage to property, and Workers' Compensation claims against any party indemnified herein, arising out of, caused by, or as a result of AT&T's placement, construction, lines, cable, erection, maintenance, use or presence of, or removal, of its Facilities, provided that the County shall give AT&T Alabama written notice of its obligation to indemnify County: (A) within ninety (90) days of receipt of written notice of a claim pursuant to this paragraph or up to one hundred twenty (120) days if AT&T Alabama is not prejudiced by the delay between ninety (90) and one hundred twenty (120) days, or (B) within thirty (30) days of service of a legal action pursuant to this paragraph or up to ninety (90) days if AT&T Alabama is not prejudiced by the delay between thirty (30) and ninety (90) days.

4. Paragraph 79, line 2 of the Agreement is amended to insert the word "sole" between "the" and "negligence."

5. It is agreed that the Operation and Maintenance of AT&T Alabama's network shall be governed by Paragraphs 44-51 of the agreement and not by Paragraph 5(f) of the Resolution.

6. Unless amended by the terms of this Addendum, all other terms and conditions of the "Agreement," shall remain unchanged and in full force and effect throughout the extended term. In the event the terms and conditions of the "Agreement" conflict with the terms of this Addendum, this Addendum shall be deemed to supersede and override the terms of the "Agreement."

7. This Addendum incorporates and includes all prior and contemporaneous negotiations, correspondence, conversations, agreements and understandings between the parties concerning the subject matter hereof. No deviation from the terms hereof shall be predicated upon any prior or contemporaneous representations, agreements or understandings, whether oral or written.

IN WITNESS WHEREOF, the parties have executed this Acceptance and Addendum to Video Services Agreement, provided in the form as three (3) original copies for the records of BellSouth Telecommunications, LLC, d/b/a AT&T Alabama and three (3) original copies for the records of the Baldwin County Commission, between BellSouth Telecommunications, LLC, d/b/a AT&T Alabama and Baldwin County, Alabama on this the 10th day of August, 2015, such Acceptance and Addendum to Video Services agreement effective commencing on August 10, 2015 and expiring on August 10, 2020.

BALDWIN COUNTY COMMISSION

BY: Charles F. Gruber
CHARLES F. GRUBER
As Its: Chairman

ATTEST:

BY: Ronald J. Cink
RONALD J. CINK
As Its: Interim County Administrator



STATE OF ALABAMA

COUNTY OF BALDWIN

I, Monica E. Taylor, the undersigned authority, a Notary Public, in and for Baldwin County and the State of Alabama, hereby certify that CHARLES F. GRUBER, as Chairman of the Baldwin County Commission, and RONALD J. CINK, as Interim Administrator of the Baldwin County Commission, whose names are signed to the foregoing instrument and who are known to me, acknowledged before me on this day that, being informed of the contents of said instrument, they, as such Chairman of the Baldwin County Commission and County Administrator of the Baldwin County Commission, and with full authority, executed the same voluntarily on the day the same bears date for and as the act of said Baldwin County Commission.

GIVEN under my hand and seal this the 24th day of August, 2011



Monica E. Taylor
Notary Public
My Commission Expires 09/05/2016

**BellSouth Telecommunications, LLC d/b/a
AT&T Alabama**

By: Fred McCallum Jr.
Name: Fred McCallum, Jr.
Title: President – AT&T Alabama

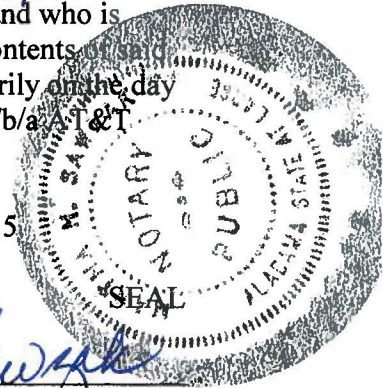
STATE OF ALABAMA

COUNTY OF Jefferson

I, MARTHA H. SAWZAK, the undersigned authority, a Notary Public, in and for said County and State of Alabama, hereby certify that FRED McCallum Jr., whose name as President of AT&T ALABAMA, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, as such officer and with full authority, executed the same voluntarily on the day the same bears date for and as the act of BellSouth Telecommunications, LLC, d/b/a AT&T Alabama.

GIVEN under my hand and seal this the 13th day of August, 2015

Martha H. Sawzak
Notary Public
My Commission Expires 5-19-2016



NOTARY PUBLIC STATE OF ALABAMA AT LARGE
MY COMMISSION EXPIRES: May 19, 2016
BONDED THRU NOTARY PUBLIC UNDERWRITERS

STATE OF ALABAMA

COUNTY OF BALDWIN

**RESOLUTION #2011-085
OF THE
BALDWIN COUNTY COMMISSION**

**RESOLUTION ADOPTING REGULATIONS FOR CABLE TELEVISION SERVICE
AND COMPETITIVE VIDEO SERVICE
IN THE UNINCORPORATED AREAS OF BALDWIN COUNTY, ALABAMA**

WHEREAS, Alabama Code Section 11-27-1 (1975) authorizes the Baldwin County Commission (Commission) to grant franchises to cable television providers utilizing public rights of way within the unincorporated areas of Baldwin County, Alabama; and

WHEREAS, the Commission is also empowered to promulgate reasonable rules and regulations for such providers; and

WHEREAS, the Commission adopted such rules pursuant to Resolution #98-56, as amended by Resolution #2006-33; and

WHEREAS, since the adoption of such rules a number of telecommunications providers have utilized technology which enables them to provide video services to their customers; and

WHEREAS, the Federal Communications Commission has adopted a franchising order imposing certain requirements on local governments to ensure a competitive environment for providers of video services, whether delivered over a traditional cable system or utilizing Internet protocol or other technology; and

WHEREAS, the Commission desires to adopt this new Resolution #2011-085 ("Resolution") to include and address these changes, and, further, to rescind the aforesaid prior Resolutions #98-56 and #2006-33 but without limiting, altering, or otherwise affecting in any manner any agreement or franchise executed prior to the adoption of this Resolution; now therefore

**BE IT RESOLVED BY THE BALDWIN COUNTY COMMISSION, IN REGULAR
SESSION ASSEMBLED, AS FOLLOWS:**

Regulations Governing Video and Cable Services

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1. Title

These regulations shall be known and may be cited as the Baldwin County Cable Service and Competitive Video Service Regulations.

2. Definitions

- A) *Affiliate* means another Person who owns or controls, is owned or controlled by, or is under common ownership or control of such Person.
- B) *Agreement* means either a Cable Franchise or Competitive Video Service Agreement.
- C) *Applicable Law* means such local, state and federal laws and rules as may govern the construction, operation and maintenance of a Cable or Competitive Video System.
- D) *Basic Cable* means the definition provided in 47 U.S.C. 522 (3), as amended.
- E) *Cable Provider* means any Person or group of Persons (1) who provides Cable Service over a Cable System and directly or through one or more Affiliates owns

a significant interest in such Cable System, or (2) who otherwise controls or is responsible for, through any arrangement, the management and operation of such a Cable System.

- F) *Cable Service* means (a) the one-way transmission to subscribers of (i) video programming, or (ii) other programming service, and (b) subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.
- G) *Cable System* means 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 (i) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (ii) a facility that serves subscribers without using any Public Right-of-Way; (iii) 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 42 U.S.C. § 541 (c), to the extent such facility is used in the transmission of video programming directly to subscribers, unless the extent of such use is solely to provide interactive on-demand services; (iv) an open video system that complies with 42 U.S.C. § 573; (v) any facilities of any electric utility used solely for operating its electric utility system; or (vi) the facilities of a Competitive Video Service Provider under this Chapter.
- H) *Commission* means the Baldwin County Commission as the duly elected governing body of Baldwin County, Alabama.
- I) *Competitive Video Service* means video programming provided by a Competitive Video Service Provider and provided through wireline facilities located at least in part in the public rights-of-way without regard to delivering technology, including internet protocol technology. This definition does not include video programming provided by a commercial mobile service provider defined in 47 U.S.C. § 332(d).
- J) *Competitive Video Service Agreement* means an Agreement executed by the Commission and a Competitive Video Service Provider pursuant to this Resolution.
- K) *Competitive Video Service Provider* means an entity providing video services pursuant to an Agreement with the Commission.
- L) *Competitive Video Service System* means a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Competitive Video Service which includes video programming and which is provided to multiple subscribers within a community, but such term does not include (i) a facility that serves only to

retransmit the television signals of one or more television broadcast stations; (ii) a facility that serves subscribers without using any Public Right-of-Way; (iii) 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 42 U.S.C. § 541 (c), to the extent such facility is used in the transmission of video programming directly to subscribers, unless the extent of such use is solely to provide interactive on-demand services; (iv) an open video system that complies with 42 U.S.C. § 573; (v) any facilities of any electric utility used solely for operating its electric utility system.

- M) *Franchise* means an initial authorization, or renewal thereof (including a renewal of an authorization which has been granted subject to 47 U.S.C. § 546), issued by the Franchising Authority, whether such authorization is designated as a franchise, permit, license, resolution, contract, certificate, agreement, or otherwise, which authorizes the construction or operation of a Cable System or Competitive Video Service.
- N) *Franchise Agreement* means the agreement executed by the Franchising Authority and a Provider pursuant to this Chapter and includes Competitive Video Service Agreements.
- O) *Franchising Authority* means the Baldwin County Commission.
- P) *Gross Revenues* means all consideration of any kind or nature, including without limitation, cash, credits, property, and in-kind contributions (services or goods) received by the Provider from the provision of Service within the Service Area.
 - 1. Included Items: Subject to paragraph (2), the term “Gross Revenues” shall include the following:
 - a. All charges and fees paid by subscribers for the provision of Service, including fees attributable to Service when sold individually or as part of a package or bundle, or functionally integrated, with services other than the Service; and
 - b. All revenue derived from the Provider’s Service pursuant to compensation arrangements for advertising sales and home shopping (including Home Shopping Network and any comparable shopping from home network) sales attributable to the local service area. Advertising commissions paid to third parties (excluding any refunds, rebates, or discounts the Provider may make to advertisers) shall not be netted against advertising revenue included in Gross Revenues. The allocation of advertising and home shopping compensation shall be based on the number of subscribers in the County divided by the total number of

subscribers in relation to the relevant region or national compensation arrangement; and

- c. All revenue collected by the Provider arising from or attributable to the provision of Service by the Provider within the County including, but not limited to: fees charged Subscribers for any basic, optional, premium, per-channel or per-program service; franchise fees; installation and re-connection fees; converter rentals and/or sales; late or administrative fees; and any upgrade, downgrade or other change-in-service fees; prorata advertising revenues; prorata revenues from home shopping commissions; and any prorata value (at retail price levels) of any non-monetary remuneration received by the Provider in consideration of the performance of advertising or any other service of the system, including fees attributable to Service when sold individually or as part of a package or bundle, or functionally integrated, with services other than the Service.
2. For the purposes of this Chapter, the term "Gross Revenues" shall not include the following:
 - a. Any revenue not actually received, even if billed, such as bad debt net of any recoveries of bad debt; and
 - b. Refunds, rebates, credits or discounts to subscribers or the Commission to the extent not already offset by clause 2. a. and to the extent such refund, rebate, credit, or discount is attributable to the Service; and
 - c. Any revenues received by the Provider or its Affiliates from the provision of any services or capabilities other than the Service, including, but not limited to telecommunications services, information services, Internet access services, and digital or VoIP telephone service.
 - d. Any revenues received by the Provider or its Affiliates for the provision of directory or Internet advertising, including yellow pages, white pages, banner advertisement, and electronic publishing; and
 - e. Any requirements or charges for managing the public rights-of-way with respect to a Franchise or Competitive Video Service Agreement under this Chapter, including payments for bonds, security funds, letters of credit, insurance, indemnification, penalties, or liquidated damages; and

- f. Any amounts attributable to the provision of Service to customers at no charge, including the provision of such Service to the public institutions without charge; and
 - g. Any tax, fee, or assessment of general applicability imposed on the customer or the transaction by a Federal, State, or local government or any other governmental entity, collected by the Provider, and required to be remitted to the taxing entity, including sales and use taxes and utility user taxes; and
 - h. Any forgone revenue from the provision of Service at no charge to any Person, except that any forgone revenue exchanged for trades, barter, services, or other items of value shall be included in Gross Revenue; and
 - i. Sales of capital assets or surplus equipment; and
 - j. Reimbursement by programmers of marketing costs actually incurred by the Provider operator for the introduction of new programming; and
 - k. The sale of Services for resale to the extent the purchaser certifies in writing that it will resell the Service and pay a fee to the Commission with respect hereto.
3. In the case of Service that may be bundled with other services of the Provider, the portion of the Provider's revenues that shall be included in Gross Revenues shall be that amount attributable to the Service as reflected on the books and records of Provider kept in the regular course of business in accordance with generally accepted accounting principles and Federal Communications Commission rules, regulations, standards, and orders, as applicable.
4. Revenue of an Affiliate shall be included in the calculation of Gross Revenues to the extent the treatment of such revenue as revenue of the affiliate has the effect (whether intentional or unintentional) of evading the payment of fees herein which would otherwise be paid for Service.
- Q) *Person* means an individual, partnership, association, joint stock company, trust, corporation or limited liability entity.
- R) *Provider* means either a Cable Provider or a Competitive Video Service Provider.
- S) *Public Right-of-Way* means any County street, alley, water or public right-of-way dedicated or commonly used for utility purposes, including utility easements wherein the County has acquired the right and authority to locate or permit the

location of utilities consistent with a Provider's facilities. "Public Right-of-Way" shall not include any real or personal County property that is not specifically described in the previous sentence, and shall not include County buildings, or other structures or improvements, regardless of whether they are situated in the public right-of-way.

- T) *Service* means either a Cable Service or Competitive Video Service.
- U) *Service Area* means the unincorporated area of Baldwin County, Alabama.

3. Grant of Authority

- A) In accordance with this Resolution and upon executing a Franchise Agreement, a Provider is authorized to occupy or use the Public Right-of-Ways within the service area to construct, operate, maintain, repair, and upgrade existing facilities and install new facilities for the purpose of providing Cable Service within the Service Area.
- B) In accordance with this Resolution and upon executing a Competitive Video Service Agreement, a Competitive Video Service Provider is authorized to occupy or use the Public Right-of-Ways within the service area to construct, operate, maintain, repair, and upgrade existing facilities and install new facilities for the purpose of providing Competitive Video Service within the Service Area.
- C) A Provider must comply with state and federal law and agree in its respective Franchise Agreement or Competitive Video Service Agreement to comply with any applicable requirements set forth in this Resolution, including, but not limited to compliance with and receipt of such permits, licenses, and legal authorizations as may be required by the Commission. This Resolution neither authorizes the Provider to use the Public Rights-of-Way for purposes of providing any other service, nor prohibits the Provider from doing so. The Provider's authority to provide non-cable service shall be subject to Applicable Law. No privilege or power of eminent domain is bestowed by this Resolution.

4. Level Playing Field

Any incumbent Provider providing Cable Service or Competitive Video Service in the unincorporated areas of Baldwin County on the effective date of this Resolution may immediately opt out of its existing Agreement with the Commission and enter into a new Agreement under Section 3.

5. Service and Technical Standards; Bonding

- A) A Provider shall design its System, and construct and maintain its System to have the capability to pass every dwelling unit within the Service Area, or such other

areas designated in the Agreement, subject to the extension provisions in this Section.

- B) A Provider will extend its Service in accordance with the following service extension formula:
1. Provider agrees to extend its Cable System or Competitive Video Service System to those areas where Provider receives a request for service from at least six (6) residential dwelling units per 660 feet of aerial plant as measured from Provider's existing distribution system. Such extension shall be at no cost to such subscriber other than the published standard/non-standard installation fees charged to all subscribers.
 2. Provider shall have the right, but not the obligation, to extend its System into any portion of the Service Area where another Provider is providing Service, into any annexed area which is not contiguous to the present Service Area, or into any area which is financially or technically infeasible due to extraordinary circumstances, such as a runway or freeway crossing.
- C) A Provider 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 Commission can communicate on all matters relating to system installation, construction, operation, and maintenance.
- D) Providers shall procure and maintain bonding in such amounts and terms as the Commission deems appropriate, taking into account the number of subscribers and impact of the system on the rights of way.
- E) A Provider shall include a description of the broad categories of programming and services to be provided in its Agreement with the Commission.
- F) A Provider is responsible for insuring that its 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 County shall have, upon request, the right to obtain a copy of tests and records required in accordance with appropriate rules but have no authority, pursuant to federal law, to enforce compliance with such standards.

6. Fees For Operation of Cable Service and Competitive Video Service

- A) **Application Fee.** Any Provider seeking an Agreement for the first time, shall pay a non-refundable application fee in the amount of five thousand dollars (\$5,000.00) by cashier's check, certified check or money order payable to the Commission.
- B) As compensation for rights granted under this Resolution, Providers shall pay to the Commission a fee of five percent (5%) of the Provider's Gross Revenues subject to the terms of its Agreement.
- C) The Provider shall file with the Commission on such form as prescribed by the Commission within thirty (30) days after the end of each monthly period a report of the Gross Revenues in the Service Area during the preceding monthly period, and shall, at the same time, pay to the Commission a sum equal to five percent (5%) of the Gross Revenues for the said monthly period. In the event that any payment is not made on such date, interest on such payment shall apply from such date at the rate of twelve percent (12%) per annum. If the Provider's Agreement should be terminated or forfeited prior to the end of any monthly period, the Provider shall submit to the Commission within twenty (20) days of such termination or forfeiture the report and payment required by this Subsection.
- D) The Commission shall have the right to audit and to recompute any amounts determined to be payable in satisfaction of the fees set forth in this Section. Any additional amount due the Commission as a result of the audit shall be paid by Provider within thirty (30) days after the Provider receives a written notice from the Commission. The notice which the Commission sends to Provider shall include a copy of the audit report.
- E) In the event that payment of any fee set forth in this Section, which has been recomputed pursuant to Subsection (C) above is not made on or before the expiration of thirty (30) days following written notice by the Commission, Provider shall be charged and shall pay, in addition to the amount due, interest on the amount due in accordance with Section 6 (C) above.
- F) Any fee payable by a Provider shall be reduced dollar for dollar by any telecommunications, messages or similar taxes levied by the Commission on the Provider or its customers with respect to the Services and paid by or through the Provider to the Commission.

7. Right-of-Way Provisions

Providers operating Cable Systems and Competitive Video Service Providers providing Competitive Video Service in the unincorporated areas of Baldwin County shall abide by any applicable Right-of-Way construction standards as established, from time to time, by the Commission and/or the County Engineer.

8. Franchise To Operate Systems in the Unincorporated Areas of the County

- A) No Person shall offer to subscribers a Cable Service or Competitive Video Service within the service area except pursuant to this Resolution. A Provider, however, that has not elected under Section 4 to enter into an Agreement under Section 3 may continue to provide Service under its existing Agreement until the expiration of such agreement.
- B) All Agreements granted pursuant to this Resolution shall be nonexclusive. The Commission reserves the right to issue as many Agreements as it deems advisable in the public interest.
- C) The Agreements shall take effect and will be in force from and after the earliest period allowed by law, and upon the filing by the Provider with the Commission of its acceptance, in writing, of each and all of the terms and provisions of the Agreement; provided, however, if the Provider shall fail to file such written acceptance within thirty days after the adoption of the agreement by the Commission, then the Agreement shall be null and void.
- D) If any section, subsection, sentence, clause, phrase or portion of this Resolution is for any reason held invalid or unconstitutional by any court of competent jurisdiction, or in conflict with rules and regulations of the Federal Communications Commission, then such portion shall be deemed a separate, distinct and independent provision of this Resolution, and such holding shall not affect the validity of the remaining portions thereof.
- E) Any Agreement executed pursuant to this Resolution may be revoked after a full due process hearing by a simple majority vote of the Commission for violation of a material provision of this Resolution, after giving the Provider ninety (90) days notice in writing of intention to revoke such agreement, unless such violation is corrected during the period of notice.
- F) The term of each Agreement shall be five years from effective date.
- G) All renewals shall be in accordance with federal and other Applicable Law.

9. Service Rates to Subscribers; Customer Service

- A) The Franchising Authority may regulate rates for the provision of Basic Cable and equipment as expressly permitted by federal or state law.
- B) An up-to-date written copy of all the Provider's rates, rules, regulations and policies having to do with subscriber service must be made available to subscribers at the time of connection or reconnection to the Service or at any time upon request, and provided to the County upon request. Such information may be made available to subscribers on the Provider's Web site.
- C) Providers shall comply with the FCC's customer service standards, as amended.

10. Scope

- A) This Resolution authorizes the use of the Public Right-of-Way for the provision of Cable Service and Competitive Video Service in the Service Area, but it does not take the place of any construction permit that may be required. The County Engineer shall be deemed to have given approval to any permit application if Provider does not receive any response within forty-five (45) days of the permit application submission date.
- B) It shall be the responsibility of the Provider to obtain any and all such permits under any other present or future provision of law that is applicable generally to Providers.

Failure of the Provider to obtain and conform to the material provisions of any and all such franchises, licenses, or permits, and to make prescribed payments if required as a condition of their issuance, shall be considered a violation of this Resolution and the Provider's Agreement.

- C) Neither the Franchising Authority nor the Provider shall be held in default under, or in noncompliance with, the provisions of this Resolution, 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 Franchising Authority or Provider 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 Provider'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 Commission's intention to subject a Provider to penalties, forfeitures or revocation of its Agreement for violations of the Agreement 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 Provider which outweigh the benefit to be derived by the County and/or Subscribers.

- D) Both parties hereby reserve any constitutional or legal right which either party may have or may subsequently be determined to have, either by subsequent legislation or court decisions. Both parties acknowledge that each party reserves all of their respective rights under applicable Federal and State Constitutions and laws. Provider agrees to comply with any lawful action or applicable requirements of the Commission in the exercise of such rights and powers which either have been or shall be enacted or established subsequent to the granting of an Agreement.

11. Public and Community Benefits

- A) A Provider shall designate a sufficient amount of digital or video-on-demand ("VOD") capacity on its network to allow for the provision of a comparable number of one (1) public, channel for educational and, or governmental ("PEG") use, channel(s), or hours of programming, at the Commission's discretion, as further specified in any Agreement.
- B) Any programming made available under this Section shall be solely for noncommercial public, educational and governmental purposes and the content, production, and delivery of which shall be the sole responsibility of the Commission. Provider's only obligation shall be the provision of one (1) digital channel or VOD capacity.
- C) Upon written request by the Commission, a Provider agrees to discuss in good faith the interconnection of PEG channel(s) with an adjacent Cable System or Competitive Video Service System. .
- D) A Provider shall comply with the FCC's Emergency Alert System (EAS) requirements, as amended, throughout the term of its Agreement.

12. Service to Public Schools and Public Buildings

Providers offering Service must, upon written request by the Commission, provide one free installation and free monthly Basic Cable Service to one outlet to each public elementary and secondary school, government administrative building, fire station, police station, and public library building that is passed by Providers' Cable System or Competitive Video Service System and is within 125 feet of Provider's distribution plant. Each such Provider shall have the responsibility to offer one free installation and one free monthly Basic Cable Service to such buildings.

13. Indemnification

A Provider shall indemnify, save harmless, and defend the Commission and all contractors, officers, and employees thereof from and against all claims, demands, causes of action, copyright action, liability, judgments, costs and expenses or losses for injury or death to persons or damage to property owned by, and Worker's Compensation claims against any parties indemnified herein, arising out of, caused by, or as a result of the Provider's construction, lines, cable, erection, maintenance, use or presence of, or removal of any poles, wires, conduit, appurtenances thereto, or equipment or attachments thereto.

14. Insurance

A Provider shall comply with the insurance requirements as provided for in its Franchise Agreement.

15. Assignment

- A) A Provider may not assign or transfer its Agreement or any interest therein, without the prior written consent of the Commission, which consent shall not be unreasonably withheld.
- B) A change in the actual working control of the Provider shall be considered a "transfer" and shall not take place without the prior written consent of the Commission.
- C) Notwithstanding anything to the contrary, no consent shall be required, however, for (1) a transfer of an agreement or any interest therein to an Affiliate or (2) a transfer in trust, by mortgage, hypothecation, or by assignment of any rights, title or interest of the Provider in the Agreement or the system in order to secure indebtedness.
- D) Any request for consent to a transfer of its Agreement or change in control of the Provider shall be handled by the Commission in accordance with Applicable Law.
- E) In the event of a transfer of an Agreement, the transferee or assignee must agree, in writing, to be bound by the terms of the Agreement subject to Applicable Law.

16. Effective Date.


This Resolution shall take effect on May 3, 2011.


17. Rescission; Effect on Existing Agreements

Resolution #98-56 and Resolution #2006-33 are hereby rescinded; provided, however, that neither this Resolution nor the adoption thereof shall limit, alter or otherwise affect in any manner any agreement or franchise executed prior to the adoption of this Resolution. It is the

intent of the Commission that any and all Franchises or Agreements that existed prior to the adoption of this Resolution shall remain valid and enforceable in accordance with their terms.

By:


FRANK BURT, JR., Chairman
Baldwin County Commission



ATTEST:



DAVID A. Z. BREWER, Interim and Acting County Administrator
Baldwin County Commission



COUNTY COMMISSION

BALDWIN COUNTY

312 Courthouse Square, Suite 12
Bay Minette, Alabama 36507
(251) 580-2564
(251) 580-2500 Fax
www.co.baldwin.al.us

LORI G. RUFFIN
Records Manager

August 11, 2010

Ms. Gigi Armbrecht
Regional Manager – External Affairs
AT&T Alabama
1110 Montlimar Drive
Suite 299
Mobile, Alabama 36609-1732

RE: IP Video Services

Dear Ms. Armbrecht:

Enclosed are two **original** *Agreements Authorizing AT&T Alabama to Provide IP Video Services within the Unincorporated Areas of Baldwin County, Alabama*, approved during the August 3, 2010 Baldwin County Commission meeting.

If you have any questions or need further assistance, please do not hesitate to contact David Brewer, Assistant County Administrator, at (251) 580-2550.

Sincerely,

LORI G. RUFFIN, Records Manager
Baldwin County Commission

LGR/met Item CA1

cc: David Brewer
Scott Barnett
Erich Bergdolt
Peggy Lambeth
Wanda Cochran

ENCLOSURE(S)

**AGREEMENT AUTHORIZING AT&T ALABAMA TO PROVIDE
IP VIDEO SERVICES WITHIN THE UNINCORPORATED
AREAS OF BALDWIN COUNTY, ALABAMA**

This agreement is made by and between BellSouth Telecommunications, Inc., d/b/a AT&T Alabama ("AT&T Alabama" or the "Company"), a Georgia Corporation, and Baldwin County, Alabama by and through its duly elected Commission ("County"). AT&T Alabama and County shall sometimes be referred to separately as a "Party" and collectively as the "Parties".

Recitals

1. Alabama Code section 11-27-1 et seq. authorizes and empowers the Baldwin County commission to grant, by resolution or ordinance, franchises for the installation of community television antenna facilities within the boundary lines of public roads, highways or rights-of-way for the operation of such Services within the unincorporated areas of Baldwin County, which franchises may be conditioned upon reasonable rules and regulations. The county has adopted such rules pursuant to Resolution Number 98-56, as amended by Resolution Number 2006-33 ("hereafter, "the Resolution").
2. AT&T Alabama intends to modify its existing telecommunications network to provide an integrated Internet Protocol ("IP") enabled broadband platform of voice, data and video services ("IP Network"), the video component of which will be referred to herein as "IP Video Service".
3. While AT&T Alabama believes that it is exempt from franchising requirements generally, it has nonetheless requested from the County authorization to offer certain video services in the unincorporated areas of Baldwin County.
4. While the County believes that AT&T Alabama's video product is the equivalent to cable television, and therefore subject to franchising requirements under state and federal law, the County nonetheless agrees to authorize AT&T to provide video service in accordance with the Resolution and the terms and conditions appearing below.

Definitions

5. *Affiliate* means, when used in relation to any person, another person who owns or controls, is owned or controlled by, or is under common ownership or control with, such person.
6. *Commission* means the Baldwin County commission, the governing body of Baldwin County, Alabama.
7. *County* means Baldwin County, Alabama which is governed by the Baldwin County commission.
8. *Effective date* means the later of the date the Agreement is approved by the County Commission and properly executed by AT&T Alabama.
9. *Facilities* mean cabinets, fiber, lines, or other property of AT&T Alabama reasonably necessary to modify its existing telecommunications network so that it may provide IP Video Service to Subscribers in the Service Area.
10. *FCC* means the Federal Communications Commission.
11. *AT&T Alabama* means Bellsouth Telecommunications, Inc., d/b/a/ AT&T Alabama, which has been authorized by the Commission to provide IP video services, or anyone who succeeds AT&T Alabama in accordance with the provisions of this Agreement.
12. *Gross Revenue* means all consideration of any kind or nature, including without limitation, cash, credits, property, and in-kind contributions (services or goods) received by AT&T Alabama from the provision of IP Video Service within the service area. By way of illustration and not limitation, the term "Gross Revenue" shall include the following:
 - (a) all charges and fees paid by subscribers for the provision of Service, including fees attributable to service sold individually or as part of a package or bundle, or functionally integrated, with services other than the Service;
 - (b) all revenue derived from the Service pursuant to compensation arrangements for advertising sales and home shopping (including Home Shopping Network and any comparable shopping from home network) sales attributable to the local service area. Advertising commissions paid to third parties (excluding

any refunds, rebates, or discounts AT&T Alabama may make to advertisers) shall not be netted against advertising revenue included in Gross Revenues. The allocation of advertising and home shopping compensation shall be based on the number of subscribers in the Service Area divided by the total number of subscribers in relation to the relevant region or national compensation arrangement; and

(c) all revenue collected by AT&T Alabama, arising from or attributable to the provision Service within the Service Area including, but not limited to: fees charged Subscribers for any basic, optional, premium, per-channel or per-program service; IP Video Service Fees; installation and reconnection fees; converter rentals and/or sales; late or administrative fees; upgrade, downgrade or other change-in-service fees; pro rata advertising revenues; pro rata revenues from home shopping commission; and any pro rata value (at retail price levels) of any non-monetary remuneration received by AT&T Alabama in consideration of the performance of advertising or any other service, including fees attributable to Service once sold individually or as part of a package or bundle, or functionally integrated, with services other than the Service.

13. *Gross Revenue Exclusions.* AT&T Alabama may exclude the following items from Gross Revenue:

- (a) any revenue not actually received, even if billed, such as bad debt net of any recoveries of bad debt;
- (b) refunds, rebates, credits or discounts to subscribers or to the County, to the extent not already set out in subparagraph (a) and to the extent such refunds, rebates, credits, or discounts are attributable to the Service;
- (c) any revenues received by AT&T Alabama or its Affiliate from the provision of services or capabilities other than the Service, including telecommunications services, information services, IP voice service, Internet access services, and services, capabilities, and applications that may be sold as part of a package or bundle, or functionally integrated with the Service;

- (d) any revenues received by AT&T Alabama or its affiliates for the provision of directory or Internet advertising, including Yellow Pages, White pages, banner advertisement, and electronic publishing;
- (e) any requirements or charges for maintaining the public rights of way with respect to this agreement, including payments for bonds, security funds, letters of credit, insurance, indemnification, penalties, or liquidated damages;
- (f) any amounts attributable to the provision of the Service to customers at no charge, including the provision of such Service to public institutions without charge;
- (g) any tax, fee, or assessment of general applicability imposed on the subscriber or where the transaction by a federal, state, or local government or any other governmental entity, collected by AT&T Alabama, and required to be remitted to be taxing entity, including sales and use taxes and utility user taxes;
- (h) any work on revenue from the provision of Service at no charge to any person, except that any foregone revenue exchanged for trades, barter, services, or other items of value shall be included in Gross Revenue;
- (i) sales of capital assets or surplus equipment;
- (j) reimbursement by programmers of marketing costs actually incurred by AT&T Alabama for the introduction of new programming; and the sale of Services for resale to the extent the purchaser certifies in writing that it will resell the Service and pay a fee to the County with respect thereto.

14. *IP Video Services or Service* means (a) utilizing the IP Network to transmit to subscribers (i) video programming or (ii) other programming service, and (b) subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

15. *Other programming service* means information that an IP Video provider makes available to all subscribers generally as part of its video service.

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

17. *Resolution* means Resolution 98-56 adopted July 23, 1998, as amended by Resolution Number 2006-33 adopted November 15, 2005.

18. *Service Area* means the unincorporated geographical area within Baldwin County and within which AT&T Alabama is authorized to construct, operate and maintain IP Video services.

19. *Street or Road* means the surface of and the space above and below any publicly owned or maintained property or right-of-way, street, road, highway, freeway, land, path, alley, court, sidewalk, parkway or drive, now or hereafter existing within Baldwin County.

20. *Subscriber* means any person or legal entity lawfully receiving any portion of the IP Video services of AT&T Alabama pursuant to this agreement

21. *Video programming* means programming provided by, or generally considered comparable to programming provided by, a television broadcast station.

Term

22. Unless terminated earlier in accordance with paragraph 21, the term of this agreement shall be for five (5) years, commencing from its effective date. So long as AT&T Alabama provides IP Video Services in the Service Area, the County may, at its option, extend the term of this agreement, or any renewal thereof, for an additional five year term. The County shall notify AT&T Alabama of its intent to renew 60 days prior to the expiration of this agreement, or any renewal.

23. AT&T Alabama shall have the right to terminate this agreement and all obligations hereunder upon 90 days notice to the County, if (a) AT&T Alabama concludes in its reasonable business judgment that IP Video Service in the County is no longer technically, economically, or financially consistent with AT&T Alabama's business objectives; (b) Title VI of the Communications Act of 1934, as amended, obligations or any similar obligations are imposed on AT&T Alabama; or (c) it becomes clear that AT&T Alabama must offer or provide IP Video Service pursuant to a franchise (cable or otherwise) and/or franchise-like requirements for other local authorization.

Enforcement of Franchise

24. AT&T Alabama shall not be excused from complying with any of the terms or conditions of this agreement by any failure of the Commission upon any one or more occasions to insist upon or to seek compliance with any such terms or conditions.

25. Subject to the protections afforded in paragraph 93, whenever the Commission shall set forth any time for any action to be performed by or on behalf of AT&T Alabama, said time shall be deemed of the essence and any failure of AT&T Alabama to perform within the time allotted shall be sufficient grounds for the Commission to revoke the Agreement.

26. AT&T Alabama agrees that it will not assert, at any time, in any claim or proceeding that any condition or term of this agreement is unreasonable, arbitrary or void or that the Commission had no power or authority to make such term or conditions, but shall be required to accept the validity of the terms and conditions of this agreement in its entirety, provided that nothing in this Agreement is intended to waive or adversely affect, or to be interpreted as waiving or adversely affecting, any rights that AT&T Alabama may have as a telephone company under Alabama Code § 23-1-85 or applicable law.

Conflict with Laws

27. Whenever any law of the State of Alabama or of the United States, or of any agency of either, shall be in direct conflict with and supersede any provision of this Agreement or the Resolution, then for so long as such state or federal law or regulation shall be in force and effect, any affected provisions of this Agreement shall be suspended and be of no force and effect and AT&T Alabama shall not be required to comply with such provision; however, the validity of the remaining portions or provisions shall not be affected thereby. In the event this Agreement imposes burdens different than those imposed by any other law, but within the power of the Commission to impose said burdens, the more restrictive provision shall apply.

28. If any section, sentence, clause or phrase of this Agreement or the Resolution is held unconstitutional or otherwise invalid, such infirmity shall not affect the

validity of the remaining portion of these rules and regulations or of any right granted hereunder. Provided, however, that in the event that the FCC, or any court of competent jurisdiction, by final and on appealable order, declares any section of this Agreement invalid, then such section or sections shall be renegotiated by the parties.

Construction and Installation

29. AT&T Alabama shall proceed with due diligence after the Effective Date to obtain all necessary permits and authorizations which are required for construction and installation of its Facilities.

30. Within ninety (90) days after obtaining all necessary permits and authorizations, AT&T Alabama shall begin the permitted work and shall act with reasonable diligence to offer Service within one (1) year after commencement of construction.

31. Failure on the part of the AT&T Alabama to offer service to the subscribers within one (1) year after the commencement of construction shall be grounds for termination. The Commission may extend the time for the commencement and completion of construction and installation of service for additional periods in the event the AT&T Alabama, acting in good faith, experiences delays by reasons of circumstance beyond its control.

32. At the time it commences Service, and on or before January 31 of each year, AT&T Alabama must file two (2) copies of a map, with the Office of the Chairman of the Baldwin County Commission, Baldwin County Administration Building, 312 Courthouse Square, Suite 12, Bay Minette, Alabama 36507 and at the office of the County Engineer, Baldwin County Highway Department, 22220 West Boulevard, Silverhill, Alabama 36576, showing the areas of Service said map being accurate as of the end of the calendar year immediately proceeding the date of filing.

33. Within AT&T Alabama's service area, whenever it shall receive a request for service from at least six subscribers within six hundred and sixty (660) feet of its Facilities AT&T Alabama shall provide Service to such subscribers at no cost to the subscribers other than the usual connect fees for all subscribers. The six hundred and

sixty (660) feet shall be measured from the point where AT&T Alabama's Facilities within a public right of way or easement is closest to the requesting subscriber's residence. Notwithstanding the provisions of this subsection, no extension shall be required if the existing Facilities are at full capacity or providing additional service would require the installation of new Facilities.

34. The Facilities shall be constructed and operated in accordance with all adopted and applicable county, state and national construction and electrical codes. All Facilities within the County shall be located as to cause minimum interference with the proper use of streets, highways, and public rights-of-way, and to cause minimum interference with the rights and reasonable convenience of property owners who abut any of said streets, highways or public rights-of-way.

Conditions for Use of Streets or Roads

35. Except when reasonably necessary to provide Service to a subscriber and not simply because it shall be more convenient, economical or profitable for AT&T Alabama to so operate, and then only when expressly permitted in writing by the Commission under such conditions as it shall prescribe for the public welfare, AT&T Alabama shall not erect or authorize or permit others to erect any poles or facilities within the streets, highways or public rights-of-way within the County in order to provide Service, but shall use the suitable existing poles and other equipment, if any, of the appropriate electrical power and telephone and other utility companies and under such terms and agreements as AT&T Alabama negotiates with these companies.

36. No Facilities shall be installed upon any public street, highway, easement or right-of-way within the County until the proposed location, specifications and manner of installation of such poles, cables, equipment or wires shall have been set forth upon a written plat or map which shall be submitted to the Chairman and County Engineer and approved by the County Engineer. The County Engineer shall be deemed to have given his approval if he does not notify the AT&T of his disapproval within forty-five (45) days of his receipt of such map or plat.

37. Whenever the Commission shall, upon thirty days written notice, require the relocation or reinstallation of any Facility located in any of its streets, highways or public rights-of-way within the County for road expansion, improvement, or paving, it shall be the obligation of AT&T Alabama to immediately remove, relocate or reinstall such Facility at no charge or expense to the Commission; provided, however, the Commission may allow additional time for good cause shown. Where the relocation or reinstallation request is associated with a public purpose other than a road expansion, improvement, or paving, neither the Commission nor AT&T waive any rights related to which party bears the cost under applicable law for such relocation or reinstallation, and both agree to meet and negotiate in good faith the terms of such relocation and reinstallation on a timely basis.

38. Whenever in any place within the County all electric and telephone utilities and cable TV facilities are located underground, it shall be the obligation of a AT&T Alabama to locate or to cause its Facilities to be located underground within such places, except for Facilities that cannot reasonably be placed underground. If the electric utilities, telephone utilities and cable TV facilities shall be located underground in any place within the County after AT&T Alabama shall have previously installed its property, nevertheless, AT&T Alabama shall at the same time or reasonably thereafter remove and relocate its Facilities also underground, in such places. In areas of the County where utilities and cable TV facilities are underground, AT&T Alabama may locate certain Facilities above ground upon a showing of necessity to and receiving written authorization from the Commission. AT&T Alabama's Facilities placed underground at the property owners' request shall be installed at the additional expense of the property owners.

39. In case of disturbance of any street, road, highway, public right of way or utility easement within the County caused by AT&T Alabama in the installation of its Facilities, AT&T Alabama shall at its own cost and expense and in a manner approved by the State of Alabama, the Commission or other properly constituted authority, place and restore such street, road, highway, public right-of-way or utility easement in as good condition as before the work involving such disturbance was done, all in accordance with

standards, rules and regulations of the Alabama Department of Transportation or County having jurisdiction over such highways, roads, streets, public rights-of-way and utility easement or any division thereof.

40. *Temporary disconnections; relocation or removal of facilities.* AT&T Alabama shall be required, at its risk and cost, to promptly protect, support, temporarily disconnect, relocate in, or remove from the rights of way, any facilities of AT&T Alabama whenever required by the County upon reasonable notice applicable to the conditions warranting such action and as then reasonably determined by the County engineer, or his designee by reason of traffic conditions, an emergency situation, public safety, or rights of way construction. The County will use its best efforts to coordinate such activity with AT&T Alabama upon the request of AT&T, including discussions of the least disruptive process. Nothing in this subsection shall be construed: (a) to obligate AT&T Alabama to pay such costs when the project requiring such costs is performed by the County as consideration under a private development agreement that the County has entered into with a private entity; or (b) prevent AT&T from receiving cost reimbursement or funds under federal or state grants or programs so long such reimbursement or funds are not at County expense. Subject to the cost provisions of this subsection, in the event the County relocates the rights-of-way where AT&T's facilities are located, the County will provide AT&T an alternative location for said facilities in the relocated rights-of-way. Nothing herein shall be construed to prevent AT&T Alabama from continuing to occupy with its facilities abandoned rights-of-way as may be allowed under applicable state law.

41. AT&T Alabama shall, on the request of any person holding a building moving permit issued by the Commission, temporarily relocate its facilities to permit the moving of such building. The expense of such temporary relocation shall be paid by the person requesting the same and AT&T Alabama shall have the authority to require such payment in advance. AT&T Alabama shall be given not less than forty-eight (48) hours advance written notice to arrange for such temporary wire changes. In the event of a disagreement between AT&T Alabama and a holder of a permit, such disagreement will be resolved by the Commission.

42. If at any time in case of fire or disaster within the County, it shall become necessary in the reasonable judgment of the Chairman, Director of the Baldwin County Emergency Management Agency, the County Engineer, the officer in charge of any Volunteer Fire Department, Fire Department, Baldwin County Sheriff's Department or other agency of the County to cut or move any of the Facilities this may be done and the repairs thereby rendered necessary shall be made by a AT&T Alabama, at its own expense and without charge against the Commission, such Volunteer Fire Department, Fire Department, Baldwin County Sheriff's Department or County agency. Without limiting the foregoing, and in order to avoid critical service outages possibly occasioned by such activity, the County will take reasonable efforts under the circumstances to notify and consult with AT&T Alabama if there is a potential that its facilities will be impacted.

43. AT&T Alabama's work on the Facilities, while in progress, shall be properly executed at all times with suitable barricades, flags, lights, flares, or other devices as are reasonably required to protect all members of the public having occasion to use the portion of the streets involved, or adjacent property. Any opening or obstruction in the streets shall be guarded and protected at all times by the placement of adequate barriers, fences or boarding, the bounds of which shall be clearly designated by warning lights of approved types.

Operation and Maintenance

44. AT&T Alabama shall comply both with the terms of this agreement and the customer service standards set out in 47 C.F.R. 76.309(c). If any conflict exists between said standards and the requirements imposed by this Agreement, AT&T Alabama shall comply with the more restrictive provisions.

45. AT&T Alabama shall install and maintain its Facilities in accordance with applicable standards delineated by the FCC to the end that the subscribers in the County shall receive high quality and reliable service.

46. The Facilities shall be installed, operated and maintained in accordance with applicable FCC rules and regulations and all other applicable laws, rules and regulations. Failures or malfunctions of the Service shall be corrected by AT&T

Alabama promptly after notice of such failure or malfunction except or unless such failure or malfunction shall be over a substantial portion of the Facilities and shall have been caused by storm, fire, lightning, explosion, civil unrest or other similar catastrophe.

47. In order to limit failures and malfunctions of the Service to a minimum and that the same might be promptly corrected at all times after notice of malfunction or failure, AT&T Alabama is required to maintain a presence in the County and shall have a listed telephone number which shall be toll free to all subscribers. The telephone shall be so operated that complaints or requests for repairs or adjustments because of malfunctions can be received at any time, including Saturday, Sunday and Holidays.

48. AT&T Alabama shall at all times keep and maintain in, or in reasonably close proximity to, the County an adequate inventory of routine maintenance and repair parts for the Service as will assure the continuity of the service to subscribers in the County on a prompt and efficient basis and without being subjected to delays by having to obtain necessary parts and equipment from distant points; AT&T Alabama shall keep available at all times maintenance and repair crews in sufficient number and capability as may be reasonably necessary and sufficient to give prompt, reasonable, and capable maintenance and repair service in accordance with good engineering practices. AT&T Alabama shall provide such adjustments and repairs as are necessary to provide a quality Service to the subscriber.

49. AT&T Alabama shall so operate and maintain its Service and Facilities where there will be no interference with television or radio reception through individually-owned receiving antennas.

50. The Commission shall, if it deems it necessary, have the right and privilege to inspect the connection, installation, operation and maintenance of the Facilities that occupy the public right-of-way or other county property or facilities in order to satisfy itself as to the proper performance of the terms of this agreement.

51. AT&T Alabama shall permit the pro-rata reduction of monthly charges for customers who notify AT&T Alabama of individual service disruption. The adjustment period shall commence upon notification. AT&T Alabama shall permit the pro-rata

reduction of monthly charges for customers who notify AT&T Alabama of individual service disruption. The adjustment period shall commence upon notification.

Obscene Programming

52. IP Video Programming services which are obscene or otherwise not protected by the Constitution of the United States of America shall not be transmitted by AT&T Alabama, provided that AT&T Alabama has reasonable prior notice that a programmer is or intends to transmit such obscene programming.

Rates

53. At any time during the term of this agreement the Commission may, if authorized under applicable FCC regulations or federal law, undertake the process to regulate rates charged for the Service. Unless and until such time as such proceedings are completed, AT&T Alabama agrees to comply with all applicable FCC regulations and to supply information regarding rates to the Commission upon request.

Removal on Subscriber's Request

54. Video set top boxes shall be so constructed and designed that by the use of ordinary household tools and without special skills or knowledge and without reasonable risk of harm, the subscriber may be capable at any time of disconnecting the set top boxes from the subscriber's television set or receiver so that said set or receiver may be used independently of the Facilities.

Rights of Individuals Protected

55. *Disclosure of Subscribers' Personally Identifiable Information.* AT&T Alabama shall not disclose personally identifiable information concerning any subscriber without prior written or electronic consent of the subscriber concerned and shall take such actions as are necessary to prevent unauthorized access to such information by a person other than the subscriber or AT&T Alabama unless authorized in 47 U.S.C. Section 551.

56. *Monitoring or Tapping.* AT&T shall not engage in any unlawful tapping or monitoring of video content of a Subscriber.

57. *Discriminatory or Preferential Practices Prohibited:* AT&T Alabama shall not, in its rates or charges, or in making available the Service, or in its rules or regulations, or in any other respect, make or grant unlawful preferences or advantages to any subscriber or potential subscriber to the Service, or to any user or potential user of the Service, and shall not subject any such persons to any unlawful prejudice or disadvantage. This provision shall not be deemed to prohibit, among other things, promotional campaigns to stimulate subscriptions to the Service or other legitimate uses thereof, nor shall it be deemed to prohibit the establishment of a graduated scale of charges and classified rate schedules to which any customer coming within such classification shall be entitled. AT&T Alabama shall not deny access to its IP Video service to any group of potential residential customers because of the income of the local area in which the group resides.

58. Reserved

59. *Disclosure to Subscribers:* If AT&T Alabama identifies the Commission on Subscriber's Bills, in accordance with the Cable Act, the Commission requires AT&T Alabama to include the following in its entirety:

AT&T Alabama operates under the authority of an agreement with:

Baldwin County Commission
312 Courthouse Square, Suite 12
Bay Minette, Alabama 36507
Phone: (334) 937-0264

(Name of AT&T Alabama)

(Customer Telephone Number of AT&T Alabama)

60. *Notification to Subscribers:* AT&T Alabama shall provide written or e-mailed information on each of the following areas at the time of installation of service, and at any time upon request:

- (a) products and service offered;
- (b) prices and options for programming services and conditions of subscription to programming and other services;
- (c) installation and service maintenance policies;
- (d) instructions on how to use the services;
- (e) channel positions of programming carried on the Service; and
- (f) billing and complaint procedures, including the address.

61. Subscribers will be notified of any changes in rates, programming services or channel positions as soon as possible through announcements on the Service and in writing or via e-mail. 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 AT&T Alabama. In addition, AT&T Alabama shall notify subscribers thirty (30) days in advance of any significant changes in the other information required by this Section.

62. *Notification to the Commission:* AT&T will attempt to notify the Commission in advance of any changes in rates, programming services or channel positions.

Video Fee

63. *General Payment:* AT&T Alabama shall pay monthly to the Commission during the term of this agreement a sum equal to five percent (5%) of its Gross Revenues, less Gross Revenue of Exclusions. AT&T Alabama shall file with the Commission on such forms as prescribed by the Commission within twenty (20) days after the end of each monthly period a report, under oath at the risk of perjury, of the Gross Revenues in the service area during the preceding monthly period, less Gross Revenue Exclusions, and shall, at the same time, pay to the Commission a sum equal to five percent (5%) of the gross revenues for the said monthly period. In the event that any payment is not made on such date, interest on such payment shall apply from such date at the rate of twelve percent (12%) per annum.

64. *Bundled Services.* In the case of Service that may be bundled or integrated functionally with other services, capabilities, or applications of AT&T Alabama, the

portion of AT&T Alabama's revenues that shall be included in Gross Revenues shall be that amount attributable to the Service as reflected on the books and records of AT&T Alabama capture the regular course of business in accordance with generally accepted accounting principles and Federal Communication Commission rules, regulations, standards, and orders as applicable.

65. *Affiliates Revenue.* Revenue of and Affiliate shall be included in the calculation of Gross Revenues to the extent the treatment of such revenue as revenue of the Affiliate has the effect (whether intentional or unintentional) of evading the payment of fees herein which would otherwise be paid for Service.

66. *Early Termination:* if this agreement should be terminated or forfeited prior to the end of any monthly period, AT&T Alabama shall submit to the Commission within twenty (20) days of such termination or forfeiture the report and payment required by paragraph 61 above for such partial monthly period.

67. *Inspection of Records:* The Commission shall have the right to inspect AT&T Alabama's records showing Gross Revenues and gross revenue exclusions from which its video fee payments are computed. The right of audit and recomputation of any and all amounts paid under the Agreement shall be always accorded to the Commission unless otherwise restricted by law. No exercise by the Commission of such right of inspection shall be deemed a waiver by it of any right hereunder or of its right to a true accounting of all amounts due or owned to it by AT&T Alabama.

68. *Effect of Acceptance:* Subject to applicable law, no acceptance of any payment by the County shall be construed as a release of or an accord of satisfaction of any claim the Commission might have for further or additional sums payable under the terms of this agreement or for any performance or obligation of AT&T Alabama thereunder.

69. The payment of any and all fees by AT&T Alabama is in addition to any ad valorem taxes which the Commission may levy upon AT&T Alabama's real or personal property, and is in addition to any other tax which may lawfully be levied by other governmental entities.

Emergency Use of the facilities/Public Access

70. *Emergency Use:* AT&T Alabama shall provide for the transmission of Emergency Alert System notifications to its subscribers provided over the "Federal Emergency Alert System," including, as appropriate, emergency messages broadcast by the Federal Emergency Management Agency, Alabama Emergency Management Agency and the Baldwin County Emergency Management Agency. AT&T Alabama shall be required to be in compliance with all FCC regulations and applicable federal and state regulations governing the transmission of information during emergency situations. Specifically, AT&T Alabama shall be required to be in compliance with 47 C.F.R. Part 11, Subpart A, Section 11, which requires AT&T Alabama to transmit or rebroadcast information originating from the Baldwin County Emergency Management Agency or Local Area Emergency Alert Plan.

71. *Free Service to County Buildings and Public Schools:* AT&T must provide the County free of charge one (1) installation and basic monthly service to each public school that is within 125 feet of AT&T Alabama's activated video ready access device, provided that the Service is technically feasible to provide. In addition, AT&T must, collectively with all other video Providers, provide free of charge one (1) installation and basic monthly service to other government buildings, fire buildings, law enforcement buildings, and library buildings that are within 125 feet of AT&T Alabama's activated video ready access device, provided that the Service is technically feasible to provide. Other than for public schools, no more than one (1) provider shall be required to provide the Service required by this section to any given location. The County will confer with all Providers and determine the assignments in a reasonable manner. AT&T shall not seek to offset recurring costs associated with the requirements of this Section against the video fee due under paragraph 63 of this Agreement, nor shall AT&T impose such costs on the schools or institutions receiving such free installations and service. AT&T shall offset any non-recurring installation and non-recurring repair of service charges provided pursuant to this section against any fees due under Section 63 of this Agreement. Such charges shall not exceed the installation charge applicable to

residential customers or, at such time as a business product is available, to business customers. AT&T Alabama shall have no duty to provide inside wire maintenance service.

72. Educational and Governmental Access Channel Capacity.

AT&T Alabama shall provide capacity for the County's public, educational and governmental ("EG") programming through AT&T Alabama's IP-enabled Video Service, including sufficient bandwidth capacity to carry one EG channel required by the County. The County may be required to support a change in or addition to current County equipment now in use for EG programming to make it compatible with AT&T Alabama's IP-enabled video technology. AT&T Alabama's obligation herein will begin when its IP-enabled Video Service subscribers in the Service Area reach one thousand (1000) subscribers.

73. Any operation of any EG access channel by County shall be the responsibility of County, and AT&T Alabama's only obligation, if any, is the responsibility for the transmission of such channel. The County will be responsible to ensure that all transmissions, retransmissions, content, or programming that may be requested to be transmitted over a channel or facility by AT&T Alabama in the future, if any, are provided or submitted to AT&T Alabama, at the AT&T Alabama designated connection point, in a manner or form that is capable of being accepted and transmitted by AT&T Alabama, without requirement for additional alteration or change in the format or content by AT&T Alabama, over the network of AT&T Alabama, and which is compatible with the technology or protocol utilized by AT&T Alabama to deliver IP Video Service. County may use a provider of its choosing, including self-provisioning, to deliver EG content to AT&T's designated connection point, provided that the bandwidth and streaming specifications are followed.

74. If technically and economically feasible, AT&T Alabama will, at its discretion, use reasonable efforts to interconnect with the incumbent cable provider to provide EG programming.

75. AT&T Alabama shall, on such dates as set by the Commission, file with the Commission and at all times thereafter maintain in full force and effect for the term of the Agreement, at AT&T Alabama's sole cost and expense, corporate surety bonds with a company and in a form approved by the Commission and in amounts set by the Commission conditioned upon the faithful performance by AT&T Alabama of all the terms and conditions of this Agreement for the term thereof and conditioned upon payment of all taxes due hereunder. AT&T may satisfy some or all of its obligations under this paragraph through certification of self-insurance, acceptance of which shall not be unreasonably withheld by the Commission.

76. If the Commission shall, under other terms of a, revoke the Agreement of AT&T Alabama other than by reason of the involuntary acquisition by the County of AT&T Alabama's property, then, in that event, the Commission shall be entitled to recover under the terms of such bond the full amount of any loss occasioned to the County by reason of such breach or violation to the full amount of such bond.

77. No recovery by the Commission of any sum pursuant to the performance bond required in this section shall be any limitation on the liability of AT&T Alabama to the County under the terms of this section, except that any sums so received by the County shall be deducted from any recovery which the Commission might have against AT&T Alabama.

Indemnification

78. AT&T Alabama agrees to indemnify, defend, and hold harmless County, its past, present and future officers, agents and employees, from and against any liability for damages and/or for any liability or claims resulting from tangible property damage or bodily injury (including accidental death), to the extent proximately caused by AT&T Alabama's negligent placement, construction, operation, or maintenance of its Facilities, provided that County shall give AT&T Alabama written notice of its obligation to indemnify County within thirty (30) days of receipt of the claim or action pursuant to this paragraph or up to ninety (90) days if AT&T Alabama is not prejudiced by the delay between thirty (30) and ninety (90) days .

79. Notwithstanding the foregoing, AT&T Alabama shall not indemnify County for any damages, liability or claims resulting from the negligence or willful misconduct of the County, its officers, agents, employees, attorneys, consultants, independent contractors or third parties, nor will it indemnify the County for any activity or function conducted by any person or entity other than AT&T Alabama in connection with EG programming.

80. AT&T Alabama agrees to indemnify, defend, and hold harmless the County and its past, present, and future officers, agents, and employees from any claim by any franchisee, franchise applicant, or other entity that asserts as a basis for relief a claim or allegation that the activities of AT&T Alabama pursuant to this agreement should have been made subject to the County's Resolution or any of its procedures, rules, or provisions relating to the franchising of community antenna television; that in any manner challenges the lawfulness or validity of this agreement; and/or that seeks to modify the claimant's obligations under a cable franchise based on the fact that the County entered into this agreement.

81. With respect to AT&T Alabama's indemnity obligations set forth in paragraphs 78 and 80, AT&T Alabama shall provide the defense of any claims brought against County by selecting counsel of AT&T Alabama's choice to represent County and defend the claim, subject to the consent of County, which shall not be unreasonably withheld. Nothing herein shall be deemed to prevent County from cooperating with AT&T Alabama and participating in the defense of any litigation by its own counsel at its own cost and expense; provided, however, that after consultation with County, AT&T Alabama shall have the right to defend, settle or compromise at its cost and expense any claim or action arising hereunder, and AT&T Alabama shall have the authority to decide the appropriateness and the amount of any such settlement, and any such settlement shall include at a minimum a full and final release of all applicable claims against County and shall include a provision that the settlement does not constitute an admission of wrongful conduct by County. In the event the terms of any such settlement do not include the release of County, AT&T Alabama shall not settle the claim or action. All of AT&T Alabama's right to enter a settlement shall entail only payment of monetary amounts by

AT&T Alabama and/or obligations to be performed fully by AT&T Alabama, and under no circumstances shall AT&T Alabama have the power to bind the County to any obligation to pay any monetary amounts, perform any particular action, or refrain from performing any action (although County may in its discretion independently agree to any such condition).

82. AT&T Alabama agrees to indemnify, defend, and hold harmless the County and its past, present, and future officers, agents, and employees from and against all claims of any person whatsoever for copyright infringement occasioned by the sole operation and control of AT&T Alabama under this Agreement or alleged to have been so caused or occurred.

83. Subject to all defenses and limitations of liability provided by law to counties, County shall hold AT&T Alabama harmless and shall be responsible for damages, liability or claims resulting from the negligence of County.

Insurance

84. Within thirty (30) days after the granting of the Agreement and at all times during the term of this Agreement, AT&T Alabama shall obtain, pay all premiums for, and file with the Commission executed duplicate copies and receipts evidencing the payment of premiums for the following:

- (a) A general comprehensive public liability insurance policy indemnifying, defending and saving harmless the Commission, its officers, boards, commissioners, agents or employees from any and all claims by any person whatsoever on account of injury to or death of a person or persons occasioned by the operations of the AT&T Alabama under this Agreement or alleged to have been so caused with a minimum of liability of One Million Dollars (\$1,000,000.00) for personal injury or death of any two or more persons in any one occurrence.
- (b) Renewal certificates of such insurance shall be promptly forwarded to the Commission as such renewals are made, and such insurance shall be kept in force and effect during the term of this Agreement. AT&T Alabama and/or

the insurance company shall file with the Commission a written notice of any material alteration or cancellation of any insurance coverage at least thirty (30) days prior to the effective date of such alteration or cancellation.

Property damage insurance indemnifying, defending and saving harmless the Commission, its officers, boards, commissions, agents, and employees from and against all claims by any person whatsoever for property damage occasioned by the operation of a AT&T Alabama under this Agreement caused with a minimum liability of Five Hundred Thousand Dollars (\$500,000.00) for property damage to any one person and Five Hundred Thousand Dollars (\$500,000.00) for property damage to two or more persons in any one occurrence. Said policies of insurance shall name the Commission as an additional insured.

- (c) Notwithstanding the above, AT&T Alabama maintains the option at any time throughout the term of this Agreement to self-insure any or all of the types and/or limits of insurance coverage described in this Section and shall provide the County with a statement certifying such self-insurance.

AT&T Alabama's Books and Records

85. All books and records of AT&T Alabama concerning the provision of Service in the Service Areas and necessary for the enforcement of the provisions of this Agreement, shall be made available for inspection and audit upon demand by the Commission within thirty (30) days after any request for such inspection or audit has been made.

86. Copies of all rules, regulations, terms and conditions established by AT&T Alabama for the provision of Service under this Agreement shall be made available to the Commission on a public web site.

Rights Reserved to the Commission

87. Without limitation of the rights which the Commission might otherwise have, the Commission does hereby expressly reserve the right, powers, and authority to exercise its governmental powers now or hereafter to the full extent that such powers may be vested in or granted to the Commission, and when acting in a quasi-judicial capacity,

to determine any question of fact relating to the meaning, terms, obligations or other factors of this Agreement as between AT&T Alabama and third parties; and to grant additional franchises or enter into additional agreements with other persons to provide IP Video Services, or similar product. Nothing herein, however, is in derogation of AT&T Alabama's right to dispute findings of the Commission in an appropriate forum.

AT&T ALABAMA Acknowledgment

88. AT&T Alabama expressly acknowledges that upon accepting the terms of this Agreement, it does so relying upon its own investigation and understanding of the power and authority of the Commission to grant the Agreement.

89. By acceptance of this Agreement AT&T Alabama acknowledges that it has not been induced to enter into this agreement by any understanding or promise, or other statement whether verbal or written by or on behalf of the Commission or by any other third person concerning any term or condition of the Agreement not expressed herein.

Sale or Lease of Franchise

90. No transfer of control of the Facilities, whether by force or voluntary sale, lease, assignment, foreclosure, attachment, merger, or any other form of disposition, except to an affiliate of AT&T Alabama, shall occur or be considered valid without first giving prior notice and receiving the approval of the Commission, which shall not be unreasonably refused. The notice shall include full identifying particulars of the proposed transaction. For the purpose of determining whether it shall consent to such change, transfer, or acquisition of control, the County may inquire into the qualifications of the prospective controlling party and AT&T Alabama shall assist the County in any such inquiry. The County shall have one hundred and twenty (120) days from the date the notice is received by the Commission within which to approve or disapprove, by resolution, the proposed transfer of control.

91. Approval of such transfer shall be expressly conditioned upon full compliance with the material terms of the agreement. The transferee shall agree in writing to comply with all provisions of this agreement.

92. For the purpose of this section, the term "control" is not limited to majority stock ownership, but includes actual working control in whatever manner exercised. A rebuttable presumption that a transfer of control has occurred shall arise upon the acquisition or accumulation by any person or group of unaffiliated persons of twenty-five percent (25%) of the voting shares of AT&T Alabama.

Revocation of Franchise

93. Subject to the provisions of this section, the Commission reserves the right to revoke, at any time, this Agreement, and rescind all associated rights and privileges in the event that:

- (a) AT&T Alabama has not substantially complied with a material provision of this Resolution, the agreement, or of any supplemental written agreement entered into by an between the County and the AT&T Alabama; or
- (b) AT&T Alabama has made a material false statement in the application for the, knowing it to be false, or AT&T Alabama commits a fraud in its conduct or relations under the Agreement with the County; or
- (c) AT&T Alabama becomes insolvent, enters into receivership or liquidation, files for bankruptcy or assignment for benefits of creditors, or is unable to pay its debts as they mature, unless the AT&T Alabama is in due process of contesting such debts; or
- (d) AT&T Alabama fails to substantially comply with a material provision of any federal or state statute, or of any material rules or regulations that govern telecommunications; or
- (e) AT&T Alabama exhibits a pattern of failing to comply with service standards as may be required by the FCC, federal law or this Agreement; or

(f) AT&T Alabama fails to comply with any federal or state judgment arising directly from the exercise of AT&T Alabama's rights under this Agreement; or

(g) AT&T Alabama fails to provide or maintain in full force and effect the bond and insurance policies required by this Resolution and this Agreement; or

(h) AT&T Alabama assigns sells or transfers its title or interest in this Agreement without the consent of the Commission.

(2) In the event that the Commission shall make a preliminary decision to revoke this Agreement, it shall give AT&T Alabama a minimum of sixty (60) days written notice of its intention to terminate and stipulate cause. A public hearing shall be scheduled for the end of said sixty (60) day period. If during said period, the cause shall be cured to the satisfaction of the County, the County shall declare the notice to be null and void. If the cause is not cured to the satisfaction of the County, before this Agreement may be terminated, AT&T Alabama must be provided with an opportunity to be heard before the Commission in a public hearing in accordance with due process procedures. After the public hearing, if the Commission, by majority vote, determines that this Agreement should be terminated, it shall issue a written decision containing its findings of fact and stating the specific grounds for termination. The decision to terminate this Agreement shall be subject to judicial review as provided by law.

(3) AT&T Alabama shall not be declared in default or be subject to any sanction under any provision of the Resolution and Agreement in any case where the Commission determines that the action justifying such sanction is without AT&T Alabama's knowledge or authorization or outside its control.

Rights upon Abandonment, Revocation or Non-renewal

94. In the event AT&T Alabama abandons its Facilities, the County determines that this Agreement should not be renewed at its expiration or this Agreement should not be renewed, or that this agreement should be revoked for cause as permitted

hereunder, AT&T Alabama shall be allowed six (6) months from the date of such determination, or such longer period as the Commission may permit, to remove from the County rights-of-way any visible equipment that AT&T Alabama used exclusively for IP video services pursuant to this agreement and does not plan to reuse.

SIGNATURE AND NOTARY PAGES TO FOLLOW

IN WITNESS WHEREOF, the parties have executed this Video Services agreement, provided in the form as three (3) original copies for the records of BellSouth Telecommunications, Inc. d/b/a AT&T Alabama and three (3) original copies for the records of the Baldwin County Commission, between BellSouth Telecommunications, Inc. d/b/a AT&T Alabama and Baldwin County, Alabama, on this the 10th day of August, 2010, such Video Services agreement effective commencing on August 10, 2010, and expiring on August 10, 2015.

BALDWIN COUNTY COMMISSION

BY: CF Gruber
CHARLES F. GRUBER
As Its: Chairman

ATTEST:

BY: Michael L. Thompson
MICHAEL L. THOMPSON
As Its: County Administrator

STATE OF ALABAMA

COUNTY OF BALDWIN

I, Lori G. Ruffin, the undersigned authority, a Notary Public, in and for Baldwin County and the State of Alabama, hereby certify that CHARLES F. GRUBER, as Chairman of the Baldwin County Commission, and MICHAEL L. THOMPSON, as Administrator of the Baldwin County Commission, whose names are signed to the foregoing instrument and who are known to me, acknowledged before me on this day that, being informed of the contents of said instrument, they, as such Chairman of the Baldwin County Commission and County Administrator of the Baldwin County Commission, and with full authority, executed the same voluntarily on the day the same bears date for and as the fact of said Baldwin County Commission.

GIVEN under my hand and seal this the 10th day of August, 2010.

Lori G. Ruffin
Notary Public
My Commission Expires

NOTARY PUBLIC STATE OF ALABAMA AT LARGE
COMMISSION EXPIRES: Mar 11, 2013
BONDED THRU NOTARY PUBLIC UNDERWRITERS

BELLSOUTH TELECOMMUNICATIONS, INC.
d/b/a AT&T ALABAMA

BY: Fred McCallum, Jr.

As Its: President

ATTEST:

BY: _____

As Its: _____

STATE OF ALABAMA

COUNTY OF ~~BALDWIN~~ JEFFERSON

I, Martha H. Sawzak, the undersigned authority, a Notary Public, in and for ~~Baldwin County~~ and the State of Alabama, hereby certify that Fred McCallum, Jr. of ~~Jefferson~~ Jefferson, as President of BellSouth Telecommunications, Inc. d/b/a AT&T Alabama, and _____, as _____ of BellSouth Telecommunications, Inc. d/b/a AT&T Alabama, are is signed to the foregoing instrument and who ~~are~~^{is} known to me, acknowledged before me on this day that, being informed of the contents of said instrument, ~~they~~^{he}, as such officer~~s~~ and with full authority, executed the same voluntarily for and as the act of BellSouth Telecommunications, Inc. d/b/a AT&T Alabama on the day the same bears date.

GIVEN under my hand and seal this the 5th day of August, 2010.

Martha H. Sawzak

Notary Public
My Commission Expires: NOTARY PUBLIC STATE OF ALABAMA AT LARGE
MY COMMISSION EXPIRES: May 19, 2012
BONDED THRU NOTARY PUBLIC UNDERWRITERS

790313

811234 5/11/10

825174 6/28/10

828933 7/12/10

828933 v2 7/14/10

STATE OF ALABAMA

COUNTY OF BALDWIN

**RESOLUTION #2011-085
OF THE
BALDWIN COUNTY COMMISSION**

**RESOLUTION ADOPTING REGULATIONS FOR CABLE TELEVISION SERVICE
AND COMPETITIVE VIDEO SERVICE
IN THE UNINCORPORATED AREAS OF BALDWIN COUNTY, ALABAMA**

WHEREAS, Alabama Code Section 11-27-1 (1975) authorizes the Baldwin County Commission (Commission) to grant franchises to cable television providers utilizing public rights of way within the unincorporated areas of Baldwin County, Alabama; and

WHEREAS, the Commission is also empowered to promulgate reasonable rules and regulations for such providers; and

WHEREAS, the Commission adopted such rules pursuant to Resolution #98-56, as amended by Resolution #2006-33; and

WHEREAS, since the adoption of such rules a number of telecommunications providers have utilized technology which enables them to provide video services to their customers; and

WHEREAS, the Federal Communications Commission has adopted a franchising order imposing certain requirements on local governments to ensure a competitive environment for providers of video services, whether delivered over a traditional cable system or utilizing Internet protocol or other technology; and

WHEREAS, the Commission desires to adopt this new Resolution #2011-085 ("Resolution") to include and address these changes, and, further, to rescind the aforesaid prior Resolutions #98-56 and #2006-33 but without limiting, altering, or otherwise affecting in any manner any agreement or franchise executed prior to the adoption of this Resolution; now therefore

**BE IT RESOLVED BY THE BALDWIN COUNTY COMMISSION, IN REGULAR
SESSION ASSEMBLED, AS FOLLOWS:**

Regulations Governing Video and Cable Services

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1. Title

These regulations shall be known and may be cited as the Baldwin County Cable Service and Competitive Video Service Regulations.

2. Definitions

- A) *Affiliate* means another Person who owns or controls, is owned or controlled by, or is under common ownership or control of such Person.
- B) *Agreement* means either a Cable Franchise or Competitive Video Service Agreement.
- C) *Applicable Law* means such local, state and federal laws and rules as may govern the construction, operation and maintenance of a Cable or Competitive Video System.
- D) *Basic Cable* means the definition provided in 47 U.S.C. 522 (3), as amended.
- E) *Cable Provider* means any Person or group of Persons (1) who provides Cable Service over a Cable System and directly or through one or more Affiliates owns

a significant interest in such Cable System, or (2) who otherwise controls or is responsible for, through any arrangement, the management and operation of such a Cable System.

- F) *Cable Service* means (a) the one-way transmission to subscribers of (i) video programming, or (ii) other programming service, and (b) subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.
- G) *Cable System* means 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 (i) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (ii) a facility that serves subscribers without using any Public Right-of-Way; (iii) 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 42 U.S.C. § 541 (c), to the extent such facility is used in the transmission of video programming directly to subscribers, unless the extent of such use is solely to provide interactive on-demand services; (iv) an open video system that complies with 42 U.S.C. § 573; (v) any facilities of any electric utility used solely for operating its electric utility system; or (vi) the facilities of a Competitive Video Service Provider under this Chapter.
- H) *Commission* means the Baldwin County Commission as the duly elected governing body of Baldwin County, Alabama.
- I) *Competitive Video Service* means video programming provided by a Competitive Video Service Provider and provided through wireline facilities located at least in part in the public rights-of-way without regard to delivering technology, including internet protocol technology. This definition does not include video programming provided by a commercial mobile service provider defined in 47 U.S.C. § 332(d).
- J) *Competitive Video Service Agreement* means an Agreement executed by the Commission and a Competitive Video Service Provider pursuant to this Resolution.
- K) *Competitive Video Service Provider* means an entity providing video services pursuant to an Agreement with the Commission.
- L) *Competitive Video Service System* means a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Competitive Video Service which includes video programming and which is provided to multiple subscribers within a community, but such term does not include (i) a facility that serves only to

retransmit the television signals of one or more television broadcast stations; (ii) a facility that serves subscribers without using any Public Right-of-Way; (iii) 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 42 U.S.C. § 541 (c), to the extent such facility is used in the transmission of video programming directly to subscribers, unless the extent of such use is solely to provide interactive on-demand services; (iv) an open video system that complies with 42 U.S.C. § 573; (v) any facilities of any electric utility used solely for operating its electric utility system.

- M) *Franchise* means an initial authorization, or renewal thereof (including a renewal of an authorization which has been granted subject to 47 U.S.C. § 546), issued by the Franchising Authority, whether such authorization is designated as a franchise, permit, license, resolution, contract, certificate, agreement, or otherwise, which authorizes the construction or operation of a Cable System or Competitive Video Service.
- N) *Franchise Agreement* means the agreement executed by the Franchising Authority and a Provider pursuant to this Chapter and includes Competitive Video Service Agreements.
- O) *Franchising Authority* means the Baldwin County Commission.
- P) *Gross Revenues* means all consideration of any kind or nature, including without limitation, cash, credits, property, and in-kind contributions (services or goods) received by the Provider from the provision of Service within the Service Area.
 - 1. Included Items: Subject to paragraph (2), the term “Gross Revenues” shall include the following:
 - a. All charges and fees paid by subscribers for the provision of Service, including fees attributable to Service when sold individually or as part of a package or bundle, or functionally integrated, with services other than the Service; and
 - b. All revenue derived from the Provider’s Service pursuant to compensation arrangements for advertising sales and home shopping (including Home Shopping Network and any comparable shopping from home network) sales attributable to the local service area. Advertising commissions paid to third parties (excluding any refunds, rebates, or discounts the Provider may make to advertisers) shall not be netted against advertising revenue included in Gross Revenues. The allocation of advertising and home shopping compensation shall be based on the number of subscribers in the County divided by the total number of

subscribers in relation to the relevant region or national compensation arrangement; and

- c. All revenue collected by the Provider arising from or attributable to the provision of Service by the Provider within the County including, but not limited to: fees charged Subscribers for any basic, optional, premium, per-channel or per-program service; franchise fees; installation and re-connection fees; converter rentals and/or sales; late or administrative fees; and any upgrade, downgrade or other change-in-service fees; prorata advertising revenues; prorata revenues from home shopping commissions; and any prorata value (at retail price levels) of any non-monetary remuneration received by the Provider in consideration of the performance of advertising or any other service of the system, including fees attributable to Service when sold individually or as part of a package or bundle, or functionally integrated, with services other than the Service.
2. For the purposes of this Chapter, the term “Gross Revenues” shall not include the following:
- a. Any revenue not actually received, even if billed, such as bad debt net of any recoveries of bad debt; and
 - b. Refunds, rebates, credits or discounts to subscribers or the Commission to the extent not already offset by clause 2. a. and to the extent such refund, rebate, credit, or discount is attributable to the Service; and
 - c. Any revenues received by the Provider or its Affiliates from the provision of any services or capabilities other than the Service, including, but not limited to telecommunications services, information services, Internet access services, and digital or VoIP telephone service.
 - d. Any revenues received by the Provider or its Affiliates for the provision of directory or Internet advertising, including yellow pages, white pages, banner advertisement, and electronic publishing; and
 - e. Any requirements or charges for managing the public rights-of-way with respect to a Franchise or Competitive Video Service Agreement under this Chapter, including payments for bonds, security funds, letters of credit, insurance, indemnification, penalties, or liquidated damages; and

- f. Any amounts attributable to the provision of Service to customers at no charge, including the provision of such Service to the public institutions without charge; and
 - g. Any tax, fee, or assessment of general applicability imposed on the customer or the transaction by a Federal, State, or local government or any other governmental entity, collected by the Provider, and required to be remitted to the taxing entity, including sales and use taxes and utility user taxes; and
 - h. Any forgone revenue from the provision of Service at no charge to any Person, except that any forgone revenue exchanged for trades, barter, services, or other items of value shall be included in Gross Revenue; and
 - i. Sales of capital assets or surplus equipment; and
 - j. Reimbursement by programmers of marketing costs actually incurred by the Provider operator for the introduction of new programming; and
 - k. The sale of Services for resale to the extent the purchaser certifies in writing that it will resell the Service and pay a fee to the Commission with respect hereto.
3. In the case of Service that may be bundled with other services of the Provider, the portion of the Provider's revenues that shall be included in Gross Revenues shall be that amount attributable to the Service as reflected on the books and records of Provider kept in the regular course of business in accordance with generally accepted accounting principles and Federal Communications Commission rules, regulations, standards, and orders, as applicable.
 4. Revenue of an Affiliate shall be included in the calculation of Gross Revenues to the extent the treatment of such revenue as revenue of the affiliate has the effect (whether intentional or unintentional) of evading the payment of fees herein which would otherwise be paid for Service.
- Q) *Person* means an individual, partnership, association, joint stock company, trust, corporation or limited liability entity.
 - R) *Provider* means either a Cable Provider or a Competitive Video Service Provider.
 - S) *Public Right-of-Way* means any County street, alley, water or public right-of-way dedicated or commonly used for utility purposes, including utility easements wherein the County has acquired the right and authority to locate or permit the

location of utilities consistent with a Provider's facilities. "Public Right-of-Way" shall not include any real or personal County property that is not specifically described in the previous sentence, and shall not include County buildings, or other structures or improvements, regardless of whether they are situated in the public right-of-way.

- T) *Service* means either a Cable Service or Competitive Video Service.
- U) *Service Area* means the unincorporated area of Baldwin County, Alabama.

3. Grant of Authority

- A) In accordance with this Resolution and upon executing a Franchise Agreement, a Provider is authorized to occupy or use the Public Right-of-Ways within the service area to construct, operate, maintain, repair, and upgrade existing facilities and install new facilities for the purpose of providing Cable Service within the Service Area.
- B) In accordance with this Resolution and upon executing a Competitive Video Service Agreement, a Competitive Video Service Provider is authorized to occupy or use the Public Right-of-Ways within the service area to construct, operate, maintain, repair, and upgrade existing facilities and install new facilities for the purpose of providing Competitive Video Service within the Service Area.
- C) A Provider must comply with state and federal law and agree in its respective Franchise Agreement or Competitive Video Service Agreement to comply with any applicable requirements set forth in this Resolution, including, but not limited to compliance with and receipt of such permits, licenses, and legal authorizations as may be required by the Commission. This Resolution neither authorizes the Provider to use the Public Rights-of-Way for purposes of providing any other service, nor prohibits the Provider from doing so. The Provider's authority to provide non-cable service shall be subject to Applicable Law. No privilege or power of eminent domain is bestowed by this Resolution.

4. Level Playing Field

Any incumbent Provider providing Cable Service or Competitive Video Service in the unincorporated areas of Baldwin County on the effective date of this Resolution may immediately opt out of its existing Agreement with the Commission and enter into a new Agreement under Section 3.

5. Service and Technical Standards; Bonding

- A) A Provider shall design its System, and construct and maintain its System to have the capability to pass every dwelling unit within the Service Area, or such other

areas designated in the Agreement, subject to the extension provisions in this Section.

- B) A Provider will extend its Service in accordance with the following service extension formula:
1. Provider agrees to extend its Cable System or Competitive Video Service System to those areas where Provider receives a request for service from at least six (6) residential dwelling units per 660 feet of aerial plant as measured from Provider's existing distribution system. Such extension shall be at no cost to such subscriber other than the published standard/non-standard installation fees charged to all subscribers.
 2. Provider shall have the right, but not the obligation, to extend its System into any portion of the Service Area where another Provider is providing Service, into any annexed area which is not contiguous to the present Service Area, or into any area which is financially or technically infeasible due to extraordinary circumstances, such as a runway or freeway crossing.
- C) A Provider 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 Commission can communicate on all matters relating to system installation, construction, operation, and maintenance.
- D) Providers shall procure and maintain bonding in such amounts and terms as the Commission deems appropriate, taking into account the number of subscribers and impact of the system on the rights of way.
- E) A Provider shall include a description of the broad categories of programming and services to be provided in its Agreement with the Commission.
- F) A Provider is responsible for insuring that its 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 County shall have, upon request, the right to obtain a copy of tests and records required in accordance with appropriate rules but have no authority, pursuant to federal law, to enforce compliance with such standards.

6. Fees For Operation of Cable Service and Competitive Video Service

- A) Application Fee. Any Provider seeking an Agreement for the first time, shall pay a non-refundable application fee in the amount of five thousand dollars (\$5,000.00) by cashier's check, certified check or money order payable to the Commission.
- B) As compensation for rights granted under this Resolution, Providers shall pay to the Commission a fee of five percent (5%) of the Provider's Gross Revenues subject to the terms of its Agreement.
- C) The Provider shall file with the Commission on such form as prescribed by the Commission within thirty (30) days after the end of each monthly period a report of the Gross Revenues in the Service Area during the preceding monthly period, and shall, at the same time, pay to the Commission a sum equal to five percent (5%) of the Gross Revenues for the said monthly period. In the event that any payment is not made on such date, interest on such payment shall apply from such date at the rate of twelve percent (12%) per annum. If the Provider's Agreement should be terminated or forfeited prior to the end of any monthly period, the Provider shall submit to the Commission within twenty (20) days of such termination or forfeiture the report and payment required by this Subsection.
- D) The Commission shall have the right to audit and to recompute any amounts determined to be payable in satisfaction of the fees set forth in this Section. Any additional amount due the Commission as a result of the audit shall be paid by Provider within thirty (30) days after the Provider receives a written notice from the Commission. The notice which the Commission sends to Provider shall include a copy of the audit report.
- E) In the event that payment of any fee set forth in this Section, which has been recomputed pursuant to Subsection (C) above is not made on or before the expiration of thirty (30) days following written notice by the Commission, Provider shall be charged and shall pay, in addition to the amount due, interest on the amount due in accordance with Section 6 (C) above.
- F) Any fee payable by a Provider shall be reduced dollar for dollar by any telecommunications, messages or similar taxes levied by the Commission on the Provider or its customers with respect to the Services and paid by or through the Provider to the Commission.

7. Right-of-Way Provisions

Providers operating Cable Systems and Competitive Video Service Providers providing Competitive Video Service in the unincorporated areas of Baldwin County shall abide by any applicable Right-of-Way construction standards as established, from time to time, by the Commission and/or the County Engineer.

8. Franchise To Operate Systems in the Unincorporated Areas of the County

- A) No Person shall offer to subscribers a Cable Service or Competitive Video Service within the service area except pursuant to this Resolution. A Provider, however, that has not elected under Section 4 to enter into an Agreement under Section 3 may continue to provide Service under its existing Agreement until the expiration of such agreement.
- B) All Agreements granted pursuant to this Resolution shall be nonexclusive. The Commission reserves the right to issue as many Agreements as it deems advisable in the public interest.
- C) The Agreements shall take effect and will be in force from and after the earliest period allowed by law, and upon the filing by the Provider with the Commission of its acceptance, in writing, of each and all of the terms and provisions of the Agreement; provided, however, if the Provider shall fail to file such written acceptance within thirty days after the adoption of the agreement by the Commission, then the Agreement shall be null and void.
- D) If any section, subsection, sentence, clause, phrase or portion of this Resolution is for any reason held invalid or unconstitutional by any court of competent jurisdiction, or in conflict with rules and regulations of the Federal Communications Commission, then such portion shall be deemed a separate, distinct and independent provision of this Resolution, and such holding shall not affect the validity of the remaining portions thereof.
- E) Any Agreement executed pursuant to this Resolution may be revoked after a full due process hearing by a simple majority vote of the Commission for violation of a material provision of this Resolution, after giving the Provider ninety (90) days notice in writing of intention to revoke such agreement, unless such violation is corrected during the period of notice.
- F) The term of each Agreement shall be five years from effective date.
- G) All renewals shall be in accordance with federal and other Applicable Law.

9. Service Rates to Subscribers; Customer Service

- A) The Franchising Authority may regulate rates for the provision of Basic Cable and equipment as expressly permitted by federal or state law.
- B) An up-to-date written copy of all the Provider's rates, rules, regulations and policies having to do with subscriber service must be made available to subscribers at the time of connection or reconnection to the Service or at any time upon request, and provided to the County upon request. Such information may be made available to subscribers on the Provider's Web site.
- C) Providers shall comply with the FCC's customer service standards, as amended.

10. Scope

- A) This Resolution authorizes the use of the Public Right-of-Way for the provision of Cable Service and Competitive Video Service in the Service Area, but it does not take the place of any construction permit that may be required. The County Engineer shall be deemed to have given approval to any permit application if Provider does not receive any response within forty-five (45) days of the permit application submission date.
- B) It shall be the responsibility of the Provider to obtain any and all such permits under any other present for future provision of law that is applicable generally to Providers.

Failure of the Provider to obtain and conform to the material provisions of any and all such franchises, licenses, or permits, and to make prescribed payments if required as a condition of their issuance, shall be considered a violation of this Resolution and the Provider's Agreement.

- C) Neither the Franchising Authority nor the Provider shall be held in default under, or in noncompliance with, the provisions of this Resolution, 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 Franchising Authority or Provider 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 Provider'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 Commission's intention to subject a Provider to penalties, forfeitures or revocation of its Agreement for violations of the Agreement 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 Provider which outweigh the benefit to be derived by the County and/or Subscribers.

- D) Both parties hereby reserve any constitutional or legal right which either party may have or may subsequently be determined to have, either by subsequent legislation or court decisions. Both parties acknowledge that each party reserves all of their respective rights under applicable Federal and State Constitutions and laws. Provider agrees to comply with any lawful action or applicable requirements of the Commission in the exercise of such rights and powers which either have been or shall be enacted or established subsequent to the granting of an Agreement.

11. Public and Community Benefits

- A) A Provider shall designate a sufficient amount of digital or video-on-demand (“VOD”) capacity on its network to allow for the provision of a comparable number of one (1) public, channel for educational and, or governmental (“PEG”) use, channel(s), or hours of programming, at the Commission’s discretion, as further specified in any Agreement.
- B) Any programming made available under this Section shall be solely for noncommercial public, educational and governmental purposes and the content, production, and delivery of which shall be the sole responsibility of the Commission. Provider’s only obligation shall be the provision of one (1) digital channel or VOD capacity.
- C) Upon written request by the Commission, a Provider agrees to discuss in good faith the interconnection of PEG channel(s) with an adjacent Cable System or Competitive Video Service System. .
- D) A Provider shall comply with the FCC’s Emergency Alert System (EAS) requirements, as amended, throughout the term of its Agreement.

12. Service to Public Schools and Public Buildings

Providers offering Service must, upon written request by the Commission, provide one free installation and free monthly Basic Cable Service to one outlet to each public elementary and secondary school, government administrative building, fire station, police station, and public library building that is passed by Providers’ Cable System or Competitive Video Service System and is within 125 feet of Provider’s distribution plant. Each such Provider shall have the responsibility to offer one free installation and one free monthly Basic Cable Service to such buildings.

13. Indemnification

A Provider shall indemnify, save harmless, and defend the Commission and all contractors, officers, and employees thereof from and against all claims, demands, causes of action, copyright action, liability, judgments, costs and expenses or losses for injury or death to persons or damage to property owned by, and Worker's Compensation claims against any parties indemnified herein, arising out of, caused by, or as a result of the Provider's construction, lines, cable, erection, maintenance, use or presence of, or removal of any poles, wires, conduit, appurtenances thereto, or equipment or attachments thereto.

14. Insurance

A Provider shall comply with the insurance requirements as provided for in its Franchise Agreement.

15. Assignment

- A) A Provider may not assign or transfer its Agreement or any interest therein, without the prior written consent of the Commission, which consent shall not be unreasonably withheld.
- B) A change in the actual working control of the Provider shall be considered a "transfer" and shall not take place without the prior written consent of the Commission.
- C) Notwithstanding anything to the contrary, no consent shall be required, however, for (1) a transfer of an agreement or any interest therein to an Affiliate or (2) a transfer in trust, by mortgage, hypothecation, or by assignment of any rights, title or interest of the Provider in the Agreement or the system in order to secure indebtedness.
- D) Any request for consent to a transfer of its Agreement or change in control of the Provider shall be handled by the Commission in accordance with Applicable Law.
- E) In the event of a transfer of an Agreement, the transferee or assignee must agree, in writing, to be bound by the terms of the Agreement subject to Applicable Law.

16. Effective Date.

This Resolution shall take effect on May 3, 2011.

17. Rescission; Effect on Existing Agreements

Resolution #98-56 and Resolution #2006-33 are hereby rescinded; provided, however, that neither this Resolution nor the adoption thereof shall limit, alter or otherwise affect in any manner any agreement or franchise executed prior to the adoption of this Resolution. It is the

intent of the Commission that any and all Franchises or Agreements that existed prior to the adoption of this Resolution shall remain valid and enforceable in accordance with their terms.

By: 
FRANK BURT, JR., Chairman
Baldwin County Commission



ATTEST:

A handwritten signature in blue ink, appearing to read "DAB", is written over a horizontal line.

DAVID A. Z. BREWER, Interim and Acting County Administrator
Baldwin County Commission