

**ORDINANCE NO. 2012-1162**

AN ORDINANCE GRANTING A 10-YEAR NON-EXCLUSIVE FRANCHISE TO CENTURYTEL BROADBAND SERVICES, LLC, ITS SUCCESSORS AND ASSIGNS, TO CONSTRUCT, MAINTAIN AND OPERATE A COMMUNICATIONS CABLE SYSTEM NETWORK FOR THE PURPOSE OF TRANSMISSION OF CABLE SERVICES WITHIN ALL INCORPORATED PORTIONS AND LOCATIONS OF THE CITY OF ORANGE BEACH, ALABAMA AND TO USE AND OCCUPY THE STREETS, ALLEYS AND OTHER PUBLIC PLACES OF CITY FOR SUCH PURPOSES.

BE IT ORDAINED BY THE CITY OF ORANGE BEACH, BALDWIN COUNTY, ALABAMA, that the attached Franchise is hereby granted to CenturyTel Broadband Services, LLC, its successors and assigns.

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

**1.1 Terms.**

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

- A. “Affiliate” when used in relation to any person, means another person who owns or controls, is owned or controlled by, or is under common ownership or control with, such person.
- B. “Basic Cable” is the lowest priced tier of Cable Service that includes the retransmission of local broadcast television signals.
- C. “Cable Act”: means Title VI of the Communications Act of 1934, as amended.
- D. “Cable Services” shall mean (1) the one-way transmission to Subscribers of (a) video programming, or (b) other programming service, and (2) subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.
- E. “Cable System” shall mean the Grantee’s facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes video programming and which is provided to multiple Subscribers within the Service Area.
- F. “FCC” means Federal Communications Commission, or successor governmental entity thereto.
- G. “Franchise” means this Ordinance and the rights, obligations, and privileges granted to Grantee by it.
- H. “Franchising Authority” means the City of Orange Beach, Alabama, or the lawful successor, transferee, or assignee thereof.
- I. “Grantee” means CenturyTel Broadband Services, LLC, a subsidiary of CenturyLink, Inc., or the lawful successor, transferee, or assignee thereof.
- J. “Gross Revenue” means any and all revenue in whatever form, from any source received by the Grantee or an Affiliate of Grantee that would otherwise be subject to the payment of franchise fees pursuant to the provisions of 47 U.S.C. 542 derived from the operation of the Cable System to provide Cable Service, within the Service Area. By way of illustration and not limitation, this definition includes revenue received from the sale of local and regional

Cable System advertising time by an Affiliate of Grantee as calculated in a manner consistent with generally accepted accounting principles. Gross Revenues shall include but are not limited to all revenue received from basic and expanded basic, pay cable, installation and reconnection fees, franchise fees from Subscribers, leased channel access, converter rentals, and home shopping revenues, all Cable Service lease payments from the Cable System within the Franchise Area. Revenues which are not directly attributable to specific Subscribers, including, but not limited to, leased access fees, advertising revenues, and home shopping commissions, shall be allocated among the franchising jurisdictions served by the Cable Franchisee's Cable System on a per Subscriber or other equitable basis measured by Grantee in a consistent manner from period to period. The term does not include any taxes or fees on Cable Services furnished by a Grantee and imposed directly upon any Subscriber or user by federal, state, or local law and collected by Grantee on behalf of such governmental unit, or amounts collected from Subscribers for Public, Educational and/or Government Access.

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

It is understood that over the term of this Franchise, the Grantee may provide new services that are properly classified as Cable Services under this Franchise and the Cable Act. The parties anticipate and agree that such services shall be subject to franchise fees under this Franchise without any further amendment or other action by the parties hereto.

K. "Institutional Network" means a communication network for educational or governmental use which is constructed or operated by the Cable Operator and which is generally available only to Subscribers who are not residential Subscribers.

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

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

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

O. "Public Way" shall mean the surface of, and the space above and below, any public street, highway, freeway, bridge, land path, alley, court, boulevard, sidewalk, parkway, way, lane, public way, drive, circle, or other public right-of-way, including, but not limited to, public utility easements, dedicated utility strips, or rights-of-way dedicated for compatible uses and any temporary or permanent fixtures or improvements located thereon now or hereafter held by the Franchising Authority in the Service Area which shall entitle the Franchising Authority and the Grantee to the use thereof for the purpose of installing, operating, repairing, and maintaining the Cable System. Public Way shall also mean any easement now or hereafter held by the Franchising Authority within the Service Area for the purpose of public travel, or for utility or public service use dedicated for compatible uses, and shall include other easements or rights-of-way as shall within their proper use and meaning entitle the Franchising Authority and the Grantee to the use thereof for the purposes of installing and operating the Grantee's Cable System over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments, and other property as may be ordinarily necessary and pertinent to the Cable System.

P. "Service Area" means the present boundaries of the Franchising Authority, subject to Section 4 hereof and shall include any additions thereto by annexation or other legal means.

Q. “Service Interruption” means the loss of picture or sound on one (1) or more cable channels.

R. “Standard Installation” is defined as one hundred twenty-five (125) feet from the nearest tap to the Subscriber’s terminal.

S. “Subscriber” means a Person who lawfully receives Cable Service of the Cable System with the Grantee’s express permission.

T. “Remote Terminal” means a digital subscriber line access multiplexer installed by Grantee and capable of providing Cable Services to Subscribers.

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

**2.1 Grant.** The Franchising Authority hereby grants to the Grantee a nonexclusive Franchise which authorizes the Grantee to construct and operate a Cable System in, along, among, upon, across, above, over, under, or in any manner connected with Public Ways within the Service Area, and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain, or retain in, on, over, under, upon, across, or along any Public Way such facilities and equipment as may be necessary or appurtenant to the Cable System, subject to compliance with the terms of this Franchise and all applicable state and federal laws and other ordinances of the Franchising Authority as set forth in Sections 2.2 and 2.7 below.

**2.2 Compliance and Conflict of Laws.** The Grantee agrees to comply with the terms of generally applicable ordinances of the Franchising Authority and applicable state and federal law and regulations. In the event of a conflict between any ordinance of Franchising Authority and this Franchise, the Franchise shall control, provided however that the Grantee agrees that it is subject to the lawful exercise of the police power of the Franchising Authority and any generally applicable ordinances adopted by the City in compliance with such authority, to the extent not consistent with this franchise agreement.

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

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

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

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

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

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

## **SECTION 3**

## CONDITIONS FOR USE OF PUBLIC WAY

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

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

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

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

**3.5 Erection of Poles Prohibited.**

A. Grantee shall not erect, for any reason, any pole on or along any Public Way or in an existing aerial utility system without the prior approval of the Franchising Authority. Grantee shall negotiate with the Franchising Authority, or as applicable any private utility for a pole attachment agreement or agreement for conduit use, or both, before commencement of construction.

B. Above-ground location of Cable System and related facilities shall generally be located where reasonable and safe and in a manner that will not materially adversely affect a Franchising Authority or other public or private property. Grantee shall minimize the number of pedestals, vaults, boxes, and other structures placed above-ground in any location to avoid creating a public safety problem and shall be of a size, design and appearance conforming to industry standards.

**3.6 Reservation of Public Way Rights.** Nothing in this Franchise shall be construed to prevent the Franchising Authority from constructing sewers, grading, paving, repairing or altering any Public Way, or laying down, repairing or removing water mains or constructing or establishing any other public work within a Public Way. All such work shall be done by Franchising Authority in such reasonable manner as not to obstruct, injure or prevent the free use and operation of Grantee's facilities. If the facilities of Grantee shall interfere with the construction or repair of any Public Way or public improvement by the Franchising Authority, then all such facilities of the Grantee may be removed or replaced in such manner as shall be directed by the Franchising Authority. Such removal or replacement shall be at the expense of Grantee. The Grantee shall at all times have the right to abandon its property. However, any such abandonment shall be in accordance with this Franchise, and applicable state and federal law.

**3.7 Underground Installation.** In those areas within the Franchising Authority where Cable System facilities are currently placed underground, all Cable System facilities shall remain or be placed underground. In areas where telephone and electric utility facilities are above ground at the time of a Grantee's installation, Grantee may install its Cable System facilities above ground,

provided that at such time as both electric and telephone utility facilities are placed underground, Grantee shall likewise place its Cable System facilities underground without cost to the Franchising Authority. In no event shall Grantee be authorized to place above ground any facility that has previously been underground without prior approval from the Franchising Authority. Nothing contained in this Section shall require Grantee to construct, operate and maintain underground any ground-mounted appurtenances.

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

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

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

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

A. Grantee shall protect the Public Way and all public and private property from damage caused by the Cable System. If damage occurs, Grantee shall promptly notify the property owner within twenty-four (24) hours in writing. Whenever the Grantee disturbs or damages any Public Way, other public property or any private property, the Grantee shall promptly restore the property to at least its prior condition, normal wear and tear excepted, at its own expense.

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

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

**3.12 Permit Requirements.**

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

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

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

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

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

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

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

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

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

D. **Incumbent Local Exchange Company Affiliate.** The parties acknowledge that Gulf Telephone Company, an affiliate of Grantee, will be primarily responsible for the construction and installation of the facilities in the Public Rights-of-Way which will be utilized by Grantee to provide Cable Television Service. So long as Gulf Telephone Company does not provide Cable Television Service to subscribers in the City, Gulf Telephone Company will not be subject to the terms and conditions contained in this Franchise. Gulf Telephone Company's installation and maintenance of facilities in the Public Rights-of-Way is governed by applicable law. To the extent Grantee constructs and installs facilities in the Public Rights-of-Way, such installation will be subject to the terms and conditions contained herein.

**3.16 Work Performed by Others.**

A. Grantee shall make available to the Franchising Authority upon request the names

and addresses of any Person, other than the Grantee, which performs services pursuant to this Franchise; provided however, that all provisions of this Ordinance remain the responsibility of Grantee.

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

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

**4.1 Geographical Coverage.** Within thirty (30) days of the Effective Date of this Franchise, Grantee shall provide the Franchising Authority with a map indicating where it will initially provide Cable Services. Upon request by the Franchising Authority, no more than once annually, this map will be updated by the Grantee. The parties acknowledge that Grantee is the not the first entrant into the wireline video market in the City. As a new entrant, investment in and expansion of Grantee's Cable System should be driven by market success, and not a contractual requirement for ubiquitous coverage. To demonstrate its commitment to provide Cable Service to the City, Grantee agrees that within three (3) years from the Effective Date of this Franchise, Grantee shall have the capability to offer Cable Services to 25% of the living units ("Initial Coverage Threshold") in the City which can be billed by the Company on a bulk basis. The parties recognize and agree that the initial deployment of Cable Services will be focused on Multi-Dwelling Units with 50 or more individual units. Grantee shall not be obligated under this Franchise to expand its Cable System beyond the Initial Coverage Threshold until 27.5% of the living units in the Initial Coverage Threshold purchase Cable Services from Grantee ("Initial Subscription Threshold"). If, on the third anniversary of the grant of this Franchise, Grantee's investment exceeds the Initial Coverage Threshold, then the Initial Subscriber Threshold shall apply to all living units capable of being served by Grantee, not just the Initial Coverage Threshold. Once the Grantee achieves the Initial Subscription Threshold, Grantee agrees that within two (2) years from the date Grantee meets the Initial Subscription Threshold, Grantee shall make an investment in the Cable System to ensure that Grantee has the capability to offer Cable Services to 15% of the single family living units ("Additional Coverage Threshold") in the City. Grantee shall not be obligated under this Franchise to expand its Cable System beyond the Additional Coverage Threshold until 27.5% of the living units in the Additional Coverage Threshold, purchase Cable Services from Grantee ("Additional Subscription Threshold"). If Grantee's investment exceeds the Additional Coverage Threshold prior to the meeting the Additional Subscriber Threshold, then the Additional Subscriber Threshold shall apply to all living Units capable of being served by Grantee, not just the Additional Coverage Threshold. Thereafter, this process of increasing the Additional Coverage Threshold by 15% when the prior Subscription Threshold is met will be continued every two (2) years until Grantee is capable of offering Cable Services to all living units in the City.

**4.2 Required Extensions of the Cable System.** Grantee will provide Cable Services within seven (7) days of a request by a person within the Service Area provided that such person resides within four thousand (4,000) feet of an activated Remote Terminal. Grantee is under no obligation to install distribution facilities or activate Remote Terminals for the provision of Cable Services. Grantee may not, however, without prior permission from the Franchise Authority deactivate a Remote Terminal capable of providing Cable Services.

**4.3 Cable Service to Public Buildings.** The Grantee, upon request, shall provide without charge, a Standard Installation and one (1) outlet and free Basic Cable to those administrative buildings owned and occupied by the Franchising Authority, library(ies) fire station(s), police station(s), and K-12 public school(s) that are within four thousand (4,000) feet of a Remote Terminal which has been activated and is capable of providing Cable Service, and are not already served by another cable operator. The Cable Service provided shall not be distributed beyond the originally installed outlet without authorization from the Grantee. The Cable Service provided shall not be used for commercial purposes, and such outlets shall not be located in areas open to the public. The Franchise Authority shall take reasonable precautions to prevent any use of the Grantee's Cable System in any manner that results in the inappropriate use thereof or any loss or damage to the Cable System. The Franchising Authority shall hold the Grantee harmless from any and all liability or claims arising out of the provision and use of Cable Service required by this Section. The Grantee shall not be required to provide an outlet to such buildings where a non-Standard Installation is required, unless the Franchising Authority or building

owner/occupant agrees to pay the incremental cost of any necessary Cable System extension and/or non-Standard Installation. If additional outlets of Basic Cable are provided to such buildings, and building owner/occupant shall pay the actual cost associated therewith.

#### **4.4 Technical Standards.**

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

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

A. In accordance with and at the time required by the provisions of FCC Regulations Part 11, Subpart D, Section 11.51, and as other provisions which may from time to time be amended, the Grantee shall install, if it has not already done so, and maintain an Emergency Alert System (EAS) for use in transmitting Emergency Act Notifications (EAN) and Emergency Act Terminations (EAT) in local and state-wide situations as may be designated to be an emergency by the Local Primary (LP), the State Primary (SP) and/or the State Emergency Operations Center (SEOC), as those authorities are identified and defined within FCC Regulations, Section 11.18.B. The Franchising Authority shall permit only appropriately trained and authorized persons to operate the EAS equipment and take reasonable precautions to prevent any use of the Grantee's Cable System in any manner that results in inappropriate use, or any loss or damage to the Cable System. Except to the extent expressly prohibited by law, the Franchising Authority agrees to hold the Grantee, its employees, officers and assigns harmless from any claims arising out of the emergency use of its facilities by the Franchising Authority, including, but not limited to, reasonable attorneys' fees and costs.

### **SECTION 5** **CABLE SYSTEM DESIGN, SERVICES, AND PROGRAMMING**

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

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

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

#### **5.2 Educational and Government Access Channels.**

A. Educational and Government Access Channel ("Access Channel"). Upon request by the Franchising Authority, the Grantee shall make available one (1) channel to be used for educational and governmental cablecast programming within six (6) months of such written notice.

B. Franchising Authority Rules: The Access Channel will be made available by Grantee for use by the Franchising Authority in accordance with the rules and procedures established by the Franchising Authority or any lawfully designated Person, group, organization, or agency authorized by the Franchising Authority for that purpose.

C. Non-Commercial Use: Any Access Channels shall be for non-commercial use. The Franchising Authority agrees not to use the Access Channel to provide commercial or revenue-generating services or services that may compete, directly or indirectly, with services provided by the Grantee, provided however, that the Franchising Authority may cablecast



acknowledgements of funding sources and the underwriting of programming costs. Such acknowledgements will be deemed non-commercial if they are within the standards for underwriting applicable to the Public Broadcasting Service (PBS) or the standards necessary to maintain tax-exempt status within the applicable regulations of the Internal Revenue Service (IRS). Programming shall not lose its non-commercial character by reason of including public or charitable fund-raising events or activities, or donor and underwriting announcements reflecting funding provided by for-profit or non-profit entities for PEG programming in accordance with the provisions of 47 C.F.R. 73.621 of the FCC's rules.

D. The location of the Access Channel shall not be changed without sixty (60) days notice to the City so long as such change is within the control of the Grantee. The Grantee shall digitally deliver the Access Channel at or after the time that Grantee converts its Cable System to digital transmission.

E. Charges: No charges may be assessed by Grantee for channel time or playback of pre-recorded programming on the Access Channel.

F. Use of Fallow Time by Grantee: Grantee will be entitled to use any channel capacity on the Access Channel for other services during any time the Access Channel is not being used for access programming.

G. Technical Standards: Grantee shall insure that the Access Channel meets the technical standards of the FCC; provided, however, the Grantee shall not be responsible for defects, flaws or other impairments in the programming delivered to the Grantee.

H. Grantee reserves the right, after notice to the City and subscribers, to consolidate all PEG channels to a single channel on the basic tier. All PEG channels could then be accessed either as an application on a menu or as choices on the assigned channel.

**5.3 Broad Categories of Programs and Services.** At a minimum, the following broad categories of programs and services shall be provided:

- A. Local news, weather, and information
- B. Educational programming
- C. Sports
- D. General entertainment (including movies)
- E. Children/family-oriented
- F. Arts, culture, and performing arts
- G. Food
- H. Foreign language based on population
- I. Science/documentary
- J. National, state, and local government affairs
- K. Access programming, as provided by this Franchise
- L. Program channel guide
- M. National news, weather, and information.

## **SECTION 6** **REGULATION BY THE FRANCHISING AUTHORITY**

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

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

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

**6.4 Franchise Fee.**

A. The Grantee shall pay to the Franchising Authority a franchise fee of five percent (5%) of annual Gross Revenues (as defined in Section 1.1J). In accordance with the Cable Act, the twelve (12) month period applicable under the Franchise for the computation of the franchise fee shall be a calendar year. The franchise fee payment shall be due quarterly and payable within forty-five (45) days after the close of the preceding quarter. Each payment shall be accompanied by a brief report prepared by a representative of the Grantee showing the basis for the computation, substantially similar in form to Appendix A attached, and made part of this Franchise. Should the Grantee have the ability to do so and at the direction of the Franchising Authority, payments shall be deposited to a Franchising Authority account electronically.

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

C. All undisputed amounts due and owing under this Franchise and not paid by Grantee within ten (10) business days of receipt of notice from the Franchising Authority to the Grantee shall bear interest at the rate of one and one-half percent (1½%) per month calculated from the date due until the date of actual payment provided, however, that if the foregoing rate is in excess of the maximum permitted by law in the State of Alabama, then such interest rate shall be adjusted downwards to the maximum rate permitted by applicable law.

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

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

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

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

employees, representatives, and agents thereof that have a need to know, or in order to enforce the provisions hereof. The Grantee shall not be required to provide Subscriber information in violation of Section 631 of the Cable Act.

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

**6.8 Renewal of Franchise.**

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

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

C. Notwithstanding anything to the contrary set forth in this Section 6.8, the Grantee and the Franchising Authority agrees that at any time during the term of the then current Franchise, while affording the public appropriate notice and opportunity to comment, the Franchising Authority and the Grantee may agree to undertake and finalize informal negotiations regarding renewal of the then current Franchise and the Franchising Authority may grant a renewal thereof.

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

**6.9 Transfer of Franchise.** The Grantee's right, title, or interest in the Franchise shall not be sold, transferred, assigned, or otherwise encumbered, other than to an entity controlling, controlled by, or under common control with the Grantee, without the prior consent of the Franchising Authority, such consent not to be unreasonably withheld. No such consent shall be required, however, for a transfer in trust, by mortgage, by other hypothecation, or by assignment of any rights, title, or interest of the Grantee in the Franchise or Cable System in order to secure indebtedness. Within thirty (30) days of receiving a request for transfer, the Franchising Authority shall notify the Grantee in writing of any additional information it reasonably requires to determine the legal, financial and technical qualifications of the transferee. If the Franchising Authority has not taken action on the Grantee's request for transfer within one hundred twenty (120) days after receiving such request, consent by the Franchising Authority shall be deemed given.

**SECTION 7**  
**CUSTOMER PRACTICES**

**7.1 No Discrimination.** The Grantee shall not, as to rates and charges, make or grant any preference or advantage to any Person, nor subject any Person to any prejudice or disadvantage. This Section shall not be construed to prohibit promotional or bulk discounts, or discounts that may be made available to seniors or the economically disadvantaged.

Neither the Grantee nor any of its employees, agents, representatives, contractors, subcontractors, or consultants, nor any other Person, shall discriminate or permit discrimination between or among any Persons in the availability of Cable Services provided in connection with the Cable System in the Franchise Area. It shall be the right of all Persons to receive all available services provided on the Cable System so long as such Person's financial or other obligations to the Grantee are satisfied

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

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

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

**7.5 Customer Service Standards.**

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

B. Cable System Office Hours and Telephone Availability.

(1) Grantee will maintain a local, toll-free, or collect call telephone access line which will be available to its Subscribers twenty-four (24) hours per day, seven (7) days per week. Trained Grantee representatives will be available to respond to customer telephone inquiries during Normal Business Hours.

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

(2) Under Normal Operating Conditions, telephone answer time by a customer representative or automated response unit, including wait time, will not exceed thirty (30) seconds when the connection is made. If the call needs to be transferred, transfer time will not exceed thirty (30) seconds. These standards will be met no less than ninety percent (90%) of the time under Normal Operating Conditions, measured on a quarterly basis.

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

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

(5) Grantee shall maintain a conveniently located customer service center, which shall include a place where Subscribers may pay their bills, pick up and return converter boxes and comparable items and receive information on the Grantee and its services. Such service center shall be open during hours consistent with Grantee's standards for serving varying levels of customer traffic.

C. Installations, Outages, and Service Calls. Under Normal Operating Conditions, each of the following four (4) standards will be met no less than ninety-five percent (95%) of the time measured on a quarterly basis:

Standard Installations will be performed within seven (7) business days after an order has been placed. "Standard" Installations are those that are located up to one hundred fifty (150) feet from the existing distribution System.

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

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

calls and other Installation activities outside of Normal Business Hours for the express convenience of the customer.)

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

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

D. Communications Between Grantee and Subscribers.

(1) Disclosure to Subscribers: If Grantee identifies the City on Subscriber's Bills, in Grantee shall include the following in its entirety:

CenturyLink operates under the authority of a franchise with:

City of Orange Beach, Alabama  
Post Office Box 458  
Orange Beach, Alabama 36561  
Phone: (251) 981-6979

(2) Notifications to Subscribers.

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

- (a) Products and services 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 Cable Service;
- (e) Channel positions programming carried on the System; and
- (f) Billing and Complaint procedures, including the address and telephone number of the Franchising Authority.

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

(5) Billing.

Bills will be clear, concise, and understandable. Bills must be fully itemized, with itemizations including, but not limited to, basic and premium service charges and equipment charges. Bills will also clearly delineate all activity during the billing period, including optional charges, rebates, and credits.

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

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

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

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

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

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

## **SECTION 8** **REPORTS AND RECORDS OF GRANTEE**

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

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

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

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

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

E. Copies of all rules, regulations, terms and conditions established by Grantee for the operation of the Cable System under this Franchise shall be filed with the City.

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

**9.1 Indemnification Against Liability**. The Grantee shall indemnify and save free and harmless, and by the acceptance of this Franchise, agrees to indemnify and save free and harmless the Franchising Authority, the Franchising Authority City Council, each member thereof, all officers, agents, employees and members of boards and commissions of the Franchising Authority from and against any and all liability by reason of or arising out of any and all claims, demands, causes of action or proceedings which may be asserted, prosecuted or established against them or any of them, for damage to persons or property of whatever nature or arising out of the use by the Grantee of the Public Way, or of any other operations or activities of the Grantee pursuant to this Franchise and the operation of its Cable System, whether such damage shall be caused by negligence or otherwise (including but not limited to any liability for damages for defamation and damages by reason of or arising out of any failure by the Grantee to secure consents from the owners, authorized distributors or licensees of programs to be delivered

by the Grantee's Cable System or vehicle operations) and irrespective of the amount of the liability insurance policies required hereunder, but excepting there from liability airings out of any claim, demand, cause of action or proceeding resulting from the negligence or willful misconduct of the Franchising Authority, the Franchising Authority City Council, each member thereof, or officers, agents, employees or members of boards and commissions of the Franchising Authority, or resulting from the negligence or willful misconduct of persons distributing programs via the access channel over which persons and programming the Grantee cannot legally and does not exercise control.

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

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

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

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

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

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

**9.8 Filing of Certified Copy with Franchising Authority.** A certificate of insurance

coverage shall be filed in the office of the Franchising Authority concurrently upon the acceptance of the award of this Franchise as set forth in Section 9.4 above.

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

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

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

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

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

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

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

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

**11.1 Security Fund.**

A. Except as expressly provided herein, or otherwise as may be required by generally applicable ordinances of the Franchising Authority or other applicable law, the Grantee shall not be required to obtain or maintain bonds or other surety as a condition of being awarded the Franchise or continuing its existence. The Franchising Authority acknowledges that the legal, financial, and technical qualifications of the Grantee are sufficient for compliance with the terms of the Franchise and the enforcement thereof. The Grantee and the Franchising Authority recognize that the costs associated with bonds and other surety may ultimately be borne by the Subscribers in the form of increased rates for services. In order to minimize such costs, the Franchising Authority agrees to require bonds and other surety only in such amounts and during such times as there is a reasonably demonstrated need such as a change in the Grantee's legal, financial, or technical qualifications which would materially prohibit or impair its ability to comply with the terms of the Franchise or afford compliance therewith. The Franchising Authority agrees that in no event, however, shall it require a bond or other related surety in an aggregate amount greater than ten thousand dollars (\$10,000), conditioned upon the substantial performance of the material terms, covenants, and conditions of the Franchise. Initially, no bond or other surety will be required. In the event that a bond or other surety is required in the future, in accordance with the requirements of this Section, the Franchising Authority agrees to give the Grantee at least sixty (60) days prior written notice thereof stating the exact reason for the requirement.

B. If a performance bond has been established, the performance bond may be drawn on by City for those purposes specified in Section 11.3 herein.



C. Within thirty (30) days after notice to Grantee that any amount has been withdrawn by the City from the performance bond, Grantee shall deposit a sum of money or otherwise replace the bond in a manner sufficient to restore such bond to its original amount.

D. Nothing herein will be deemed a waiver of the normal permit and bonding requirements made of all contractors working within the City's Public Way, except as may be waived in accordance with the Franchise.

**11.2 Procedure for Remedying Franchise Violations.** If Grantee fails to perform in a timely manner any material obligation, as determined by the Franchising Authority, required herein, following notice from the Franchising Authority and an opportunity to cure such non-performance, the Franchising Authority may remedy such violation in accordance with the following procedures:

A. The Franchising Authority will first notify Grantee of the violation in writing by delivery of registered or certified mail, and demand correction within a reasonable time. The Grantee shall have thirty (30) days from receipt of the notice to: (a) respond to the Franchising Authority, contesting the assertion of noncompliance, or (b) cure such default, or (c) in the event that, by the nature of default, such default cannot be cured within the thirty (30) day period, initiate reasonable steps to remedy such default and notify the Franchising Authority of the steps being taken and the projected date that they will be completed. If Grantee fails to correct the violation within the time prescribed or if Grantee fails to commence corrective action within the time prescribed and diligently remedy such violation thereafter, the Grantee will then be given a written notice at least thirty (30) days prior to a public hearing to be held before the City Council. Said notice will specify the violations alleged to have occurred.

B. At the public hearing, the City Council will hear and consider all relevant evidence, and thereafter render findings and its decision. Such public hearing shall be held at the next regularly scheduled meeting of the Franchising Authority which is scheduled at a time which is no less than thirty (30) days therefrom. The Franchising Authority shall notify the Grantee in writing of the time and place of such meeting and provide the Grantee with an opportunity to be heard.

C. In the event the City Council finds that Grantee has corrected the violation or has diligently commenced correction of such violation after notice thereof from the Franchising Authority and is diligently proceeding to fully remedy such violation, or that no material violation has occurred, the proceedings will terminate and no penalty or other sanction will be imposed.

D. Subject to applicable federal and state law, in the event the City Council finds that a material violation exists and that Grantee has not corrected the same in a satisfactory manner or has not diligently commenced correction of such violation, the City Council may establish a date, no earlier than thirty (30) days following notification, by which Grantee must comply with the obligation or the Franchising Authority may thereafter seek specific performance of any Franchise provision, which reasonably lends itself to such remedy. As an alternative to damages the Franchising Authority may commence an action at law for monetary damages or seek other equitable relief. In the case of a substantial default of a material provision of the Franchise, the City Council may also implement the Franchise termination procedures in accordance with the following:

The Franchising Authority shall give written notice to the Grantee of its intent to revoke the Franchise on the basis of a pattern of noncompliance by the Grantee, including one or more instances of substantial noncompliance with a material provision of the Franchise. The notice shall set forth the exact nature of the noncompliance. The Grantee shall have ninety (90) days from such notice to object in writing and to state its reasons for such objection. In the event the Franchising Authority has not received a satisfactory response from the Grantee, it may then seek termination of the Franchise at a public meeting. The Franchising Authority shall cause to be served upon the Grantee, at least ten (10) days prior to such public meeting, a written notice specifying the time and place of such meeting and stating its intent to request such termination.

At the designated meeting, the Franchising Authority shall give the Grantee an opportunity to state its position on the matter, after which it shall determine whether or not the Franchise shall be revoked. The Grantee may appeal such determination to an appropriate court, which shall have the power to review the decision of the Franchising Authority “de novo” and to modify or reverse such decision as justice may require.

The Franchising Authority may, at its sole discretion, take any lawful action which it deems appropriate to enforce the Franchising Authority's rights under the Franchise in lieu of revocation of the Franchise.

E. In determining whether a violation is material, the Franchising Authority will take into consideration the reliability of the evidence of the violation, the nature of the violation, and the damage, if any, caused to the Franchising Authority or the City's residents thereby, whether the violation was chronic, and any justifying or mitigating circumstances, and such other matters as the City may deem appropriate. The parties hereby agree that it is not the Franchising Authority's intention to subject the Grantee to penalties, fines, forfeitures or revocation of the Franchise for so-called “technical” breach(es) or violation(s) of the Franchise or local cable ordinance, which shall include but are not limited to the following:

- (1) In instances or for matters where a violation or a breach by the Grantee of the Franchise or local cable ordinance was good faith error that resulted in no or minimal negative impact on the customers within the Service Area; or
- (2) Whether there existed circumstances reasonably beyond the control of the Grantee as described in Section 11.9 and which precipitated a violation by the Grantee of the Franchise or local cable ordinance, or which were deemed to have prevented the Grantee from complying with a term or condition of the Franchise or local cable ordinance.

**11.3 Penalty.** In the event the Grantee has obtained a bond pursuant to the provisions of Section 11.1A above and after complying with the due process procedures and remedies provided in Section 11.2 above, the Franchising Authority finds that a material violation exists and that Grantee has not corrected the same in a satisfactory manner or has not diligently commenced correction of such violation, the Franchising Authority may establish a date, no earlier than thirty (30) days following notification, by which Grantee must comply with the obligation or the Franchising Authority may thereafter impose damages, payable from the security fund.

**11.4 Revocation.** Should the Franchising Authority seek to revoke the Franchise after following the procedures set forth in Section 11.2D above, the Franchising Authority shall give written notice to the Grantee of its intent. The notice shall set forth the exact nature of the non-compliance. The Grantee shall have ninety (90) days from such notice to object in writing and to state its reasons for such objection. In the event the Franchising Authority has not received a satisfactory response from the Grantee, it may then seek termination of the Franchise at a public hearing. The Franchising Authority shall cause to be served upon the Grantee, at least thirty (30) days prior to such public hearing, a written notice specifying the time and place of such hearing and stating its intent to revoke the Franchise.

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

**11.5 Franchising Authority's Rights to Enforce.** The Franchising Authority may, at its sole discretion, take any lawful action which it deems appropriate to enforce the Franchise and the exercise of any of the remedies as set forth in Section 11 shall not constitute an election of remedies or otherwise be considered a waiver by the Franchising Authority to take any lawful action or exercise any appropriate remedy it deems appropriate to enforce the terms and conditions of this Franchise.

**11.6 Removal or Abandonment of Property.** Notwithstanding anything to the contrary of this Section, upon termination of the Franchise, the Grantee or its successors and assigns shall retain ownership of the Cable System and shall be entitled at its option and expense to remove the Cable System from all Public Ways, private property, or to abandon said Cable System.

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

**11.8 Restoration by Franchising Authority, Reimbursement of Costs.** In the event of a failure by the Grantee to complete any work required by Section 11.7 above, or any of the work required by Franchising Authority Franchise within the time as may be established and to the mutual satisfaction of the Franchising Authority and the Grantee, the Franchising Authority may cause such work to be done and the Grantee shall reimburse the Franchising Authority the costs thereof within ninety (90) days after receipt of an itemized list of such costs.

**11.9 Force Majeure.** The Grantee shall not be held in default under, or in noncompliance with, the provisions of the Franchise, nor suffer any enforcement or penalty relating to noncompliance or default, where such noncompliance or alleged defaults occurred or were caused by circumstances reasonably beyond the ability of the Grantee to anticipate and control. This provision includes work delays caused by waiting for utility providers to service or monitor their utility poles to which the Grantee's Cable System is attached, as well as unavailability of materials and/or qualified labor to perform the work necessary.

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

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

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

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

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

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

City Administrator  
City of Orange Beach  
4099 Orange Beach Boulevard  
Orange Beach, AL 36561

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

Randy Wood, General Manager  
CenturyTel Broadband Services,  
LLC  
19812 Underwood Road  
Foley, AL 36535

and

CenturyLink  
1801 California Street, 10<sup>th</sup> Floor  
Denver, CO 80220  
Attn: Mary Ferguson Lafave

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

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

**12.6 Receivership and Foreclosure.**

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

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

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

B. Foreclosure. In the case of a foreclosure or other judicial sale of the Franchise property, or any material part thereof, Franchising Authority may serve notice of termination upon Grantee and the successful bidder at such sale, in which event the Franchise granted and all rights and privileges of the Grantee hereunder shall cease and terminate thirty (30) days after service of such notice, unless:

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

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

**12.7 Publication.**

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

B. Cost of Publication. Grantee shall assume any cost of publication of this Franchise, as such publication may be required by law, and such cost is payable upon a Grantee's filing of its written acceptance of this Franchise as provided in Section 10.1A of this Franchise.

**12.8 Governing Law.**

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

Considered and adopted this 4<sup>th</sup> day of December 2012.

CITY OF ORANGE BEACH, ALABAMA

By: [Signature]  
Its: Mayor

ATTEST:

By: [Signature]  
Its:

CENTURYTEL BROADBAND SERVICES, LLC,  
A SUBSIDIARY OF CENTURYLINK, INC.

By: \_\_\_\_\_  
Its:

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

I, the undersigned authority, a Notary Public, in and for \_\_\_\_\_ County and the State of \_\_\_\_\_, hereby certify that \_\_\_\_\_, as \_\_\_\_\_ of CenturyTel Broadband Services, LLC, whose name is 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 officers and with full authority, executed the same voluntarily for and as the act of CenturyTel Broadband Services, LLC, on this the day the same bears date.

GIVEN, under my hand and Seal, this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

\_\_\_\_\_  
Notary Public  
My Commission expires: \_\_\_\_\_

**APPENDIX A**

**FRANCHISE FEE PAYMENT WORKSHEET**

REVENUE SOURCE*	NUMBER OF SUBSCRIBERS	GROSS REVENUE	5% FRANCHISE FEE	YTD
Installation/Repair				
Basic Service				
Lifeline Cable Service				
Tier 1				
Tier 2				
Tier 3				
Digital				
Premium Services				
Pay-Per-View Services				
Digital Video Recorder				
Video on Demand				
Leased Access				
Additional Outlets				
FM Service/Music Service				
Remote Control/Converter				
Interactive Services				
Late Fees				
Collection Fees				
Advertising				
Shopping				
Other				
TOTAL				

**APPENDIX B**

**FORM OF ACCEPTANCE**

The Honorable Anthony Kennon  
Mayor  
City of Orange Beach  
4900 Orange Beach Boulevard  
Orange Beach, AL 36561

Dear Mayor Kennon:

CenturyTel BroadBand Services, LLC (“CenturyLink”) hereby accepts the Franchise Ordinance adopted by the City of Orange Beach on \_\_\_\_\_, 2012 (“Franchise Ordinance”).

In accordance with Section 10 of the Franchise Ordinance, CenturyLink hereby promises to comply with and abide by all of the provisions, terms, and conditions of the Franchise Ordinance.

CenturyLink looks forward to a productive relationship with the City of Orange Beach, Alabama for the ongoing benefit of the City’s residents.

Very truly yours,

STATE OF \_\_\_\_\_ )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was subscribed and sworn to before me this \_\_\_\_ day of January, 2012 by \_\_\_\_\_, the \_\_\_\_\_ of CenturyTel BroadBand Services, LLC.

\_\_\_\_\_  
SEAL

Notary Public

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