

**CITY OF PELL CITY, ALABAMA
ORDINANCE NO. _____**

AN ORDINANCE GRANTING A NONEXCLUSIVE FRANCHISE RENEWAL TO COOSA CABLE COMPANY, ITS PERMITTED SUCCESSORS AND ASSIGNS, TO CONSTRUCT, OPERATE, AND MAINTAIN A CABLE SYSTEM IN THE CITY OF PELL CITY, ALABAMA; AND SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OF THE FRANCHISE; AND PROVIDING FOR REGULATION AND USE OF THE CABLE SYSTEM.

BE IT ORDAINED, by the Mayor and City Council of the City of Pell City, Alabama:

Section 1. Definitions. For the purpose of this Ordinance, the following words and phrases shall have the meanings set forth in this section.

- (a) “Basic Cable” means any service tier which includes the retransmission of local television broadcast signals.
- (b) “Cable Act” means Title VI of the Communications Act of 1934, as amended, 47 U.S.C. §§ 521 *et seq.*
- (c) “Cable Service” means the one-way transmission to Subscribers of video programming, or other programming service; and subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.
- (d) “Cable System” means Company’s facility located within the City, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes video programming and which is provided to multiple Subscribers within a community.
- (e) “City” shall mean the City of Pell City, Alabama and all territory within its governmental authority.
- (f) “City Council” means the governing body of the City.
- (g) “Company” means Coosa Cable Company, and its permitted successors.
- (h) “Effective Date” means the date of adoption of this Ordinance by the City Council.
- (i) “EG Channel” means a channel on the Cable System for use by the City and educational institutions to distribute noncommercial governmental and education programming.

- (j) “Expanded Basic” means the service tier which includes additional channels offered by the Company for its service tier next above Basic Cable Service.
- (k) “Facilities” means any reception, processing, distribution or transmission component of the Cable System, including cables, conduits, converters, splice boxes, cabinets, manholes, vaults, poles, equipment, drains, surface location markers, appurtenances, fiber, and related facilities maintained by Company.
- (l) “FCC” means the Federal Communications Commission.
- (m) “Franchise” means the rights granted to Company under this Ordinance to construct and operate the Cable System and to provide Cable Services and other services as permitted under applicable law.
- (n) “Franchise Area” means the entire geographic area within the City as it is now constituted or may in the future be constituted.
- (o) “Gross Revenues” means all revenue, including Franchise Fees, derived by Company from the operation of the Cable System to provide Cable Services in the City, less uncollected bad debt, and except the following: FCC regulatory fees, Access Fees, if any, specified under Section 9(d), and any other governmental tax, fee, or charge imposed on any transaction between Company and a subscriber or other third party, and collected by Company for payment to a governmental authority.
- (p) “Installation” means the connection of the Cable System from feeder cable to the point of connection including Standard Installations and custom Installations with the Subscriber Converter or other terminal equipment.
- (q) “Normal Business Hours” means those hours during which most similar businesses in City are open to serve customers.
- (r) “Normal Operating Conditions” means those Service conditions which are within the control of Company. Those conditions which are not within the control of Company 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 ordinarily within the control of Company include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of the Cable System.
- (s) “Person” is any person, firm, partnership, association, corporation, company, or other legal entity.

- (t) “Street” means any street, alley, other land or waterway, dedicated or commonly used for utility purposes, including general or utility easements in which the City has the right and authority to authorize, regulate or permit the location of facilities other than those of the City. "Street" shall not include any real or personal City property that is not specifically described in the previous two sentences and shall not include City buildings, fixtures, and other structures or improvements, regardless of whether they are situated in the Street.
- (u) “Subscriber” means any Person who lawfully receives Cable Service.
- (v) “Term” means the term of this Franchise as set forth in Section 3.

Section 2. Grant of authority.

- (a) Grant of nonexclusive authority. The City grants to Company the right and privilege to construct, erect, operate, and maintain, in, upon, along, across, above, over and under the Streets, all Facilities necessary or desirable for the construction, maintenance, and operation of the Cable System. This Franchise shall be nonexclusive, and the City may grant franchises to other Persons.
- (b) Additional franchises. Any additional franchises granted by the City shall contain material terms and conditions that are no more favorable nor less burdensome than those contained herein so that no cable operator franchised by the City shall have an unfair competitive advantage over other operators franchised by the City. 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 are not materially more favorable or less burdensome. If Company reasonably believes that a competitor’s franchise contains terms or conditions that place Company at a competitive disadvantage, Company may petition the City to modify this Ordinance to eliminate the competitive disadvantage, and the City shall not unreasonably deny the petition.
- (c) Police Powers. Company shall at all times during the term of this Franchise be subject to all lawful exercise of the police power, statutory rights, local ordinance making authority and eminent domain rights of City.
- (d) Non-cable services. Company may use the Cable System to deliver non-Cable Services as permitted by applicable law and the City reserves any and all rights that it may have to regulate such non-Cable Services in accordance with applicable law.

- (e) State Franchise. Company shall have all rights granted by the State to obtain alternative authorization to provide Cable Services in the City via state authorization, if applicable.
- (f) Rules of Company. Company may promulgate rules, regulations, terms and conditions governing its business and services as reasonably necessary to enable Company to exercise its rights and perform its obligation under this Ordinance.

Section 3. Franchise Term. The Term of the Franchise granted under this Ordinance commences upon the Effective Date and shall continue for a term of 10 years, unless renewed, revoked or terminated sooner. The parties agree that any proceedings undertaken by the City that relate to the renewal of the Franchise shall be governed by and comply with the provisions of Section 626 of the Cable Act. Upon the Effective Date, this Franchise shall supersede and replace any previous franchise granted by the City and held by Company.

Section 4. Conditions of street occupancy.

- (a) Location of Facilities. Company shall locate all Facilities so as to minimize interference with the use of the Streets and with the rights and reasonable convenience of adjacent property owners.
- (b) Construction codes and permits. Company shall obtain all necessary permits and shall comply with all ordinances of general applicability before commencing any construction, upgrade or extension of the Cable System, including the opening or disturbance of any Street.
- (c) Repair of Streets and property. Company, at its expense, shall promptly restore any Street or public property damaged by Company during the construction, repair, maintenance or reconstruction of the Cable System in accordance with the requirements contained in any City ordinance or local code provision.
- (d) Public projects. After reasonable prior notice, Company, at its expense, shall relocate its Facilities as required by the City due to traffic conditions, public safety, street construction, or other public improvements by the City. In requiring Company to protect, support, temporarily disconnect, relocate or remove any portion of its property, the City shall treat Company the same as, and require no more of Company, than any other similarly situated utility. Company shall have the right to seek reimbursement from the City, under any applicable insurance or government program for reimbursement.
- (e) Building movement. Upon request of any Person holding a moving permit issued by the City and after reasonable prior notice, Company shall temporarily move its Facilities to permit the moving of buildings. Company may require the requesting Person to pay all costs related to the temporary relocation of Facilities, and may require payment in advance.

- (f) Tree trimming. Company may trim any trees in or overhanging the Streets, alleys, sidewalks, or public easements of the City as necessary to protect Company's Facilities in accordance with all applicable local code requirements.
- (g) Emergency Alert System. Company shall carry all federal, state and local alerts provided over the federal "Emergency Alert System" ("EAS") through Company's Cable Service as required by applicable FCC regulations. Company shall comply with any applicable state emergency plan. Company shall, in accordance with FCC or other applicable regulations, cooperate with the City on the use and operation by the City of the EAS.

Section 5. Cable System operations and safety.

- (a) Minimum Capacity. Within 24 months of the Effective Date, Company shall upgrade, operate, and maintain the System to a minimum of 750 MHz capacity.
- (b) Technical standards. The technical standards used in the operation of the Cable 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. The Cable System shall be designed, constructed, and maintained in material compliance with the National Electrical Code (NFRA 70) and the National Electrical Safety Code (ANSI C2), subject to any grandfathering of previously constructed portions of the Cable System as permitted by the applicable code.
- (c) Safety requirements. Company shall employ ordinary care and shall maintain in use commonly accepted methods and devices to reduce failures and accidents. Construction, operation, and maintenance of the Cable System shall be performed in an orderly and workmanlike manner.
- (d) System maps. Upon request by the City, Company shall make available to the City for review at Company's office up-to-date maps showing locations of all Facilities in the Streets.
- (e) System maintenance. When feasible, Company shall schedule Cable System maintenance to minimize service interruptions.

Section 6. Service obligations and Cable System extension.

- (a) Residential service drops. Company shall provide Cable Services without discrimination to all Persons residing within 300 aerial feet or 150 underground feet of the Cable System who request Cable Services and who comply with Company's terms and conditions of service. Company shall extend the Cable System to contiguous areas of the City not currently served by the Cable System when any such area reaches a household density equal to or greater than 30 households per cable mile. Company is generally not obligated to extend service to residences beyond 300 aerial feet or 150 underground feet from Company's

Facilities. Isolated residences requiring more than a standard 300 foot aerial drop or 150 foot underground line may be provided at a premium Installation rate if the service has been requested by the resident. Company may request advanced payment for a premium Installation. Upon the annexation of any additional land area by City, the annexed area shall thereafter be subject to all the terms of this Franchise.

- (b) Service to public buildings. Company shall provide free of charge, throughout the term of this Franchise, Installation of one (1) Drop, one (1) cable outlet, and Basic Cable Service, and, if necessary to receive Basic Cable Service, one set-top box, without charge to the Public Buildings identified on Schedule A attached. The free Cable Service set forth above shall be used by the Public Buildings in a manner consistent with the government purpose for the eligible building and shall not be resold. Internal distribution of the free Cable Service in any Public Building will be the responsibility of the Public Building owner. If internal distribution of the free Cable Service results in signal leakage in excess of limits established by the FCC: (i) the Public Building owner shall reimburse Company any costs associated with FCC action arising from the leakage; and (ii) Company may suspend free Cable Service to that Public Building until the Public Building owner corrects the signal leakage to Company's reasonable satisfaction. Company shall not impose any charges for such additional extensions or outlets with the exception of any additional terminal equipment which may be required.
- (c) Customer Service Center; Payment Drop Off Centers. Company shall maintain within 20 miles of the City a convenient location for customer service, receiving Subscriber payments, handling billing questions and equipment replacement. If Company relocates the customer service center outside the City limits, Company shall use commercially reasonable efforts to establish one or more payment drop-off locations within the City limits.

Section 7. Customer service and rates.

- (a) Customer Service Standards. Company shall also provide the necessary facilities, equipment and personnel to comply with the following customer service standards under Normal Operating Conditions:
 - A. Cable System office hours and telephone availability:
 - i. Company will maintain a local, toll-free or collect call telephone access line which will be available to its Subscribers twenty-four (24) hours a day, seven (7) days a week.
 - 1. Trained Company representatives will be available to respond to customer telephone inquiries during Normal Business Hours.
 - 2. 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 Company representative on the next business day.

- ii. 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.
 - iii. Under Normal Operating Conditions, the customer will receive a busy signal less than three percent (3%) of the time.
 - iv. Regional customer service center and bill payment locations will be open at least during Normal Business Hours.
- B. 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:
- 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 Company, Company will begin working on "Service Interruptions" promptly and in no event later than twenty-four (24) hours after the interruption becomes known. Company must begin actions to correct other Service problems the next business day after notification of the Service problem. Company shall resolve all Service Interruptions within forty-eight (48) hours under Normal Operating Conditions.
 - 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. (Company may schedule Service calls and other Installation activities outside of Normal Business Hours for the express convenience of the customer.)
 - iv. Company may not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment.
 - v. If Company'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 Company and Subscribers:
- i. Notifications to Subscribers:

1. Company 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:
 - 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 of the programming carried on the System; and
 - f. Billing and complaint procedures, including the address and telephone number of the City.
 2. Subscribers will be notified of any changes in rates, programming services or Channel positions in writing, by any reasonable means at the Company's discretion. 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 Company. In addition, the Company shall notify Subscribers thirty (30) days in advance of any significant changes in the other information required by this Section 7(a)(C)(i). Company 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 City on the transaction between the operator and the Subscriber.
- ii. Billing:
 1. 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.
 2. In case of a billing dispute, the Company must respond to a written complaint from a Subscriber within thirty (30) days.
 - iii. Refunds: Refund checks will be issued promptly, but no later than either:
 1. The Subscriber's next billing cycle following resolution of the request or thirty (30) days, whichever is earlier, or
 2. The return of the equipment supplied by Company if Service is terminated.
 - iv. Credits: Credits for Service will be issued no later than the Subscriber's next billing cycle following the determination that a credit is warranted.

- (b) Changes to Rates or Cable Services. Company shall provide Subscribers and the City with notice of changes to Cable Services or rates in accordance with FCC rules and regulations. The City hereby reserves any rights it may have under applicable law to regulate the rates charged by Company for Cable Services.

Section 8. Franchise Fee.

- (a) Franchise Fee. From the Effective Date through July 31, 2011, Company shall pay to the City an annual Franchise Fee in an amount equal to 3% of Gross Revenues. Beginning on August 1, 2011, Company shall pay to the City an annual Franchise Fee in an amount equal to 5% of Gross Revenues. Any payments due under this provision shall be payable quarterly. The payment shall be made within forty-five (45) days of the end of each of Company's fiscal quarters together with a report showing the basis for the computation in form substantially the same as attached Schedule B. After the end of the fourth quarter of Company's fiscal year, Company may have an additional 15 days to submit payment and the report. In the event that a Franchise Fee payment or other sum due is not received by the City on or before the date due, or is underpaid, Company shall pay in addition to the payment, or sum due, interest from the due date at an annual rate equal to the maximum rate permitted under state law, or twelve percent (12%) if no such rate is legally specified. Following reasonable prior notice, the City may inspect Company's books, records, and reports to verify franchise fee calculations and payments.
- (b) Inspection. During the term of this Franchise Agreement, upon reasonable prior written notice, during normal business hours, the City shall have the right to inspect the Company's financial records used to calculate the City's franchise fees, and the right to audit and to re-compute any amounts determined to be payable under this Section. Any additional amounts due to the City as a result of such audit shall be paid to the City by the Company within thirty (30) days following written notice to the Company by the City of such final audit. Notice to the Company shall include a copy of the audit report. The City shall bear the expense of any inspection or audit of the Company's books and records. Any additional amount due the City shall be paid within thirty (30) days of the City submitting a final invoice for such sum, and if such sum shall exceed five percent (5%) of the total Franchise Fee, which the audit determines should have been paid during any quarter, then Company shall pay the City's reasonable costs and expenses for such audit.
- (c) Books and Records Throughout the term of this Franchise Agreement, the Company agrees that the City, upon thirty (30) days prior written notice to the Company, may review such of the Company's books and records regarding the operation of the Cable System and the provision of Cable Service in the Franchise Area of the Company's business office, during normal business hours as is reasonably necessary to ensure the Company's compliance with the terms and conditions of this Franchise. Such books and records shall include, without limitation, any records required to be kept in a public inspection filed by the Company pursuant to the rules and regulations of the FCC.

- (d) File for Public Inspection. Throughout the term of this Franchise Agreement, the Company shall maintain at its business office, in a file available for public inspection during normal business hours, those documents required pursuant to the FCC's rules and regulations.
- (e) Communications with FCC. Upon request by the City, copies of all communications submitted by the Company to the FCC concerning the service, rates or operations of the Company in the Franchise Area with regard to the provisions of the Ordinance shall be provided to the City by mailing or filing a copy of the same to or with the City Clerk.

Section 9. Local Government/Educational Channel.

- (a) EG Channel Capacity and Use. Within 120 days of City's request, Company shall provide City with channel access for one EG Channel and connectivity from City Hall to the Cable System headend. Company shall carry the EG Channel on the Basic Tier in an analog format until all of the channels on the system are carried in a digital format. Company may simulcast the EG channel in digital and also offer the EG a digital tier of service. Programming provided by the City and education institutions authorized by City shall be limited to noncommercial government and education programming.
- (b) Company right to unused EG capacity. Company may upon written request to City, utilize the EG Channel for commercial or non-commercial programming when it is not scheduled for EG use.
- (c) EG Channel indemnification. To the extent allowed by state law, City shall indemnify, defend, and hold Company harmless for any third party claims and related damages, costs and expenses, related to programming distributed on the EG Channel, except for programming provided by Company.
- (d) EG Access Support. Within 120 days of City's request Grantee shall begin remitting to the City a per Subscriber fee of twenty-five cents (\$0.25) per month to fund capital expenditures related solely to educational and governmental access programming for the EG Channel (hereinafter "Access Fee"). The Access Fee may be used in City's sole discretion for capital expenditures related to the EG Channel and related programming.

Company may, on a semi-annual basis, upon 60 days written request to City, seek verification that the Access Fee has been used for capital purchases as set forth in this section. The City shall be permitted to hold all or a portion of the Access Fee from year to year as a designated fund to permit the City to make large capital expenditures, if necessary. If City chooses to borrow from itself or a financial institution to fund large EG access capital purchases or capital expenditures, City shall be permitted to make periodic repayments using the Access Fee. If Company believes City has failed to demonstrate compliance with the expenditure limitations of the Access Fee, Company shall provide City with written notice of its objections.

The parties shall thereafter meet at the reasonable request of either party to address the objections identified by Company. If Company reasonably concludes that City has expended Access Fees in a manner inconsistent with the limitations imposed herein, the Company may, after thirty (30) days written notice to the City, advise the City of its intention to terminate payment of the Access Fee. If the City disputes Company's allegation the City may commence a franchise violation proceeding against Company pursuant to the terms of this Franchise. In the event the City commences a franchise violation proceeding against Company, the Company shall continue to collect the Access Fee and hold the disputed monies in a separate interest bearing account until a final order is issued and any appeals exhausted. Any monies so held shall be distributed in accordance with any final order (after exhaustion of any and all appeals) or as City and Company might agree.

- (e) Access Fee Pass Through. Company may itemize the Access Fee as a separate line item charge on subscriber bills.

Section 10. Insurance and Indemnification.

- (a) Insurance. In addition to any other state mandated insurance requirements, Company shall maintain a comprehensive general liability insurance policy with the following minimum coverage limits:
 - (i) \$1,000,000 for personal injury or death;
 - (ii) \$1,000,000 for property damage; and
 - (iii) \$500,000 automobile insurance/combined bodily injury and property damage.

All insurance policies shall include the City, its officers, agents and employees, as insured parties and Company shall provide the City with a certificate of insurance which shall contain a statement that the insurer will not cancel the policy or fail to renew the policy for any reason without first giving 30 days' advance written notice to the City. Failure to maintain insurance required by this Section shall be deemed a material breach of this Franchise.

- (b) Indemnification. Company shall indemnify and hold harmless the City, its officers, agents and employees ("Indemnitees") from and against any claims, liabilities, damages, losses, and expenses (including, without limitation, reasonable attorney fees) ("Losses"), which may arise out of Company's construction, installation, operation or maintenance of the Cable System or breach of any provisions of the Franchise, unless such Losses arise from the negligence or intentional misconduct of the City, its officers, agents or employees. This obligation shall survive the term of this Franchise to the extent required to effectuate this provision. The indemnification obligations of Company set forth in this Franchise are not limited in any way by the amount or type of damages or compensation payable by or for Company 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 Company. City does not, and shall not, waive any rights

against Company which it may have by reason of the indemnification provided for in this Franchise, because of the acceptance by City, or the deposit with City by Company, of any of the insurance policies or certificates required herein.

Section 11. Transfer of Franchise.

- (a) Transfer. Neither the Company nor any other Person may transfer the Cable System or the Franchise or any of the Company's rights or obligations in or regarding the Franchise without the prior written consent of the City. No such 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 Company in the Franchise or in the Cable System in order to secure indebtedness, or (ii) a transfer to any entity controlled by the Company.
- (b) Change of Control. No change of Ownership or Control of the Company, the Cable System or the Franchise shall occur after the Effective Date, by act of the Company, its Owners, or any affiliated Person, by act of any Person holding Control of the Company, the System or the Franchise, by operation of law or otherwise, without the prior written consent of the City. For purposes of this Section "Control" means ownership of a majority interest or the actual working control and day to day management of the Company.
- (c) Consideration of transfer request. Company shall notify the City of its intent to transfer Ownership or Control of the Company or Franchise and provide all information submitted to the FCC concerning the transfer, as well as, sufficient additional information the Company reasonably believes will allow the City to determine the legal, financial and technical qualifications of the transferee. Company shall provide notice to the City under this Section by delivering a completed FCC Form 394 with all application attachments and exhibits or its equivalent. Within thirty (30) days of receiving a request for transfer, the City shall, in accordance with FCC rules and regulations, notify the Company if the City questions the accuracy of the information provided in the request for consent to transfer the franchise.
- (d) Information to be submitted for transfer review. All information will be submitted in compliance with the Cable Act and applicable FCC regulations.

Section 12. Franchise Enforcement. The City may enforce the terms of this Franchise granted under this Ordinance in case of material noncompliance by Company. Material noncompliance shall include:

- (a) A material violation by Company of any term, condition, or provision of this Ordinance that remains uncured within the applicable cure period;
- (b) Failure of Company to comply with any provision of any applicable Ordinance;

- (c) Company becomes insolvent, unable or unwilling to pay its debts, or is adjudged bankrupt, or there is a notice of prospective foreclosure or other judicial sale of all or a substantial part of the Cable System;
- (d) Company abandons the Cable System;
- (e) Company fails to operate the Cable System for a period of 30 days; or
- (f) Company is found to practice any fraud upon the City.

Section 13. Enforcement procedures. If the City seeks to enforce the terms of this Franchise under Section 12, the City shall follow the procedures in this Section.

- (a) Notice of complaint. The City shall provide Company with notice describing with reasonable specificity the alleged noncompliance. Company shall have 30 days from receipt of notice to cure the alleged noncompliance. The time for the Company to correct any violation or liability shall be extended by City if, in the City's reasonable discretion, the necessary action to correct such violation is of such a nature or character as to require more than thirty (30) days within which to perform, provided the Company provides written notice that it requires more than thirty (30) days to correct such violations and commences the corrective action within the thirty (30) day period and thereafter uses reasonable diligence to correct the violation. If Company cures the alleged noncompliance within the 30-day period, the City shall provide Company with notice withdrawing the complaint.
- (b) Public hearing. If Company fails to cure the alleged noncompliance within the 30-day cure period, or if Company provides the City with notice disputing the complaint, and the parties fail to otherwise resolve the matter, the City shall schedule a public hearing on the alleged noncompliance. At the public hearing, Company may present testimony and deliver to the City all evidence relevant to Company's defense. At the conclusion of the public hearing, the City may dismiss the complaint, defer action, order appropriate sanctions, require specific performance or terminate the Franchise in accordance with this Section. The City may, in the City's sole discretion, pursue any and all available remedies at law or in equity by proceeding directly to a court of competent jurisdiction.
- (c) Termination. The City may, after a duly noticed public hearing, terminate the Franchise for material noncompliance by Company. If Company contests the termination in a court of competent jurisdiction, Company may operate the Cable System in accordance with this Ordinance while the case is pending.
- (d) Removal of Facilities. Upon expiration or termination of the Franchise, Company shall be afforded a six-month period to sell or otherwise dispose of the Cable System subject to City right of approval per Section 10 herein. During the six-month period, Company shall operate the Cable System in accordance with this Franchise. At the expiration of the six-month period, Company has the right to remove its Facilities within a reasonable time but shall be subject to all local code

provisions regarding Street restoration any other applicable local or state law governing abandonment of facility in the Streets.

Section 14. Unauthorized reception of Cable Service; tampering with Facilities.

- (a) It shall be unlawful for any Person without Company's consent to willfully tamper with, remove or injure any of Company's Facilities.
- (b) It shall be unlawful for any Person to make or use any unauthorized connection to any part of Company's Cable System.
- (c) Any Person that violates this section shall be guilty of a misdemeanor and punished by a fine not to exceed \$500.00 for each occurrence or imprisonment for a term not to exceed 90 days or both, such fine and imprisonment as may be imposed by a court of competent jurisdiction.

Section 15. Customer Right to Cable Service.

- (a) It is the policy of the City to promote competition and choice in video services. It shall be unlawful for any property owner, manager, or other person offering rental housing in City to restrict by any means a tenant or resident from receiving Cable Service from the provider of their choice.
- (b) Any Person that violates this section shall be guilty of a misdemeanor and punished by a fine not to exceed \$500.00 for each occurrence or imprisonment for a term not to exceed 90 days or both, such fine and imprisonment as may be imposed by a court of competent jurisdiction.

Section 16. Notices. Notices under this Ordinance shall be in writing and shall be deemed given upon delivery by hand delivery, certified mail return receipt requested, or overnight courier to the following addresses:

To City:
City of Pell City
City Hall
1905 First Avenue North
Pell City, Alabama 35125
Attn: Mayor

To Company:
Coosa Cable Company
1701 Cogswell Avenue
Pell City, AL 35125
Attn: President

A party may designate other addresses for providing notice by providing notice in writing of such addresses.

Section 17. Miscellaneous.

- (a) Severability. If any provision of this Ordinance is for any reason held illegal, invalid, or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining provisions of this Ordinance. The invalidity of any portions of this Ordinance shall not abate, reduce, or otherwise affect any consideration or other obligation required by Company under the remaining provisions of this Ordinance.
- (b) Conflicting Ordinances Repealed. All ordinances and parts of ordinances in conflict with this Ordinance are repealed as of the effective date of this Ordinance.
- (c) Work Performed by Others. All applicable obligations of this Franchise shall apply to any subcontractor or others performing any work or services pursuant to the provisions of this Franchise, however, in no event shall any such subcontractor or other performing work obtain any rights to maintain and operate a Cable System or provide Cable Service. Upon written request, Company shall provide notice to City of the name(s) and address(es) of any entity, other than Company, which performs substantial services pursuant to this Franchise.
- (d) Non-enforcement by City. Company shall not be relieved of its obligations to comply with any of the provisions of this Franchise by reason of any failure or delay of City to enforce prompt compliance. City may only waive its rights hereunder by expressly so stating in writing. Any such written waiver by City of a breach or violation of any provision of this Franchise shall not operate as or be construed to be a waiver of any subsequent breach or violation.
- (e) Force Majeure. Neither party shall be liable for any failure of performance hereunder due to causes beyond its reasonable control including but not limited to; acts of God, fire, explosion, vandalism, storm or other similar catastrophes; national emergencies; insurrection; riots or wars.
- (f) Entire Agreement. This Agreement constitutes the entire agreement between the Company and the City. Amendments to this Agreement shall be mutually agreed to in writing by the parties, unless otherwise expressly provided herein.
- (g) Governing Law. This Agreement and the rights of the parties under it will be governed by and construed in all respects in accordance with the laws of the State of Alabama without regard to principles of conflicts of law.

Section 18. Effective date and acceptance. This Ordinance shall become effective upon adoption by the City and acceptance by Company and the publication thereof as provided by law, the expense of which shall be borne by the Company pursuant to Section 11-45-8(b), Code of Alabama. Company shall notify City of Company's acceptance of this Ordinance within 30 days of adoption by City. City may revoke this Ordinance if Company fails to provide timely notice of acceptance.

Passed and adopted this _____ day of _____, 2011.

ATTEST:

CITY OF PELL CITY, ALABAMA

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

SCHEDULE A
List of Designated Locations for
Free Drop, Outlet and Basic Cable Service

Civic Center
Senior Citizens BLDG
Armory
City Shop
City Hall Upstairs
Police Department
Sewer Treatment Plant
Fire Station #1
Fire Station #2
Fire Station #3
Fire Station #4

**SCHEDULE B
FRANCHISE FEE PAYMENT WORKSHEET**

	Month/Year	Month/Year	Month/Year	Total
Basic Cable Service				
Installation Charge				
Bulk Revenue				
Expanded Basic Service				
Pay Service				
Pay-per-view				
Guide Revenue				
Franchise Fee Revenue				
Advertising Revenue				
Home Shopping Revenue				
Digital Services				
Inside Wiring				
Equipment Rental				
Processing Fees				
Bad Debt				
Other				
REVENUE				
Fee Calculated				

Fee Factor: 5%