

**ORDINANCE NO. 1758**

AN ORDINANCE AUTHORIZING AND GRANTING TO  
MEDIACOM SOUTHEAST LLC ("MEDIACOM") THE RIGHT TO USE THE  
RIGHTS-OF-WAY OF THE CITY OF FAIRHOPE, ALABAMA (THE "CITY") TO  
PROVIDE CABLE SERVICES TO THE CITIZENS OF THE CITY UNDER THE  
TERMS OF A CABLE TELEVISION SYSTEM FRANCHISE AGREEMENT

WHEREAS, Alabama Code § 11-43-62 authorizes and empowers the City to regulate the use of the streets for the erection of all systems of wires and conduits and generally to control and regulate the use of the streets for any and all purposes, and to grant franchises for such as the City deems advisable; and

WHEREAS, Mediacom's franchise agreement granted pursuant to Ordinance 1671, adopted January 13, 2020, will expire on January 1, 2025, and Mediacom now desires to enter into a new franchise agreement with the City; and

WHEREAS, the Cable Television System Franchise Agreement attached hereto and incorporated herein by this reference (hereinafter the "Agreement") sets forth the terms and conditions pursuant to which Mediacom shall operate its cable television system, including the fees that shall be paid to the City with respect to same.


NOW THEREFORE, BE IT ORDAINED by the City Council (the "Council") of the City of Fairhope, Alabama as follows:

The Mayor is hereby authorized to execute the Agreement for and on behalf of the City. A copy of the Franchise Agreement is on file in the office of the City Clerk.

If any section, subsection, sentence, clause, phrase, or portion of this Ordinance (including the Cable Television System Franchise Agreement attached hereto) is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions hereof. If any of the terms or provisions set forth in the Agreement are inconsistent or otherwise in conflict with any of the terms or provisions in Ordinance Number 1284 (Cable Television), then the terms and provisions set forth in the Agreement shall prevail with respect to the Agreement.

This Ordinance shall take effect immediately upon its due adoption and publication as required by law.

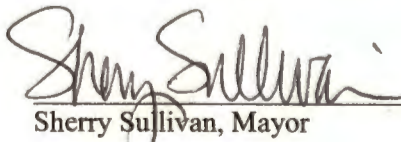
APPROVED AND ADOPTED by the Council this 12th day of September, 2022


  
James Reid Conyers, Jr.  
Council President

ATTEST:

  
Lisa A. Hanks, MMC  
City Clerk

APPROVED AND ADOPTED by the Council this 12th day of September, 2022

  
Sherry Sullivan, Mayor

Ord. No. 1758 Published in  
FAIRHOPE COURIER  
on Friday, September 23, 2022  
 City Clerk

## FRANCHISE AGREEMENT

This *AGREEMENT* is effective as of the 13 day of September, 2022 (the "Effective Date"), and is between the City of Fairhope, Alabama (the "Franchising Authority" or the "City"), and Mediacom Southeast, LLC (the "Company").

The Franchising Authority hereby acknowledges that the financial, legal, and technical ability of the Grantee is reasonably sufficient to provide services, facilities, and equipment necessary to meet the future cable-related needs of the community, and having afforded the public adequate notice and opportunity for comment, Franchising Authority desires to enter into this Franchise with the Grantee for the construction and operation of a cable system on the terms set forth herein.

### SECTION 1 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 consistent 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. "Basic Cable Service" is the lowest priced tier of Cable Service that includes the retransmission of local broadcast television signals.
- B. "Cable Act" means Title VI of the Cable Act of 1934, as amended.
- C. "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.
- D. "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.
- E. "Franchise Authority" means Franchise Authority of Fairhope, a municipal corporation, in the State of Alabama, acting by and through its City Council, or it's lawfully appointed designee.
- F. "Franchise Authority Code" means all local ordinances, laws and regulations of the Franchise Authority.
- G. "FCC" means Federal Communications Commission or successor governmental entity thereto.

- H. "Franchising Authority" means Fairhope, Alabama.
- I. "Grantee" means Mediacom Southeast, LLC or the lawful success transferee, or assignee thereof.
- J. "Gross Revenues" means all revenue derived from the provision and operation of the Cable System and services within the municipal boundaries of the Franchise Authority including, but not limited to, all Cable Service fees, Franchise/video service fees, equipment rental, premium services, pay-per-view, home wire maintenance service revenue, late fees, home shopping commissions, installation, disconnection and connection fees, advertising revenue, equipment revenue and related income sources. If Grantee offers voice, video and data services for one bulk fee, the Franchising Authority will still receive a five percent franchise fee on the amount of the bulk fee attributable to the video service. The term Gross Revenue shall not include any taxes on services furnished by Grantee imposed by any municipality, state, or other governmental unit and collected by Grantee for such governmental unit.
- K. "Person" means an individual, partnership, association, joint stock company, trust, corporation, or governmental entity.
- L. "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 now or hereafter held by the Franchising Authority in the Service Area
- M. "Service Area" means the present boundaries of the Franchising Authority and shall include any additions thereto by annexation or other legal means, subject to the exceptions in subsection 3.16.
- N. "Standard Installation" is defined as 125 feet from the nearest tap to the Subscriber's terminal.
- O. "Subscriber" means a Person who lawfully receives Cable Service of the Cable System with the Grantee's express permission.

## 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 the Public Ways within the Service Area, and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain, or retain in any Public Way such facilities and equipment as may be necessary or appurtenant to the Cable System for the transmission and distribution of Cable Services.



Notwithstanding the above grant to use Public Ways, no Public Ways shall be used by Grantee if Franchising Authority determines that such use is inconsistent with the terms, conditions, or provisions by which such Public Way was created or dedicated, or with the present use of the Public Way. Any use by Grantee of the Public Ways shall be subject to all local Franchise Authority Code requirements governing the Public Ways.

**2.2 Lease or Assignment Prohibited.** No Person may lease Grantee's System for the purpose of providing Cable Service until and unless such Person shall have first obtained and shall currently hold a valid franchise or other lawful authorization from the Franchise Authority containing substantially similar burdens and obligations to this Franchise. Any assignment of rights under this Franchise shall be subject to and in accordance with the requirements of Section 4.5 of this Franchise. This provision shall not prevent Grantee from complying with any commercial leased access requirements or any other provisions of Applicable Law.

**2.3 Other Ordinances.** The Grantee agrees to comply with the terms of the Franchise Authority Code. Neither party may unilaterally alter the material rights nor obligations set forth in this Franchise. In the event of a conflict between the Franchise Authority Code and this Franchise, this Franchise shall control.

**2.4 Other Authorizations.** The Grantee acknowledges and agrees that the Franchising Authority reserves the right to grant one (1) or more additional franchises or other similar lawful authorization to provide Cable Services within the Franchising Authority; provided, however, that no such franchise or similar lawful authorization shall contain material terms or conditions which, when considered as a whole, are substantially more favorable or less burdensome to the competitive provider than the material terms and conditions herein. The parties agree that this provision shall not require a word for word identical franchise or authorization for a competitive entity so long as the overall regulatory and financial burdens on each entity are generally equivalent.

Notwithstanding any provision to the contrary, should any non-wireless facilities-based entity provide Cable Service within the Franchise Area during the term of this Franchise without a Franchise granted by the Franchising Authority and the Franchising Authority has the legal authority under State and Federal law to impose a Franchise on such entity, then Grantee shall have all rights which may be available to assert, at Grantee's option, that this Franchise is rendered "commercially impracticable," and invoke the modification procedures set forth in Section 625 of the Cable Act.

### **SECTION 3 Standards of Service**

#### **3.1 Registration, Permits, Construction Codes, and Cooperation.**

A. Grantee shall comply with the construction requirements of local, state and federal laws.

- B. Grantee agrees to obtain a permit as required by Franchising Authority prior to removing, abandoning, relocating or reconstructing, if necessary, any portion of its facilities in the Public Way, other than for the normal routine installation of Drop(s) and maintenance activities. Notwithstanding the foregoing, Franchising Authority understands and acknowledges there may be instances when Grantee is required to make significant repairs that are of an emergency nature. Permits for emergency work, if necessary, shall be applied for as soon as possible, but in no event later than (5) business days after the emergency work has commenced.
- C. The fees paid to obtain permits are separate, and in addition to, any other fees included in the Franchise.
- D. Franchising Authority may issue reasonable policy guidelines to all users of the Public Way to establish procedures for determining how to control issuance of construction permits to multiple users of the same Rights-of- Way. Grantee shall cooperate with Franchising Authority in establishing such policy and comply with the procedures established by the Franchise Authority to coordinate the issuance of multiple construction permits.
- E. Upon reasonable prior written notice, Grantee shall use reasonable efforts to meet with developers and be present at pre-construction meetings to ensure that Cable System facilities are installed in new developments within the Service Area in a timely manner, with such obligation being subject to all other requirements or limitations in this Franchise, including the density requirements in Section 3.16.

**3.2 Use of Existing Poles or Conduits.** Grantee shall use its best efforts to utilize existing poles, conduits and other facilities belonging to either Grantee or other utility providers whenever commercially reasonable and shall not construct or install any new, different or additional poles, conduits or other facilities on public property without the written approval of Franchising Authority. No location or any pole or wire-holding structure of Grantee shall be a vested interest, and such poles or structures shall be removed or modified by Grantee at its own expense whenever Franchising Authority determines that such a move is a public necessity.

**3.3 Conditions of Occupancy.** The Cable System installed by the Grantee pursuant to the terms hereof shall be located so as to cause a minimum of interference with the proper use of Public Ways and with the rights and reasonable convenience of property owners who own property that adjoins any of such Public Ways.

**3.4 Restoration of Public Ways.** If during the course of the Grantees construction, operation, or maintenance of the Cable System there occurs a disturbance of any Public Way by the Grantee, Grantee shall replace and restore such Public Way to a condition mandated by the Franchise Authority Code or to reasonably comparable to the condition of the Public Way existing immediately prior to such disturbance if the Franchise Authority Code is silent on the issue.

**3.5 Relocation for the Franchising Authority.** Upon its receipt of reasonable advance written notice, to be not less than ten (10) business days, the Grantee shall protect, support, raise, lower, temporarily disconnect, relocate in or remove from the Public Way, any property of the Grantee when lawfully required by the Franchising Authority by reason of traffic conditions, public safety, street abandonment, freeway and street construction, change or establishment of street grade, installation of sewers, drains, gas or water pipes, or any other type of public structures or improvements which are not used to compete with the Grantee's services.

**3.6 Relocation for a Third Party.** The Grantee shall, on the request of any Person holding a lawful permit issued by the Franchising Authority, protect, support, raise, lower, temporarily disconnect, relocate in or remove from the Public Way as necessary any property of the Grantee, provided: (A) the expense of such is paid by said Person benefiting from the relocation, including, if required by the Grantee, making such payment in advance; and (B) the Grantee is given reasonable advance written notice to prepare for such changes. For purposes of this subsection, "reasonable advance written notice" shall be no less than: (1) five (5) business days advance notice to arrange temporary wire alterations and thirty days to complete the raising or lowering of such lines; (2) thirty (30) business days in the event of a temporary relocation, and no less than one hundred twenty (120) days for a permanent relocation.

**3.7 Emergency.** Whenever, in case of fire or other emergency, it becomes necessary in the judgment of the Mayor, police chief, fire chief, or their delegates, to remove or damage any of Grantee's facilities, no charge shall be made by Grantee against Franchise Authority for restoration, repair or damages.

**3.8 Emergency Alert Capability.** Grantee shall at all times comply with the Emergency Alert System standards pursuant to Title 47, Section 11, Subparts A-E of the Code of Federal Regulations, as may be amended or modified from time to time.

**3.9 Technical Standards.** The technical standards used in the operation of the System shall comply, at minimum, with the technical standards promulgated by the FCC relating to Cable Systems pursuant to Title 47, Section 76, Subpart K of the Code of Federal Regulations, as may be amended or modified from time to time, which regulations are expressly incorporated herein by reference.

**3.10 FCC Reports.** Any reports filed by Grantee with the FCC shall upon written request, be filed with Franchise Authority or its designee within Thirty (30) days of the date when report is filed with the FCC.

**3.11 Trimming of Trees and Shrubbery.** The Grantee shall have the authority to trim trees or other natural in order to access and maintain the Cable System. Any trimming of trees by the Grantee in the Public Way shall be subject to such regulation or supervision as the Mayor or other authorized official may establish to protect the public health, safety and convenience.

**3.12 Safety Requirements.** Construction, operation, and maintenance of the Cable System shall be performed in an orderly and workmanlike manner. All such work shall be performed in substantial accordance with generally applicable federal, state, and local regulations and the National Electric Safety Code. Cable System structures, and lines, equipment and connections in, over, under and upon the Rights-of-Way of Franchise Authority, wherever situated or located, shall at all times be kept and maintained in good condition, order, and repair so that the same shall not menace or endanger the health, safety or property of Franchise Authority or any Person.

**3.13 Underground Construction.** In those areas of the Service Area where all of the transmission or distribution facilities of the respective public utilities providing telephone communications and electric services are underground, the Grantee likewise shall construct, operate, and maintain its Cable System underground. Nothing contained in this subsection shall require the Grantee to construct, operate, and maintain underground any ground-mounted appurtenances.

**3.14 Locating Facilities.**

- A. If during the design process for public improvements, Franchise Authority discovers a potential conflict between Grantee's facilities and proposed construction, Grantee shall either: (a) locate and, if necessary, expose its facilities in conflict or (b) use a location service to locate or expose its facilities. Grantee is obligated to furnish the location information in a timely manner, but in no case longer than thirty (30) days after written notice from Franchising Authority.
- B. Franchise Authority reserves the prior and superior right to lay, construct, erect, install, use, operate, repair, replace, remove, relocate, re-grade, widen, realign, or maintain any Public Way, aerial, surface, or subsurface improvement, including but not limited to water mains, traffic control conduits, cable and devices, sanitary or storm sewers, subways, tunnels, bridges, viaducts, or any other public construction within the Public way.

**3.15 Installation Records.** Grantee shall keep accurate Installation records of the location of all facilities in the Rights-of-Way and public ways and furnish strand maps to Franchise Authority upon prior written request. Grantee shall cooperate with Franchise Authority to furnish such information in an electronic mapping format, if possible compatible with the then current Franchise Authority electronic mapping format. Upon completion of new or relocation construction of underground facilities in the Rights-of- Way and public ways, Grantee shall provide Franchise Authority with Installation records in an electronic format, if possible compatible with the then-current Franchise Authority electronic mapping format showing the location of the underground and above ground facilities.

**3.16 Required Extensions of the Cable System.** Grantee agrees to provide Cable Service to all residences in the Service Area subject to the density requirements specified in this subsection. Whenever the Grantee receives a request for Cable Service from a potential Subscriber in an unserved area contiguous to Grantee's existing distribution facilities where



there are at least 10 residences within 1320 cable-bearing strand feet (one-quarter cable mile) from the portion of the Grantee's trunk or distribution cable which is to be extended, it shall extend its Cable System to such Subscribers at no cost to said Subscribers for the Cable System extension, other than the published Standard/non- Standard Installation fees charged to all Subscribers. Notwithstanding the foregoing, the Grantee shall have the right, but not the obligation, to extend the Cable System into any portion of the Service Area where another operator is providing Cable Service, into any annexed area which is not contiguous to the present Service Area of the Grantee, or into any area which is financially or technically infeasible due to extraordinary circumstances, such as a runway or freeway crossing.

**3.17 Subscriber Charges for Extensions of the Cable System.** No Subscriber shall be refused service arbitrarily. However, if an area does not meet the density requirements of subsection 3.16 above, the Grantee shall only be required to extend the Cable System to Subscriber(s) in that area if the Subscriber(s) are willing to share the capital costs of extending the Cable System. Specifically, the Grantee shall contribute a capital amount equal to the construction cost per mile, multiplied by a fraction whose numerator equals the actual number of residences per 1320 cable-bearing strand feet from the Grantee's trunk or distribution cable, and whose denominator equals 10. Subscribers who request service hereunder shall bear the remaining cost to extend the Cable System on a pro rata basis. The Grantee may require that payment of the capital contribution in aid of construction borne by such potential Subscribers be paid in advance. Subscribers shall also be responsible for any Standard/non-Standard Installation charges to extend the Cable System from the tap to the residence.

**3.18 Public, Educational and Governmental Programming.** Grantee shall provide within ninety (90) days of the Franchise Authority's request one (1) PEG channel for public, educational and governmental (PEG ) programming as designated in the Franchise Authority's sole discretion.

Any operation of the PEG access channel by Franchise Authority shall be the responsibility of Franchise Authority, and Grantee's obligation is the transmission of such channel. The Franchise Authority 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 Grantee in the future, are provided or submitted to Grantee, at the Grantee's designated connection point, in a manner or form that is capable of being accepted and transmitted by Grantee, without requirement for additional alteration or change in the format or content by Grantee, over the network of Grantee, and which is compatible with the technology or protocol utilized by Grantee to deliver its Cable Service. Grantee is responsible for providing the connectivity to each PEG access Channel distribution point up to the first one thousand (1,000) feet.

**3.19 Reimbursement of Costs.** If Franchise Authority provided funds are available to any Person using the Public Way for the purpose of defraying relocation costs, the Franchising Authority shall provide the same proportionate cost reimbursement to Grantee.

**3.20 Consumer Protection and Service Standards.** Grantee shall maintain a convenient local bill payment location in the Franchise Authority for receiving Subscriber payments.



Grantee shall also provide the necessary facilities, equipment and personnel to comply with the following consumer protection standards under Normal Operating Conditions:

**A. Cable System office hours and telephone availability:**

- a. Grantee will maintain a local or toll-free telephone access line which will be available to its Subscribers twenty-four (24) hours a day, seven (7) days a week.
  - i. Trained Grantee representatives will be available to respond to customer telephone inquiries during Normal Business Hours.
  - ii. After Normal Business Hours, the access line may be answered by a customer service representative, or an automated response system, including an answering machine. Inquiries received after Normal Business Hours will be responded to by a trained customer service representative no later than the close of the next business day.
  - iii. Under Normal Operating Conditions, telephone answer time by a customer representative, including wait time, shall not exceed thirty (30) seconds when the connection is made. If the call needs to be transferred, transfer time shall not exceed thirty (30) seconds. These standards shall be met no less than ninety percent (90%) of the time under Normal Operating Conditions, measured on a quarterly basis.
  - iv. 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.
  - v. Under Normal Operating Conditions, the customer will receive a busy signal less than three percent (3%) of the time.
  - vi. Bill payment locations will be open at least during normal business hours.

**B. Installations, Outages and Service Calls.**

- a. 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:
  - i. 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.
  - ii. Excluding conditions beyond the control of Grantee, Grantee will begin working on "Service Interruptions" promptly and in no event later than twenty-four (24) hours after the interruption becomes known. Grantee must begin actions to correct other Service problems the next business day after notification of the Service problem.
  - iii. The "appointment window" alternatives for Installations, Service calls, and other Installation activities will be either a specific time or, at maximum, a four (4) hour time block during Normal

Business Hours. (Grantee may schedule Service calls and other Installation activities outside of Normal Business Hours for the express convenience of the customer.)

- iv. Grantee may not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment.
- v. If Grantee's representative is running late for an appointment with a customer and will not be able to keep the appointment as scheduled, the customer will be contacted prior to the time of the scheduled appointment. The appointment will be rescheduled, as necessary, at a time which is convenient for the customer.

**C. Communications between Grantee and Subscribers:**

- a. Notifications to subscribers:
  - i. Grantee shall 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:
    - 1. Products and Services offered;
    - 2. Prices and options for programming services and conditions of subscription to programming and other services;
    - 3. Installation and Service maintenance policies;
    - 4. Instructions on how to use the Cable Service;
    - 5. Channel positions of the programming carried on the System; and
    - 6. Billing and complaint procedures, including the address and telephone number of the Franchise Authority.
  - ii. Subscribers will be notified of any changes in rates, programming services or Channel positions as soon as possible in writing. Notice must be given to Subscribers a minimum of thirty (30) days in advance of such changes if the changes are within the control of the Grantee. In addition, the Grantee shall notify Subscribers thirty (30) days in advance of any significant changes in the other information required by this Section 5.4(c)(i)(l ). Grantee shall not be required to provide prior notice of any rate changes as a result of a regulatory fee, Franchise Fee, or other fees, tax, assessment or charge of any kind imposed by any federal agency, state or Franchise Authority on the transaction between the operator and the Subscriber.
- b. Billing:
  - i. 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.
  - ii. In case of a billing dispute, the Grantee must respond to a written complaint from a Subscriber within thirty (30) days.

- c. Refunds: Refund checks will be issued promptly, but no later than either:
  - i. The Subscriber's next billing cycle following resolution of the request or thirty (30) days, whichever is earlier, or
  - ii. Thirty (30) days from the return of the equipment supplied by Grantee if Service is terminated.
- d. Credits: Credits for Service will be issued no later than the Subscriber's next billing cycle following the determination that a credit is warranted.
- e. Grantee shall comply with the cable industry's on-time guaranty as endorsed by the National Cable Television Association. This on-time guaranty generally provides that if Installation is not commenced within the "appointment window" specified by the operator, Installation shall be free for the Subscriber. Moreover, Grantee shall provide Subscribers with a Twenty and No/ 100 Dollars (\$20.00) credit for any missed service appointments.

### **3.21 Refund Policy.**

- A. If a Grantee's Cable Service is interrupted due to a System outage for twenty-four (24) or more consecutive hours, Subscribers, upon request, shall be credited pro rata for such interruption. Credits must be issued no later than the Subscriber's next billing cycle following the determination that a credit is warranted. For this purpose, every month will be assumed to have thirty (30) days.
- B. In the event a Subscriber establishes or terminates Service and receives less than one (1) full month of Service, Grantee shall prorate the monthly rate on the basis of the number of days in the period for which Service was rendered to the number of days in the billing. Refund checks will be issued promptly, but no later than thirty (30) days from the date of return of the equipment supplied by the Grantee if Cable Service is terminated.

**3.22 Late Fees.** Fees for the late payment of bills shall be assessed in accordance with applicable law.

## **SECTION 4 Regulation by the Franchising Authority**

### **4.1 Franchise Fee.**

- A. The Grantee shall pay to the Franchising Authority a franchise fee of five percent (5%) of Gross Revenues (as defined in subsection 1.1 of this Franchise). The franchise fee payment shall be due monthly and payable on the last day of the month. Each payment shall be accompanied by a brief report prepared by a representative of the Grantee showing the basis for the computation.



In the event that a Franchise Fee payment or other sum due is not received by the Franchising Authority on or before the date due, or is underpaid, Grantee shall pay in addition to the payment, or sum due, interest from the due date at annual rate equal to six percent (6%).

- B. All amounts paid shall be subject to audit and re-computation by Franchising Authority and acceptance of any payment shall not be construed, as an accord that the amount paid is in fact the correct amount. If any audit reveals an error by Grantee of ten percent (10%) or more during any audit period, Grantee shall be responsible for Franchising Authority's reasonable out of pocket costs associated with the audit.

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

**4.3 Renewal of Franchise.** Any renewal of this Franchise shall be performed in accordance with Section 626 of the Cable Act.

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

**4.5 Transfer of Franchise.** Neither the Grantee nor any other Person may sell, transfer or assign the Franchise or any of the Grantee's rights or obligations in or regarding its Cable System or the Franchise without the prior written consent of the Franchising Authority which consent shall not be unreasonably withheld. No change in Control of the Grantee, the Cable System or the Franchise, including actual working control shall occur after the Effective Date, by operation of law, or otherwise, without the prior written consent of the Franchising Authority. Such consent shall not be unreasonably withheld. No consent shall be required, however, for (i) a transfer in trust, by mortgage, hypothecation, or by assignment of any rights, title or interest of the Grantee in this Franchise or the Cable System in order to secure indebtedness, or (ii) intercorporate reorganizations between or among entities wholly owned and wholly controlled by the parent company of Grantee to the extent such transaction does not involve a change in the management, day to day operations, or financial condition of the Grantee; provided the Franchising Authority shall be notified by the Grantee in the event of such intercorporate reorganization.

Any request for consent to a transfer shall be handled by the Franchising Authority in accordance with its rules and procedures as such are consistent with federal and state law, with Section 617 of the Cable Act and with regulations of the FCC. Any proposed transferee must accept in writing the Franchise rights and obligations.

**SECTION 5**  
**Books and Records**

Grantee agrees that the Franchising Authority, upon thirty (30) days written notice to the Grantee and no more than once annually may review its books and records at the Grantee's business office, during normal business hours and on a nondisruptive basis, as is reasonably necessary to ensure compliance with the terms of this Franchise. Such notice shall specifically reference the subsection of the Franchise that is under review so that the Grantee may organize the necessary books and records for easy access by the Franchising Authority. Alternatively, if the books and records are not easily accessible at the local office of the Grantee, the Grantee may, at its sole option, choose to pay the reasonable travel costs of the Franchising Authority's representative to view the books and records at the appropriate location. The Grantee shall not be required to maintain any books and records for Franchise compliance purposes longer than three (3) years. Notwithstanding anything to the contrary set forth herein, the 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 which 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.

**SECTION 6**  
**Insurance and Indemnification**

**6.1 Liability Insurance.**

- A. Upon the effective date, Grantee shall, at its sole expense take out and maintain during the term of this Franchise public liability insurance with a company licensed to do business in the state of Alabama with a rating by A.M. Best & Co. of not less than "B plus" listing the Franchising Authority as additional insured that shall protect the Grantee, Franchising Authority and its officials, officers, directors, employees and agents from claims which may arise from operations under this Franchise, whether such operations be by the Grantee, its officials, officers, directors, employees and agents or any subcontractors of Grantee. This liability insurance shall include but shall not be limited to; protection against claims arising from bodily and personal injury and damage to property, resulting from Grantee's vehicles, products and operations. The amount of insurance for single limit coverage applying to bodily and personal injury and property damage shall not be less than Two Million and No/ 100 Dollars (\$2,000,000.00). The following endorsements shall be attached to the liability policy:
- a. The policy shall provide coverage on an "occurrence" basis.
  - b. The policy shall cover personal injury as well as bodily injury.
  - c. The policy shall cover blanket contractual liability subject to the standard universal exclusions of contractual liability included in the carrier's standard endorsement as to bodily injuries, personal injuries and property damage.

- d. Broad form property damage liability shall be afforded.
  - e. Franchising Authority shall be named as an additional insured on the policy.
  - f. An endorsement shall be provided which states that the coverage is primary insurance and that no other insurance maintained by the Franchising Authority will be called upon to contribute to a loss under this coverage.
  - g. Standard form of cross-liability shall be afforded.
  - h. An endorsement stating that the policy shall not be canceled without thirty (30) day notice of such cancellation given to Franchising Authority.
- B. Grantee shall submit upon request to Franchising Authority certificate of insurance signed by the insurance agent and companies named, as well as all properly executed endorsements.
- C. Grantee shall not commence any Cable System construction work or permit any subcontractor to commence work until all insurance required under this Franchise has been obtained. Said insurance shall be maintained in full force and effect until the expiration of this Franchise.

## **6.2 Indemnification.**

- A. The Grantee agrees to indemnify, save and hold harmless, and defend the Franchising Authority, its officers, boards and employees, from and against any and all lawsuits, claims, causes or action, actions, liabilities, demands, damages, judgments, settlements, disability, losses, expenses (including attorney's fees and disbursements of counsel) and cost of any nature that any of the Indemnified Parties may at any time suffer, sustain or incur arising out of, based upon or in any way connected with the Grantee's operations, the exercise of the Franchise, the breach of Grantee of its obligations under this Franchise and/or the activities of Grantee, its subcontractor, employees and agents hereunder.
- B. The indemnification obligations of Grantee set forth in this Franchise are not limited in any way by the amount or type of damages or compensation payable by or for Grantee under Workers' Compensation, disability or other employee benefit acts, acceptance of insurance certificates required under this Franchise or the terms, applicability or limitations of any insurance held by Grantee.
- C. Franchising Authority does not, and shall not, waive any rights against Grantee which it may have by reason of the indemnification provided for in this Franchise, because of the acceptance by Franchising Authority, or the deposit with Franchising Authority by Grantee, of any of the insurance policies described in this Franchise.
- D. The indemnification of Franchising Authority by Grantee provided for in this Franchise shall apply to all damages and claims for damages of any kind suffered by reason of any of the Grantee's operations referred to in this Franchise, regardless of whether or not such



insurance policies shall have been determined to be applicable to any such damages or claims for damages.

- E. Grantee shall not be required to indemnify Franchising Authority for misconduct on the part of Franchising Authority or its officials, boards, commissions, agents, or employees. Franchising Authority shall hold Grantee harmless, subject to the limitations in state statutes for any damage resulting from misconduct of the Franchising Authority or its officials, boards, commissions, agents, or employees in utilizing any access Channels, equipment, or facilities and for any misconduct by Franchising Authority in connection with work performed by Franchising Authority and permitted by this Agreement, on or adjacent to the Cable System.

In order for Franchising Authority to assert its rights to be indemnified, defended, and held harmless, Franchising Authority must with respect to each claim:

- a. Promptly notify Grantee in writing within ten (10) business days of any claim or legal proceeding which gives rise to such right; and
- b. Afford Grantee the opportunity to participate in and fully control any compromise, settlement or other resolution or disposition of any claim or proceeding; and
- c. Fully cooperate with reasonable requests of Grantee, at Grantee's expense, in its participation in, and control, compromise, settlement or resolution or other disposition of such claim or proceeding subject to paragraph 2 above.

## SECTION 7

### Enforcement and Termination of Franchise

**7.1 Notice of Violation.** In the event that the Franchising Authority believes that the Grantee has not complied with the any material term of the Franchise, the Franchising Authority shall informally discuss the matter with Grantee. If these discussions do not lead to resolution of the problem, the Franchising Authority shall notify the Grantee in writing of the exact nature of such alleged noncompliance.

**7.2 The Grantee's Right to Cure or Respond.** The Grantee shall: (A) have thirty (30) days from receipt of the notice described in subsection 7.1: to cure the default; or (B) have ten (10) days from the receipt of the notice described in Subsection 7.1 to respond to the Franchising Authority, contesting the assertion of such noncompliance. The time for Grantee to correct any violation or liability shall be extended by Franchising Authority if the necessary action to correct such violation or liability is of such a nature or character as to require more than thirty (30) days within which to perform, provided Grantee provides written notice that it requires more than thirty (30) days to correct such violations or liability, commences the corrective action within the thirty (30) day period and thereafter uses reasonable diligence to correct the violation or liability.

**7.3 Public Hearing.** In the event that the Grantee fails to respond to the notice described in subsection 7.1 pursuant to the procedures set forth in subsection 7.2, or in the event that the alleged default is not remedied within thirty (30) days or the date projected pursuant to 7.2(C) above, if it intends to continue its investigation into the default, then the Franchising Authority shall schedule a public hearing. The Franchising Authority shall provide the Grantee at least ten (10) days prior written notice of such hearing, which specifies the time, place and purpose of such hearing, and provide the Grantee the opportunity to be heard.

**7.4 Enforcement.** Subject to applicable federal and state law, in the event the Franchising Authority, after the hearing set forth in subsection 7.3, determines that the Grantee is in material default of any provision of the Franchise, the Franchising Authority may:

- a. Commence an action at law for monetary damages or seek other equitable relief; or
- b. In the case of repeated or ongoing substantial non-compliance with a material term or terms of the Franchise, seek to revoke the Franchise in accordance with subsection 7.5.

**7.5 Revocation.** Should the Franchising Authority seek to revoke the Franchise after following the procedures set forth in subsections 7.1-7.4 above, the Franchising Authority shall give written notice to the Grantee of its intent. The notice shall set forth the exact nature of the repeated or ongoing substantial noncompliance with a material term or terms of the franchise. 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, Grantee shall be provided a fair opportunity for full participation, including the right to be represented by legal counsel, to introduce relevant evidence, to require the production of evidence, to and to introduce witnesses. A complete verbatim record and transcript shall be made of such hearing using audio or video tape.

Following the hearing, the Franchising Authority shall determine whether or not the Franchise shall be revoked. If the Franchising Authority determines that the Franchise shall be revoked, the Franchising Authority shall promptly provide Grantee with its decision in writing. The Grantee may appeal such determination of the Franchising Authority to an appropriate court. Such appeal must be taken within sixty (60) days of Grantee's receipt of the determination of the Franchising Authority.

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.

**7.6 Abandonment of Service.** Grantee may not abandon the System or any portion thereof without having first given three (3) months written notice to Franchise Authority. Grantee may not abandon the System or any portion thereof without compensating Franchise Authority for all costs incident to removal of the System.

7.7

**Removal After Abandonment, Termination or Forfeiture.**

- a. In the event of a lawful termination or abandonment of the System, Franchise Authority shall have the right to require Grantee to remove all or any portion of the System from all Rights-of-Way and public property within Franchise Authority.
- b. If Grantee has failed to commence removal of System, or such part thereof as was designated by Franchise Authority, within ninety (90) days after written notice of Franchise Authority's demand for removal is given, or if Grantee has failed to complete such removal within twelve (12) months after written notice of Franchise Authority's demand for removal is given, Franchise Authority shall have the right to remove the System at Grantee's expense and/or declare all right, title, and interest to the System to be in Franchise Authority with all rights of ownership including, but not limited to, the right to operate the System or transfer the System to another for operation by it.

7.8 **Force Majeure.** Neither party 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 parties 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.

**SECTION 8  
Miscellaneous Provisions**

8.1 **Work Performed by Others.** All applicable obligations of this Franchise shall apply to any contractor or others performing any work or services pursuant to the provisions of this Franchise, however, in no event shall any such contractor or others performing work obtain any rights to maintain and operate a System or provide Cable Service. Upon written request by Franchise Authority, Grantee shall provide notice to Franchise Authority of the name(s) and address(es) of any entity, other than Grantee, which performs substantial services pursuant to this Franchise.

8.2 **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.

8.3 **Entire Agreement.** This Franchise constitutes the entire agreement between the Grantee and the Franchising Authority and supersedes all other prior understandings and agreements oral or written. Any amendments to this Franchise shall be mutually agreed to in writing by the parties.



**8.4 Reservation of Rights.** Execution of this franchise will not constitute, or be deemed to constitute, a waiver, either expressly or impliedly, by either party of any constitutional or legal right which it may have or may be determined to have, either by subsequent legislation or court decisions. The parties acknowledge that each party reserves all of its rights under applicable Federal and State Constitutions and laws.

**8.5 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 mail, c) within five (5) business days after having been posted in the regular mail or d) or the next business day if sent by express mail or overnight air courier.

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

City of Fairhope, Alabama  
ATTN: City Clerk  
161 North Section St.  
Fairhope, AL 36532

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

Mediacom Southeast, LLC  
Attn: Jenna Comizio, Legal Affairs  
1 Mediacom Way  
Mediacom Park, NY 10918

With a copy to: Mediacom Communications  
Attn: Mitchell Brown, Government Relations  
1613 Nantahala Beach Road  
Gulf Breeze, Florida 32563

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

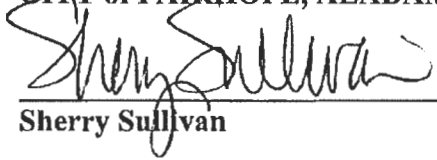
**8.6 Descriptive Headings.** The captions to Sections and subsections contained herein are intended solely to facilitate the reading thereof. Such captions shall not affect the meaning or interpretation of the text herein.

**8.7 Severability.** If any Section, subsection, sentence, paragraph, term, or provision hereof is determined to be illegal, invalid, or unconstitutional by any court of competent jurisdiction or by any state or federal regulatory authority having jurisdiction thereof, such determination shall have no effect on the validity of any other Section, subsection, sentence, paragraph, term or provision hereof, all of which will remain in full force and effect for the term of the Franchise.

**8.8 Term and Acceptance.** This Franchise shall be for a term of ten (10) years from the Effective Date of this Agreement. With execution of this Agreement, Company shall also deliver a certified or cashier's check in the amount of Three Thousand Dollars (\$3,000.00) made payable to the City of Fairhope, Alabama, as an acceptance fee and insurance certificates as required herein, that have not previously been delivered. The acceptance fee shall serve to recover attorney's fees and consulting expenses incurred by the City in granting this Franchise.

Considered and approved this 13 day of September, 2022.

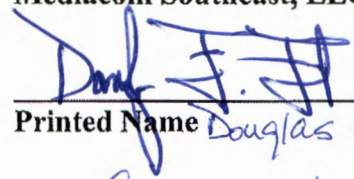
**CITY of FAIRHOPE, ALABAMA**

  
\_\_\_\_\_  
Sherry Sullivan

Title Mayor

Date 09.13.2022

**Mediacom Southeast, LLC**

  
\_\_\_\_\_  
Printed Name Douglas F. Frank

Title Group Vice President

Date 9/26/22